

**STATE OF RHODE ISLAND  
DEPARTMENT OF BUSINESS REGULATION  
PASTORE COMPLEX  
1511 PONTIAC AVENUE  
CRANSTON, RHODE ISLAND**

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<b>Beachcomber Properties LLIC,</b>	:	
<b>Appellant,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>Town of Narragansett, Town Council</b>	:	<b>DBR No.: 23LQ003</b>
<b>Sitting as Liquor Licensing Committee,</b>	:	
<b>Appellee</b>	:	
	:	
<b>and</b>	:	
	:	
<b>Narragansett Casino LLC,</b>	:	
<b>Intervenor,</b>	:	

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**ORDER RE: MOTION FOR STAY**

**I. INTRODUCTION**

This matter arose from a motion for stay filed on April 18, 2023 by Beachcomber Properties, LLC (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 regarding the decision taken on April 17, 2022 by the Town of Narragansett, Town Council Sitting as Liquor Licensing Committee (“Board” or “Town”) granting a Class F liquor license for April 21, 2023 to Narragansett Casino LLC (“Intervenor”).<sup>1</sup> A remote hearing on the motion to stay was heard on April 20, 2023 before the undersigned who was delegated to hear this matter by the Director of the Department. All parties were represented by counsel.

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<sup>1</sup> Narragansett Casino LLC was allowed to intervene in this appeal.

## **II. JURISDICTION**

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-7-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

A liquor appeal to the Department pursuant to R.I. Gen. Laws § 3-7-21 is considered a *de novo* hearing. The Department's jurisdiction is *de novo* and the Department independently exercises the licensing function. *A.J.C. Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984); *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964); and *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964). Because the Department's has such broad and comprehensive control over traffic in intoxicating liquor, its power has been referred to as a "super-licensing board." *Baginski v. Alcoholic Beverage Comm.*, 4 A.2d 265, 267 (R.I. 1939). See also *Board of Police Com'rs v. Reynolds*, 133 A.2d 737 (R.I. 1957). The purpose of this authority is to ensure the uniform and consistent regulation of liquor statewide. *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964). Further, since the liquor appeal hearing is a *de novo* hearing rather than an appellate review of what occurred at the municipal level, any alleged error of law or fact committed by the municipal agency is of no consequence. *Cesaroni* (Department's jurisdiction is *de novo* and the Department independently exercises the licensing function); and *Hallene*.

## **III. CLASS F LICENSE**

This matter relates to a Class F license which is a one (1) day liquor license for beer and wine which was granted by the Board to the Intervenor.

R.I. Gen. Laws § 3-7-14 provides in part as follows:

Class F license. (a) A retailer's Class F license authorizes the holder of the license to keep for sale and to sell malt and vinous beverages on the premises, described in the license, at retail for consumption on the premises where sold for a period of nineteen (19) hours, including Sunday. The license may be issued to religious organizations, state corporations, limited-liability companies (LLCs), sole proprietorships, and political organizations only and the sale of malt and vinous

beverages may take place between the hours of six o'clock (6:00) a.m. and one o'clock (1:00) a.m. on the following day, provided that no more than twelve (12) licenses shall be issued to any organization, corporation, LLC, sole proprietorship, or political organization in any one calendar year; and provided further that, as to each such entity, this limit of twelve (12) licenses per calendar year shall apply collectively to the entity and its officers, directors, principals, affiliates, employees, and agents. Class F licenses shall not be granted to any person or entity holding any other liquor license. The fee for each retailer's Class F license is fifteen dollars (\$15.00).

Section 1.4.12 of 230-RICR-30-10-1, *Liquor Control Administration* regulation provides as follows:

1.4.12 Class F, F-1, and F-2 (19 Hour License) License - Retail

A. Class F & F-1 alcoholic beverage licenses are to be considered "special event" licenses which are not subject to issuance on a regular basis to the same party and/or premises.

B. "Special Event" shall be considered any occasion and/or event which shall occur at irregular intervals of time not subject to any permanent scheduling.

C. No person and/or entity otherwise qualified for issuance of such license shall be issued more than five (5) such licenses in any one calendar year, however the local licensing authority board may grant up to an additional seven (7) licenses to a proposed licensee whose event exceeds said five (5) licenses.

D. No such license shall be issued without satisfactory evidence that proper health and safety precautions have been taken with regard to the use of such license, including but not limited to evidence of:

1. Adequate police control or protection;
2. Satisfactory sanitary and health facilities on the premises;
3. Control procedures that will be in place to prevent under-age drinking and excessive drinking by any individual or individuals frequenting the "special event."

