

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

Mutual Properties Apple Valley, LLC,	:	
Appellant,	:	
	:	
v.	:	
	:	
Town of Smithfield, Town Council	:	DBR No.: 23LQ001; -002
Sitting as Liquor Licensing Committee,	:	
Appellee	:	
	:	
and	:	
	:	
Copperfields, Inc. LLC,	:	
Intervenor,	:	

ORDER OF DISMISSAL

I. INTRODUCTION

This matter arose from an appeal filed on March 3, 2023 by Mutual Properties Apple Valley, LLC (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 regarding the decision taken on February 21, 2023 by the Town of Smithfield, Town Council Sitting as Liquor Licensing Committee (“Board” or “Town”) granting the renewal of a Class BV liquor license (“License”) for Copperfield’s Inc. (“Intervenor”).¹ On March 31, 2023, the Appellant filed a second appeal of the Board’s decision of March 21, 2023 to transfer the Intervenor’s License. The two (2) appeals were consolidated. A prehearing conference was held on April 6, 2023 with a further status conference being held on April 20, 2023. The Intervenor filed a motion to dismiss to which the Town joined and to which the Appellant objected. A remote

¹ Copperfield’s Inc. was allowed to intervene in this appeal.

hearing on the motion to dismiss was heard on May 2, 2023 before the undersigned who was delegated to hear this matter by the Director of the Department. All parties were represented by counsel.

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 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*; and *Hallene*.

III. ISSUE

Whether the motion to dismiss should be granted.

IV. MATERIAL UNDISPUTED FACTS

The Appellant was the Intervenor's landlord and filed an eviction action against the Intervenor in Superior Court. On January 20, 2023, judgment was entered for the Appellant granting possession of the premises and damages in the amount of \$18,652. Execution was stayed until April 1, 2023.

The Intervenor was to pay the February and March rent before the first of the month. The judgment provided as follows:

Should Defendant [Intervenor] not vacate the premises by April 1, 2023, Defendant shall owe liquidated damages in the amount of \$5,000.00 plus legal fees associated with any further possession action. (See Appellant's first appeal for copy of judgment).

On February 21, 2023, the Town renewed the Intervenor's License. On March 21, 2023, the Town approved the transfer of the Intervenor's License. At the Town hearing on the transfer, it was represented that there was an eviction proceeding with \$18,000 being held in the court registry but there was an outstanding balance of \$652 with a deadline of April 1, 2023 for the Intervenor to comply. The Town approved the transfer "subject to any monies owed pursuant to the State of Rhode Island Superior Court stipulation, judgement and civil action in Kent County KD-2022-0655." The minutes for the transfer meeting state the Town solicitor stated that the Intervenor must provide confirmation of payment. (See Town's objection, minutes of the Town meetings for February 21 and March 21, 2023).

On April 17, 2023, the Appellant initiated a Superior Court action against the Intervenor for breach of contract and civil contempt. The complaint alleges that the Intervenor did not vacate the premises by April 1, 2023 but it does not seek possession of the premises as the Intervenor has left. The Appellant alleges in its complaint that the Intervenor failed to vacate by April 1, 2023 and left its property behind as well as caused property damage. The main allegations are that the Intervenor damaged the property and failed to leave by April 1, 2023. (Copy of complaint provided by Appellant to the undersigned by letter dated April 20, 2023).

At hearing, the parties agreed that the Intervenor paid the \$18,652.00 owed and the February and March rent to the Appellant. The Intervenor disputed that it failed to leave the premises by April 1, 2023 and asserts it vacated the premises by March 31, 2023.

V. DISCUSSION

A. **Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, “the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. DEM*, 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (R.I. 1998).

B. **Relevant Statutes**

R.I. Gen. Laws § 3-7-21 provides in part as follows:

Appeals from the local boards to director. (a) Upon the application of any petitioner for a license, or of any person authorized to protest against the granting of a license, including those persons granted standing pursuant to § 3-5-19, or upon the application of any licensee whose license has been revoked or suspended by any local board or authority, the director has the right to review the decision of any local board, and after hearing, to confirm or reverse the decision of the local board in whole or in part, and to make any decision or order he or she considers proper, but the application shall be made within ten (10) days after the making of the decision or order sought to be reviewed. Notice of the decision or order shall be given by the local or licensing board to the applicant within twenty-four (24) hours after the making of its decision or order and the decision or order shall not be suspended except by the order of the director. ***

R.I. Gen. Laws § 3-5-19 provides in part as follows:

Transfer or relocation of license. (a) The board, body or official which has issued any license under this title may permit the license to be used at any other place within the limits of the town or city where the license was granted, or, in their

discretion, permit the license to be transferred to another person, but in all cases of change of licensed place or of transfer of license, the issuing body shall, before permitting the change or transfer, give notice of the application for the change or transfer in the same manner as is provided in this chapter in the case of original application for the license, and a new bond shall be given upon the issuance of the license provided, that notice by mail need not be made in the case of a transfer of a license without relocation. In all cases of transfer of license, indebtedness of the licensee incurred in the operation of the licensed premises shall be paid to or released by an objecting creditor before the issuing body permits the transfer. In cases of dispute as to the amount of indebtedness, the issuing body, may, in its discretion, permit the transfer upon statement of the licensee, under oath, that the claim of indebtedness is disputed and that the statement of dispute is not interposed for the purpose of inducing transfer of the license. ***

C. Arguments

The Intervenor argued that it complied with the judgment, and no debt is owed. It argued that pursuant to R.I. Gen. Laws § 3-5-19, it submitted an affidavit disputing any debt. It argued the License was validly renewed and transferred. It argued that the reference in the judgment about liquidated damages is for any further possession action, and there has been no further possession action. It argued the Appellant is arguing that certain items have not been removed from the premises because it cannot argue that the Intervenor still has possession. The Intervenor argued that the Appellant's Court action is not a judgment.

The Town argued that it correctly approved the renewal and transfer of the License. It argued that there is no debt as the Intervenor has paid the judgment and the Superior Court action is not a debt but just an action for damages. It argued that the transfer was conditioned on the payment of judgment by the Intervenor, and the Intervenor has proved its payment of the judgment.

The Appellant argued that the Town transferred the License subject to the Intervenor satisfying the judgment, and the Intervenor has not satisfied the judgment. The Appellant argued that on April 1, 2023, the Appellant still had items on the premises that should not have been there, and other items were missing so it had not vacated by April 1, 2023. The Appellant argued that there was

additional property damage so the question is whether the creditor is satisfied so that the License should be held in abeyance until Superior Court renders a judgment.

D. Motion to Dismiss

Section 2.11 of the Department’s *Rules of Procedure for Administrative Hearing* 230-RICR-100-00-2 (“Hearing Regulation”) provides in part as follows:

General. Any Party may request that the Hearing Officer enter any order or action not inconsistent with law or these Rules. The types of motions made shall be those which are permissible under these Rules and the Rhode Island Superior Court Rules of Civil Procedure (“Super. R. Civ. P.”).

In determining a motion to dismiss for failure to state claim, the allegations contained in the complaint will be assumed to be true and all doubts viewed in the light most favorable to the nonmoving party. The motion should not be granted unless it is clear beyond a reasonable doubt that the claimant would not be entitled to relief under any conceivable sets of facts that could be proven in support of claimant’s claim. Additionally, the party bringing the action must have standing.² *Ho-Rath v. Rhode Island Hospital*, 115 A.3d 938 (R.I. 2015); *Boyer v. Bedrosian*, 57 A.3d 259 (R.I. 2012); and *Ryan v. Department of Transp.*, 420 A.2d 841 (R.I. 1980).

E. Standing

The first appeal was of the renewal of the License. When an original license is issued, abutters within 200 feet of the new licensee have the right to appeal to the Department pursuant to R.I. Gen. Laws § 3-7-21. R.I. Gen. Laws § 3-5-17³ provides what type of notice to 200 feet abutters

² “A party acquires standing either by suffering an injury in fact or as the beneficiary of express statutory authority granting standing.” *Tanner v. East Greenwich*, 880 A.2d 784, 792 (R.I. 2005).

³ R.I. Gen. Laws § 3-5-17 provides as follows:

Notice and hearing on licenses. – Before granting a license to any person under the provisions of this chapter and title, the board, body or official to whom application for the license is made, shall give notice by advertisement published once a week for at least two (2) weeks in some newspaper published in the city or town where the applicant proposes to carry on business, or, if there is no newspaper published in a city or town, then in some newspaper having a general circulation in the city

is required to be given for an original application for license. Notice is also given to 200 feet abutters for a transfer or relocation of license pursuant to R.I. Gen. Laws § 3-5-19. R.I. Gen. Laws § 3-7-21 also provides that those granted standing pursuant to R.I. Gen. Laws § 3-5-19 have the right to appeal. R.I. Gen. Laws § 3-5-19 applies to the transfer or relocation of a license where the notification process is the same as an original application. R.I. Gen. Laws § 3-7-6 governs the renewal of liquor licenses including Class B licenses. Appeal rights are not granted to 200 feet abutters in renewal matters since a renewal does not involve a new license, or a new location, or a new owner.

