STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: January 9, 2023)

THE WINE AND LIQUOR COMPANY, INC. and CITY OF CRANSTON, ***Petitioners,***	:	
v.	:	**C.A. No. PC-2022-02539**
RHODE ISLAND DEPARTMENT OF BUSINESS REGULATION and OAKLAWN DISCOUNT LIQUORS, INC. and MAB LIQUORS, LTD., ***Respondents.***	:	

DECISION

LANPHEAR, J. Before the Court for decision is the Wine and Liquor Company (W&L) and the City of Cranston's Complaint appealing from the April 14, 2022 Decision issued by the Rhode Island Department of Business Regulation (DBR) in DBR No. 21LQ007. Jurisdiction is pursuant to G.L. 1956 § 42-35-15, the Administrative Procedures Act (APA). Extensive memoranda was submitted and oral argument was waived.

I

Facts and Travel

In its Decision, DBR ruled that W&L's class A liquor license to operate a retail liquor establishment in the City of Cranston, Rhode Island retroactively became null and void because W&L failed to comply with "all necessary conditions for licensing within one (1) year by November 4, 2020." (Decision 33.) W&L and the City of Cranston timely filed their Administrative/Agency Appeal Complaint with the Superior Court on May 5, 2022. (Docket PC-2022-02539.)

The matter arose before DBR from an appeal by Oaklawn Liquors, Inc. and MAB Liquors, Ltd. (collectively Respondents) filed on October 8, 2021 pursuant to G.L. 1956 § 3-7-21 challenging the City of Cranston's decision on October 4, 2021, by and through the Cranston Safety Services and Licenses Committee (City), the City's duly authorized retail liquor-licensing body, to renew W&L's Class A liquor license. (Decision 1.)

A

History of the Disputed License

In 2016, the Clift family, the principals of W&L, developed a plan to acquire an existing liquor store and expand that enterprise into a "superstore." (W&L's Administrative Appeal Mem., 2.) On March 7, 2016, the City approved the transfer of the license to W&L from the previous owner without express conditions or restrictions. (Decision 3.) W&L then operated Another Liquor Store located at 311 Warwick Avenue. On September 11, 2017, the City renewed the license without express conditions or restrictions, did so again on October 1, 2018, and again on October 7, 2019. *Id.*

On November 4, 2019, the City approved the location transfer of the license from the 311 Warwick Avenue location to 1458–1500 Oaklawn Avenue, without express conditions or restrictions. *Id.* The Clifts closed the Warwick Avenue store in April 2020, and to date have not opened the Oaklawn Avenue store. *Id.* at 4. However, during 2020 the Clifts were in the process of purchasing the Oaklawn Avenue property, securing financing, and completing the permitting process. (W&L's Administrative Appeal Mem., 3.) In 2021, the Clifts began construction of their new superstore building at the Oaklawn Avenue location. *Id.* After the location transfer, the City renewed the license without express conditions or restrictions on September 14, 2020, and a second time on October 4, 2021. (Decision 3.) During the City's hearing on the second renewal at the

new location, Respondents' counsel argued that W&L had not met the conditions precedent to issue the license, including location, tax certificate, and certificate of occupancy. (R. 27b, 4:9-22 (hereinafter City Tr.).) In the alternative, Respondents' counsel argued that W&L had either abandoned the license or failed to operate under the license for a period exceeding one year. *Id.* 5:5-6:1.

B

Travel

After the second renewal at the new location, Respondents filed their appeal with DBR challenging the renewal. (W&L's Administrative Appeal Mem., 3.) The two Respondents are in direct competition with W&L as they each are liquor retailers in Cranston. Respondents alleged that W&L lacked a legal interest in the premises to which the license was transferred at the time of transfer. (Not. of Appeal and Req. for Stay, ¶¶ 3-4.) Respondents also cited "abandonment" of the license and failure to meet conditions for issuance within one year of the original grant pursuant to Section 1.4.14 of the Liquor Regulation as reasons to void the license. *Id.* ¶¶ 6-8.