**IV. STANDARD FOR ISSUANCE OF A STAY**

Under *Narragansett Electric Company v. William W. Harsch et al.*, 367 A.2d 195, 197 (R.I. 1976), a stay will not be issued unless the party seeking the stay makes a "'strong showing'" that "(1) it will prevail on the merits of its appeal; (2) it will suffer irreparable harm if the stay is not granted; (3) no substantial harm will come to other interested parties; and (4) a stay will not harm the public interest." Despite the ruling in *Harsch*, the Supreme Court in *Department of Corrections v. Rhode Island State Labor Relations Board*, 658 A.2d 509 (R.I. 1995) found that

*Harsch* was not necessarily applicable in all agency actions and the Court could maintain the *status quo* in its discretion when reviewing an administrative decision pursuant to R.I. Gen. Laws § 42-35-15(c). The issue before the undersigned is a motion to stay a Decision which is subject to a *de novo* appeal and does not fall under R.I. Gen. Laws § 42-35-15(c).

## V. ARGUMENTS

The Appellant and Intervenor are in litigation over ownership of the property at issue. They both agree that the Appellant owns the land on which the building at issue sits. The Appellant represented that it owns the building, but the Intervenor represented that it owns the building. There is litigation in Superior Court that is going to arbitration in relation to the ground lease for the building and the ownership issues relating to the building. The Town represented that its land records show the Intervenor as owning the building, and the Intervenor has been paying the taxes so that is what the Town follows.

The Appellant argued as a matter of law the Board could not grant the license so that the license was void. The Appellant argued that the Intervenor failed to provide any evidence to the Board as required by § 1.4.12 of the Regulation. *Supra*. The Appellant argued that it would suffer irreparable harm to its contractual and property rights to deny the sale of alcohol on its own property, and it is against the sale of alcohol on its property. The Appellant argued that the public interest is served by an adherence to the Department's regulations so a license should not be granted to an inexperienced company with no valid claim to the premises. The Appellant further argued that the Board did not review the evidence of compliance with the Regulation and impermissibly delegated that authority to the Town Clerk after the Board meeting. The Appellant also argued that it received no notice of this hearing and only discovered it by reading the agenda.

The Intervenor argued that the issue is whether the Class F license was properly issued, and it is in compliance with § 1.4.12 of the Regulation. It argued the Town issued the license and not the Town Clerk. It argued that the Appellant waived any notice argument because it appeared at the Board hearing. It argued that it will have adequate protection since it will have five (5) TIPS certified<sup>2</sup> servers on duty on April 21, 2023 with three (3) TIPS certified servers walking the floor monitoring and ensuring compliance with all local and state regulations. The Intervenor represented that the event is for a University of Rhode Island department (School of Engineering) award show and will have 150 students attending, and that the students will be bused in. The Intervenor argued that it has a valid business license for an occupancy of 300 and was recently inspected by the Town, including the Building Inspector and Fire Marshal, and given a certificate of occupancy so that there are satisfactory sanitary and health facilities for the premises for the attendees. The Intervenor represented that the URI department has designated professors and students to assist staff in checking ID's, and in its objection to the motion to stay, it represented that those over 21 will be given a wrist band and be able to purchase drink tickets at a separate table in order to purchase alcohol, and there will also be unlimited soda and water available as well. The Intervenor argued that it has control procedures that will be in place to prevent underage drinking. The Intervenor represented that it has insurance (\$2.5 million) on which the Appellant is named. The Intervenor represented that it has local licenses for victuals, business, entertainment, and holiday sales.

The Town argued that it followed the state requirements for granting a Class F license. It represented that for a Class F license, an applicant files an application which is then heard by the Board. It represented that when the Board approves the issuance of a Class F license, the license

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<sup>2</sup> TIPS certification is the acronym for the Alcohol Server Training Program Certification set forth in § 1.4.43 of the Regulation.

is then issued once the Town Clerk receives evidence of compliance with state and local laws. The Town argued that security is shown by the use of TIPS certified servers. The Town represented that no specific notice was sent as the Town does not believe that is required by the statute.