The Department has broad and comprehensive control over the traffic in intoxicating liquors. *Supra*. Because of this broad authority to enforce Title 3, the Department may review matters on appeal pursuant to its authority under R.I. Gen. Laws § 3-2-2⁴ rather than R.I. Gen. Laws § 3-7-21. The Department exercises its authority under a R.I. Gen. Laws § 3-2-2 when a

or town. Applications for retailer's Class F, P and Class G licenses need not be advertised. The advertisement shall contain the name of the applicant and a description by street and number or other plain designation of the particular location for which the license is requested. Notice of the application shall also be given, by mail, to all owners of property within two hundred feet (200') of the place of business seeking the application. The notice shall be given by the board, body or official to whom the application is made, and the cost of the application shall be borne by the applicant. The notices shall state that remonstrants are entitled to be heard before the granting of the license, and shall name the time and place of the hearing. At the time and place a fair opportunity shall be granted the remonstrants to make their objections before acting upon the application; provided that no advertisement or notice need be given pursuant to this section when a license holder applies for a temporary seasonal expansion of an existing liquor license.

⁴ R.I. Gen. Laws § 3-2-2 provides as follows:

Supervision. – (a) The department has general supervision of the conduct of the business of manufacturing, importing, exporting, storing, transporting, keeping for sale, and selling beverages.

(b) The department may lease a warehouse for the purpose of efficiently exercising its powers and duties of inspection and may upon reasonable charges store beverages for license holders in the warehouse. No lease shall be for a longer period than five (5) years and every lease shall contain the provision that if it becomes unlawful to manufacture, keep for sale, and to sell beverages in this state it shall become void.

(c) The department has the power at any time to issue, renew, revoke and cancel all manufacturers', wholesalers' and retailers' Class G licenses and permits as are provided for by this title.

(d) The department shall supervise and inspect all licensed places to enforce the provisions of this title and the conditions, rules and regulations which the department establishes and authorizes.

matter rises to a level that impacts its broad authority over statewide licensing. *City of Providence Bd. of Licenses v. State Department of Business Regulation*, 2006 WL 1073419 (R.I. Super.); and *Green Point Liquors v. McConaghy*, 2004 WL 2075572 (R.I. Super).

As the undersigned indicated to the parties after the first appeal,⁵ it appeared that the Appellant likely did not have standing as it was appealing a renewal of a license, but the Department might have *sua sponte* jurisdiction over the appeal in relation to whether the licensee (Intervenor) had a premise (if it had been evicted). R.I. Gen. Laws § 3-5-9⁶ provides that a Class BV license must be issued to a specific premise. In other words, once a license is granted, it must be used for specific premises. *Baker v. Department of Business Regulation*, 2007 WL 1156116 (R.I. Super.) (finding that a Class B liquor license can be revoked for failing to comply with conditions of licensing when license not being used and finding that license is tied to premises).

Prior to the scheduled April 6, 2023 prehearing conference for the first appeal, the second appeal was filed. These matters were consolidated. By the time of the April 6, 2023 prehearing conference, the issue of premise was moot since the License had been transferred to a new premise so there was no potential statewide concern regarding compliance with conditions of licensing for a Class BV license in relation to a premise.

Based on the foregoing, the Appellant had no standing to bring the first appeal. The Department has no reason to review the first appeal under its *sua sponte* authority.

⁵ See email of March 3, 2023 from the undersigned when scheduling the prehearing conference after receipt of the first appeal.

⁶ R.I. Gen. laws § 3-5-9 provides as follows:

Premises covered. Not more than one retail license, except in the case of a retailer's Class E license, shall be issued for the same premises. Every license shall particularly describe the place where the rights under the license are to be exercised and beverages shall not be manufactured or kept for sale or sold by any licensee except at the place described in his or her license.

F. Second Appeal

The Appellant agreed at the hearing that it is not within 200 feet of the new location so that the Appellant is not an abutter of the Intervenor's new location. The Appellant could not appeal as an abutter, but its second appeal (of the transfer) was as a creditor pursuant to R.I. Gen. Laws § 3-5-19. Pursuant to R.I. Gen. Laws § 3-5-19, indebtedness of a licensee incurred in the operation of the licensed premises shall be paid or released by an objecting creditor before the licensing body permits the transfer. However, the licensing body may permit the transfer upon the statement of the licensee, under oath, that the claim of indebtedness is disputed, and the dispute is not interposed for purpose of inducing the transfer of license.

The Intervenor has submitted an affidavit from its principal that the Intervenor paid the \$652,⁷ disputed any debts, and gave notice it would vacate by March 31, 2023 and vacated by March 31, 2023 (Affidavit attached to Intervenor's motion to dismiss).