W&L filed a motion to intervene on October 15, 2021, and this motion was granted by DBR on October 27, 2021. (Decision 1-2.) Christy, LLC and Marley Rose, LLC also filed a motion to intervene on October 15, 2021, which was denied by order dated November 23, 2021.[1] *Id.* at 2 n.2. The issue before DBR was "[w]hether the License at issue should have been either transferred and/or renewed and/or whether it has been abandoned and/or is null and void." *Id.* at 2.

[1] Christy, LLC and Marley Rose, LLC are companies whose principals are also members of the Clift family, jointly own the real estate at 1458-1500 Oaklawn Avenue, and have a lease agreement with W&L. *See id.* at 3-4.

C

Summary of Material Facts and Testimony

Prior to finalizing its plan to acquire a liquor license and transfer the license to a new store, W&L sought written advice from DBR outlining the rules and procedure for a liquor license relocation, which W&L received and acted on. Hr'g Tr. 90:21-92:11, Feb. 8, 2022 (DBR Tr.). W&L's construction plan involved rehabilitating property that had been part of Mardi Gras, a former night club. (*See* City Tr. 15:8-19.) W&L closed the Warwick Avenue store in April 2020 and to date has not opened the Oaklawn Avenue store. (Decision at 4.) Christy and Marley Rose acquired the Oaklawn Avenue property in June of 2020 and subsequently leased the property to W&L. (City Tr. 16:14-20.) Deborah Clift testified that if W&L's liquor license transfer had not been approved, the business transaction to purchase the Oaklawn Avenue property would not have gone forward. (DBR Tr. 55:24-56:4.) After purchasing the new property, several issues with the property came to light including tax liabilities, environmental issues, and issues with removing existing tenants. (*See id.* 62:6-65:2.) A demolition permit was issued by the City of Cranston in August of 2020, and all the buildings on the site were razed by December 31, 2020. *Id.* 71:8-21. W&L could have then moved its inventory and opened up in one of the existing buildings; however, this would have required "major renovations." *Id.* 93:5-18.

Prior to beginning construction, the regulatory process was "extensive," requiring rezoning, permitting from the Department of Environmental Management, permitting from the Department of Transportation, and planning review with the Planning Department for building permits. (*See* City Tr. 15:8-19.) The building permit was issued in May 2021. *Id.* 15:20–23. The initial transfer plan listed the new store's address as 1458-1500 Oaklawn Avenue because this was the range of addresses for the commercial property. (DBR Tr. 36:18-21.) Counsel for W&L stated

that the developer and owner of the property have spent $2 million and borrowed $4.5 million in this endeavor. (City Tr. 19:16-23.)

W&L ceased selling liquor at the end of March 2020. (DBR Tr. 107:9-12.) Deborah Clift testified that W&L never "closed" and never ceased operations. *See id.* 82:1-83:7. She testified further that W&L continues to pay bills and taxes, continues to be responsible to the bank for its lease, and continues to work on design, construction, maintenance, storage, security, and personnel for the business. *Id.* 83:8-86:3.

During the construction process, the Covid-19 pandemic caused numerous issues and delays that slowed down the completion of the project. Deborah Clift testified that both the engineering and architecture firms shut down temporarily, and that the construction firm had multiple events of Covid-19. *Id.* 99:7–99:20. Supply chain issues affected the availability of steel which was delivered to the site seven months behind schedule. *Id.* 100:7-17. Manufacturing shutdowns have also delayed the construction of the site's cooler. *Id.* 101:7-20. Accounting for these delays, the store would have been ready to open in May 2022. *Id.* 103:5-8.

D

DBR's Conclusions of Law

DBR concluded that the abandonment statute did not apply because W&L became subject to the provisions of Section 1.4.14 of the Liquor Regulation with the November 4, 2020 transfer of the license. (*See* Decision, 29-32.) DBR found that the November 4, 2019 license transfer was valid; that the September 14, 2020 renewal was valid; but that the license became invalid by

November 4, 2020 because W&L had failed to complete its new premises and thus had not complied with Section 1.4.14 of the Liquor Regulation. (Decision, 33-34.)