## **VI. DISCUSSION**

The information received by the undersigned is based on representations of the parties. The undersigned did not have a transcript of the Board hearing; however, an audio of the Board's hearing for April 17, 2023 was available online, and the undersigned listened to that recording.<sup>3</sup>

The Intervenor has various valid business licenses from the Town. While the Appellant is in litigation with the Intervenor regarding the lease and ownership of the land and/or property on which the Intervenor's building sits, the Intervenor has not been enjoined by the Court from operating in the building. The Intervenor certified on its application to the Town that it will abide with all state and local requirements. The license is a one (1) day license for a URI awards show. The Intervenor will have five (5) TIPS certified servers on duty to ensure no underage drinking and to ensure compliance with all liquor licensing requirements. The Intervenor represented it would comply with all state and local requirements, and that the URI students would be bused in for the awards ceremony for which the Class F was being granted. Indeed, the number of attendees is half the capacity of the venue. The premises have been issued a certificate of occupancy.

The Appellant argued that the no evidence was supplied to the Board for such compliance. However, the Intervenor indicated on its application that it would comply with all laws and regulations that relate to the application. The Appellant argued that the Board should review the information about such compliance, but apparently the Town Clerk reviews such evidence after

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<sup>3</sup> See <https://www.youtube.com/watch?v=HqL8XubmFus> (Town of Narragansett youtube channel for April 17, 2023 Board hearing).

the Board's approval. The Appellant argued that the Town's procedures violated state law in that the Board should review such evidence of compliance rather than the Town Clerk.

This matter has now been appealed to the Department. The Department's jurisdiction is *de novo*. If there are errors of law by a local authority, the Department may choose to remand an issue for a local authority to reconsider the issue or re-notice a matter. However, the Department does not need to remand matters and exercises its licensing authority independently. Thus, any error of law by the Board is not necessarily of consequence on appeal.<sup>4</sup>

Applying the stay criteria, a stay will not be issued if the party seeking the stay cannot make a strong showing that it will prevail on the merits of its appeal. The building has been issued a certificate of occupancy, has local business licenses, and will be using five (5) TIPS servers.<sup>5</sup> There is protection in terms of TIPS servers. The Intervenor has local licenses so has complied with health and safety regulations. There are control procedures against underage drinking with TIPS servers. Thus, there has been no showing that the Intervenor is not in compliance with the requirements of § 1.4.12 of the Regulation. The Appellant argued it will suffer irreparable harm to its property rights; however, the issue of ownership and lease is in Court and currently the Intervenor is licensed by the Town to operate at these premises. There is a public interest in ensuring the adherence to statutory and regulatory requirements for liquor licensing; however, it has not been shown that the Intervenor is not adhering to such requirements. This is a one (1) day license for a limited group of attendees for which there are TIPS certified servers, and the attendees will be bused in from URI for an awards ceremony.

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<sup>4</sup> Thus, this stay order is not addressing the Town's procedures for granting such license or whether there are any notice requirements for a Class F license under R.I. Gen. Laws § 3-5-17.

<sup>5</sup> The undersigned notes that ID's should only be checked by Intervenor staff (TIPS servers) rather than assisted in the checking of ID's by URI students.

**VII. RECOMMENDATION**

There has been no showing that a stay should be granted. Therefore, the Appellant's motion for stay is denied.

Dated: April 20, 2023

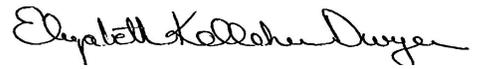
  
Catherine R. Warren  
Hearing Officer

**INTERIM ORDER**

I have read the Hearing Officer's Recommended Order in this matter, and I hereby take the following action with regard to the Recommendation:

ADOPT  
 REJECT  
 MODIFY

Dated: 4/20/2023

  
Elizabeth Kelleher Dwyer, Esquire  
Interim Director

**NOTICE OF APPELLATE RIGHTS**

**THIS ORDER CONSTITUTES AN INTERLOCUTORY ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-15. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS**

**CERTIFICATION**

I hereby certify on this 20th day of April, 2023 that a copy of the within Order and Notice of Appellate Rights were sent by electronic delivery and first class mail, postage prepaid, to the following: Patrick J. Dougherty, Esquire, Dougherty & Associates Law, Inc., 887 Boston Neck Road, Suite #1, Narragansett, RI 02882 and pjdoughertylaw@verizon.net; John O. Mancini, Mancini Carter, The Hanley Building, 56 Pine Street, 3<sup>rd</sup> Floor, Providence, R.I. 02901 and jmancini@mancinicarter.com; and Mark Davis, Esquire, Town of Narragansett, 25 Fifth Avenue, Narragansett, R.I. 02882 and mdavis@mdalegal.com and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.

*Megan J. Mihara*  
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