There are two (2) issues here. One is the appeal by the Appellant as a creditor and one is the satisfaction of the judgment. The Appellant relied on the issue of the liquidated damages in the judgment and its Superior Court complaint to argue that judgment has not been satisfied. A review of the liquidated damages provision in the judgment shows that it related to a further an action for possession. There has been no action for further possession in that while the parties dispute which day the premises were vacated and how they were vacated, the Appellant has not filed an action to possess the premises since the Intervenor is not in possession of the premises and has vacated the premises. The Appellant has possession and has filed an action for breach of contract and property damage against the Intervenor. Furthermore, a review of the Town's minutes for the transfer of License shows that the Town conditioned the transfer of the License on the

⁷ A total of \$18,652 was owed by the Intervenor in the Court judgment with \$18,000 already being held in the Court registry so that the payment of \$652 covered that total amount under the judgment.

payment of monies owed and required confirmation of same. *Supra*. In other words, the transfer was subject to the payment of \$18,652 (and rent) as stated in the judgment. The potential of liquidated damages for a future possession action was not considered by the Town. (Indeed, the point of the hearing was to transfer the License elsewhere).

While it is up to a Court to determine whether the judgment has been satisfied, the Town's condition for the transfer was the payment of monies owed under the judgment has been satisfied by the Intervenor.

Furthermore, while the Appellant is able to bring an appeal as a creditor, a town has the discretion to permit a transfer upon the statement of a licensee under oath that it disputes the debt. Here, the transfer was granted before the filing of the Superior Court action. However, the Intervenor has provided an affidavit that it disputes any other monies owed beyond that already paid. Finally, there is no outstanding debt owed by the Intervenor in that there is only Court litigation that may or may not result in another judgment against the Intervenor. The Appellant is no longer a creditor of the Intervenor as there is no judgment (or any debt certain) for any money owed but rather litigation in Superior Court which may or may not end up in a judgment. The Intervenor has also attested under oath that any debt is disputed.

Based on the foregoing, the Appellant no longer has standing to pursue its *de novo* appeal as a creditor. Additionally, the Intervenor met the Town's condition for the transfer of the License.

G. Renewal of Class BV Licenses


At hearing, the Appellant did not press its argument about the renewal of the License and service of alcohol that it raised in its papers. In its objection, the Appellant argued that the Intervenor was in violation of the law if it served alcohol after the expiration of its License but before the renewal was granted by the Town. However, it should be noted that a Class BV liquor

licensee that timely files its renewal is *prima facie* entitled to renewal. R.I. Gen. Laws § 3-7-6.⁸ Further, in general R.I. Gen. Laws § 42-35-14⁹ provides that with a timely filing of a license renewal application, the license continues in operation until a final decision is made on the renewal application. *Chernov Enterprises, Inc. v. Sarkas*, 284 A.2d 61 (R.I. 1971) (in relation to a liquor license renewal). Assuming a timely renewal, the License did not lapse between its expiration and the Town's renewal decision in March, 2023.

VI. RECOMMENDATION

Based on the foregoing, the first appeal is dismissed as the Appellant does not have standing. The second appeal is dismissed because the Appellant no longer has standing as a creditor since the Town's condition for the transfer of License has been met and any other monetary claim by the Appellant is disputed by the Intervenor and is in litigation so that the Appellant also has failed to state a claim in its appeal. Therefore, this consolidated appeal is dismissed, and there is no impediment from this appeal to the issuance of the transfer of the License.

Dated: MAY 9, 2023


Catherine R. Warren
Hearing Officer

⁸ R.I. Gen. Laws § 3-7-6 provides in part as follows:

Renewal of Class A, Class B, Class C, Class D, Class E, and Class J licenses. The holder of a Class A, Class B, Class C, Class D, Class E, or Class J license who applies before October 1 in any licensing period for a license of the same class for the next succeeding licensing period is *prima facie* entitled to renewal to the extent that the license is issuable under § 3-5-16. This application may be rejected for cause, subject to appeal as provided in § 3-7-21. ***

⁹ R.I. Gen. Laws § 42-35-14 provides in part as follows:

Licenses. (a) Whenever the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for a hearing, the provisions of this chapter concerning contested cases apply.

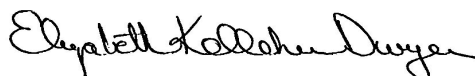
(b) Whenever a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court. ***

ORDER

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

 X ADOPT
 REJECT
 MODIFY

Dated: 5/10/2023



Elizabeth Kelleher Dwyer, Esquire
Interim Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TOR.I. GEN. LAWS§ 42-35-12. 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 APPROPRIATE TERMS.

CERTIFICATION

I hereby certify on this 10th day of May, 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: John O. Mancini, Esquire, Mancini Carter, The Hanley Building, 56 Pine Street, 3rd Floor, Providence, R.I. 02901 and jmancini@mancinincarter.com; Scott D. Levesque, Esquire, Bengtson & Jestings, LLP, 40 Westminster Street, Suite 300, Providence, R.I. 02905 and slevesque@benjestlaw.com; Stefanie DiMaio Larivee, Esquire, 478A Broadway, Providence, R.I. 02909 and sdllaw1107@gmail.com; J. Dixon-Acosta, Esquire, 899 Warren Avenue, Suite 2, East Providence, R.I. 02914 and jadaesq@gmail.com; and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.