DBR characterized Section 1.4.14 as follows:

> "Section 1.4.14 balances the need for a liquor licensee to be able to plan and construct an establishment knowing that it will be able to sell alcohol when it opens and the need for the local authority to be able to control liquor trafficking by ensuring that liquor licenses are used within a reasonable time and are not held for speculation." *Id.* at 16.

DBR also stated,

> "The first sentence of § 1.4.14 provides that a "retail alcoholic beverage license may be granted but not issued pending full compliance with conditions and criteria necessary for the issuance of said license." The section then states that a licensee shall have a full year to "meet all conditions and criteria set forth in the granting order." The section is concerned with "full" compliance for "all conditions and criteria" necessary for the issuance of said license and not just additional conditions imposed by a local licensing authority." *Id.*

DBR concluded that the City had placed no express restrictions or conditions on the November 4, 2019 license transfer, i.e. the grant of the license. *Id.* at 17-18. DBR concluded that W&L nevertheless had only one year from that date to comply with "all the conditions and criteria *necessary* for the issuance of the License." *Id.* at 19 (emphasis added).

II

Arguments

W&L argues that the hearing officer erred as a matter of law in rejecting W&L's claim of equitable estoppel. (W&L's Administrative Appeal Mem. 24.) W&L further argues that Section 1.4.14 of the Liquor Regulation is inconsistent with statutory law and is thus invalid. *Id.* at 33. W&L contends that the hearing officer misconstrued and misapplied Section 1.4.14 and that voiding W&L's license was unreasonable in light of the circumstances. *Id.* at 37, 41. W&L also

contends that revoking their license without notice and hearing violated W&L's due process rights. *Id.* at 43. Finally, W&L argues that the hearing officer erred as a matter of law in failing to apply laches to bar Respondents' appeal to DBR. *Id.* at 46. The City argues that the hearing officer misconceived the evidence and applied the wrong standard. (Mem. of City of Cranston in Supp. of Appeal 4.)

Respondents argue that the hearing officer correctly applied Section 1.4.14 of the Liquor Regulation. (Mem. of Law by Defs., Oaklawn Discount Liquors, Inc. and MAB Liquors, Ltd. 7.) Respondents also argue that the City was required to revoke W&L's license under G.L. 1956 § 3-5-16.1 but failed to do so. *Id.* at 9. DBR contends that voiding W&L's license was consistent with due process standards. (DBR's Administrative Appeal Mem. 6.) DBR also contends that its authority for Section 1.4.14 is consistent with statutory law. *Id.* DBR further contends that its interpretation and application of Section 1.4.14 was correct. *Id.* at 8. Finally, DBR contends that rejecting to apply equitable estoppel and laches to this case was the correct legal determination. *Id.* at 12, 16.

III

Standard of Review

When reviewing the decision of an administrative agency, the Court "sits as an appellate court with a limited scope of review." *Mine Safety Appliances Co. v. Berry*, 620 A.2d 1255, 1259 (R.I. 1993). The Court's review is governed by the Rhode Island Administrative Procedures Act (APA), G.L. 1956 chapter 35 of title 42. *See Iselin v. Retirement Board of Employees' Retirement System of R.I.*, 943 A.2d 1045, 1048 (R.I. 2008) (citing *Rossi v. Employees' Retirement System of R.I.*, 895 A.2d 106, 109 (R.I. 2006)); *see also Vito v. Department of Environmental Management*, 589 A.2d 809, 810 (R.I. 1991). Section 42-35-15(g) provides, in pertinent part:

> "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> > "(1) In violation of constitutional or statutory provisions;
> > "(2) In excess of the statutory authority of the agency;
> > "(3) Made upon unlawful procedure;
> > "(4) Affected by other error of law;
> > "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> > "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Section 42-35-15(g).

When reviewing a decision under the APA, the Court may not substitute its judgment for that of the agency on questions of fact. *See Johnston Ambulatory Surgical Associates, Ltd. v. Nolan*, 755 A.2d 799, 805 (R.I. 2000). The Court defers to the administrative agency's factual determinations if they are supported by legally competent evidence. *See Arnold v. Rhode Island Department of Labor and Training Board of Review*, 822 A.2d 164, 167 (R.I. 2003). The Court cannot "weigh the evidence [or] pass upon the credibility of witnesses [or] substitute its findings of fact for those made at the administrative level." *E. Grossman & Sons, Inc. v. Rocha*, 118 R.I. 276, 285, 373 A.2d 496, 501 (1977).

The Court will '"reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record."' *Baker v. Department of Employment and Training Board of Review*, 637 A.2d 360, 363 (R.I. 1994) (quoting *Milardo v. Coastal Resources Management Council*, 434 A.2d 266, 272 (R.I. 1981)). The Court is free to conduct a *de novo* review of determinations of law made by an agency. *See Arnold*, 822 A.2d at 167 (citing *Johnston Ambulatory Surgical Associates*, 755 A.2d at 805). The Court is limited to the certified record in its determination as to whether legally competent evidence exists to support

the agency's decision. *Barrington School Committee v. Rhode Island State Labor Relations Board*, 608 A.2d 1126, 1138 (R.I. 1992).

IV

Analysis

A

Liquor Regulation § 1.4.14 Is Inconsistent with the Statute

The Rhode Island Supreme Court has provided lower courts and administrative agencies with clear guidance regarding statutory interpretation. Issues of statutory interpretation are generally questions of law which are reviewed *de novo*. *See Iselin*, 943 A.2d at 1049. When interpreting a statute, courts must first determine whether the statute is ambiguous. *Bucci v. Lehman Brothers Bank, FSB*, 68 A.3d 1069, 1078 (R.I. 2013). "[W]hen the language of 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." *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996); *see also Dart Industries, Inc. v. Clark*, 696 A.2d 306, 310 (R.I. 1997) (citation omitted). In certain circumstances, however, courts will not interpret the statute literally, namely "when to do so would produce a result at odds with its legislative intent . . . Rather, [the court] will give the enactment 'what appears to be the meaning that is most consistent with its policy or obvious purpose.'" *Kirby v. Planning Board of Review of Town of Middletown*, 634 A.2d 285, 290 (R.I. 1993) (quoting *Zannelli v. Di Sandro*, 84 R.I. 76, 81, 121 A.2d 652, 655 (1956)).

Should the court find that a statute is ambiguous, the analysis shifts because "'[w]hen a statute is susceptible of more than one meaning, [the court] employ[s] [its] well-established maxims of statutory construction in an effort to glean the intent of the Legislature.'" *Town of*

Burrillville v. Pascoag Apartment Associates, LLC, 950 A.2d 435, 445 (R.I. 2008) (quoting *Unistrut Corp. v. State Department of Labor and Training*, 922 A.2d 93, 98–99 (R.I. 2007)). Even with an ambiguous statute, the court begins with the "plain language of the statute to determine the legislative intent[.]" *Matter of Falstaff Brewing Corp. re: Narragansett Brewery Fire*, 637 A.2d 1047, 1050 (R.I. 1994). When "interpreting a legislative enactment [it is incumbent upon the court] to determine and effectuate the Legislature's intent and to attribute to the enactment the meaning most consistent with its policies or obvious purposes." *Brennan v. Kirby*, 529 A.2d 633, 637 (R.I. 1987). It is only then that a court may determine how the legislative act serves its purpose, taking into consideration the practical results should the court adopt an alternative interpretation. *Matter of Falstaff Brewing Corp.*, 637 A.2d at 1050.

Regarding deference to an agency's interpretation of a statute, our Supreme Court has said:

> "We have generally followed the principle that, if a statute's requirements 'are unclear or subject to more than one reasonable interpretation, the construction given by the agency charged with its enforcement is entitled to weight and deference as long as that construction is not clearly erroneous or unauthorized.'" *Grasso v. Raimondo*, 177 A.3d 482, 486–87 (R.I. 2018) (quoting *State v. Swindell*, 895 A.2d 100, 105 (R.I. 2006)). "However * * * we do not owe any 'administrative agency's interpretation blind obeisance; rather, the true measure of a court's willingness to defer to an agency's interpretation of a statute depends, in the last analysis, on the persuasiveness of the interpretation, given all the attendant circumstances.'" *Id.* at 487 (quoting *Mancini v. City of Providence*, 155 A.3d 159, 168 (R.I. 2017)). *Middle Creek Farm, LLC v. Portsmouth Water & Fire District*, 252 A.3d 745, 753 (R.I. 2021).

Our high court has also concluded "'when a statute is clear and unambiguous, we are not required to give any deference to the agency's reading of the statute.'" *Town of Warren v. Bristol Warren Regional School District*, 159 A.3d 1029, 1038 (R.I. 2017) (quoting *Unistrut Corp.*, 922 A.2d at 99). Our Supreme Court has very clearly stated that "'we will not apply a statute in a manner that will defeat its underlying purpose.'" *Id.* (quoting *Arnold*, 822 A.2d at 169. Similarly, "[i]t is well

settled that Rhode Island courts accord great deference to an agency's interpretation of its rules and regulations . . . , provided that the agency's construction is neither clearly erroneous nor unauthorized." *Endoscopy Associates, Inc. v. Rhode Island Department of Health*, 183 A.3d 528, 534 (R.I. 2018).

1. Relevant Statutes and Regulations

General Laws 1956 § 3-1-5 provides, in pertinent part, as follows:

> "**Liberal construction of title.** This title shall be construed liberally in aid of its declared purpose which declared purpose is the promotion of temperance and for the reasonable control of the traffic in alcoholic beverages; . . ." Section 3-1-5.

Section 3-7-3[2] authorizes the issuance of Class A licenses (to keep and sell alcoholic beverages at retail) for towns and cities with a population of 10,000 or more. Section 3-5-16 limits the number of Class A licenses that a town or city may issue according to the size of its population.

Section 3-5-16.1 sets forth the "revocation" process for "abandoned" liquor licenses:

> "**Revocation of abandoned Class A licenses.** Whenever it comes to the attention of any local licensing authority as defined in § 3-5-15 that the holder of a Class A license has abandoned the premises from which the licensee has been conducting his or her business or

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[2] Section 3-7-3 provides in pertinent part, as follows:

> "**Class A license--Towns and cities of 10,000 or more.** (a) In cities and towns having a population of ten thousand (10,000) or more inhabitants, a retailer's Class A license authorizes the holder to keep for sale and to sell, at the place described, beverages at retail and to deliver the beverages in a sealed package or container, which package or container shall not be opened nor its contents consumed on the premises where sold. The holder of a Class A license, if other than a person entitled to retail, compound, and dispense medicines and poisons, shall not on the licensed premises engage in any other business, keep for sale or sell any goods, wares, merchandise or any other article or thing except the beverages authorized under this license and nonalcoholic beverages. This provision shall not apply to the sale or selling of cigarettes, newspapers, cigars, cigarette lighters, gift bags, prepackaged peanuts, pretzels, chips . . ."

> has ceased to operate under the license for a period of ninety (90) days or more then after hearing with due notice to the licensee the local licensing authority shall cancel the license; provided, that the authority may grant a reasonable period of time, not to exceed one year, to the licensee within which to reestablish the business where the abandonment or cessation of operating was due to illness, death, condemnation of business premises, fire or other casualty."

Section 3-5-19 establishes the procedure for "transfer or relocation" of a liquor license. The pertinent portion states:

> "**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, . . ."

The transfer procedure generally mirrors the procedure for an initial liquor license application laid out in § 3-5-17. The liquor license renewal procedure is set forth in § 3-7-6.

Section 1.4.14 of 230 RICR 30-10-1 Liquor Control Regulation (Liquor Regulation) provides as follows:

> "**Granted License (Not Issued) - Retail**
> A retail alcoholic beverage license may be granted but not issued pending full compliance with conditions and criteria necessary for the issuance of said license. All such "grants" of alcoholic beverage licenses shall be in writing. The license shall particularly describe the place or premises where the rights under the license are to be exercised. The applicant shall have no more than one (1) year after the original granting of the license to meet all conditions and criteria set forth in the granting order. If the applicant does not meet all conditions and criteria within one (1) year, the license shall become null and void without further hearing by the local licensing authority; provided, however, said time period shall not be calculated when the license at issue is involved in litigation, from the date of the commencement of the action to final disposition."

Section 1.4.3 of the Liquor Regulation provides specific requirements in advertising for liquor applications for most licenses. At least fourteen days of advertisements are required.

2. DBR's Interpretation of "Operate" Under the Abandonment Statute Is Inconsistent with the Plain Meaning of the Statute

Although the Court agrees with DBR's conclusion that a valid license transfer is not an abandonment of the premises, the Court finds that DBR's interpretation of "operate" is unreasonable and inconsistent with the Legislature's intended policy because it unreasonably infers forfeitures for unanticipated delays outside of the control or reasonable expectation of the license, even when the licensee is not actively selling from the premises.

DBR's Decision holds that revocations by abandonment occur as a matter of law "[o]nce a Class A liquor licensee stops selling liquor, it is no longer operating under its license." (Decision 31.) However, § 3-5-16.1 clearly states that this may only occur after "hearing with due notice to the licensee," and that the authority may grant a one-year extension in cases of illness, death, condemnation, fire, or casualty. Crucially, DBR overlooked that a Class A liquor license permits the license holder to "*keep*" and "sell" alcoholic beverages. Therefore, operating under a Class A liquor license also includes keeping alcoholic beverages. Section 3-7-3. Although the record in this case is clear that W&L ceased *selling* alcoholic beverages, the record is not at all clear that W&L had ceased *keeping* alcoholic beverages. Reading the statutes in concert with one another and according to their plain meanings, a liquor licensing authority may not revoke a Class A liquor license due to abandonment without finding that the licensee ceased to *both* keep *and* sell alcoholic beverages at the subject premises. Thus, the Court finds that DBR's interpretation of "operate" is inconsistent with § 3-5-16.1.

3. DBR's Interpretations of the Transfer Statute and Applicable Regulations Violate the Plain Meanings of the Provisions and Otherwise Lead to Unreasonable Results at Odds with the Legislature's Intent

The Court agrees with DBR's determination that Section 1.4.14 of the Liquor Regulation seeks to ensure that a liquor license may only issue to the specific premises where the license is to be used (as required by § 3-5-9). Obviously, licensees should comply with all necessary issuance conditions and criteria. While the statutes restrict against using the licenses at multiple locations or at locations which are not certified for occupancy or health standards, licenses should not be automatically withdrawn, particularly when licensees are not selling at all, and are seeking to improve their properties. The one-year time limit set forth in regulation 1.4.14 refers only to "conditions and criteria *set forth in the granting order*" and does not refer to conditions and criteria "necessary for issuance." (Emphasis added.) DBR in its regulations and interpretation of its regulations have stretched the statute beyond its intent, its words, and its reasonable meaning.[3]

DBR's actions not only violate the plain meaning of the regulation, but also exceed DBR's authority and usurps the City's discretion whether to attach express granting conditions and criteria in addition to the conditions and criteria necessary to issue a liquor license. G.L. 1956 § 3-2-2 authorizes DBR to have "general supervision of the conduct of the business of manufacturing, importing, exporting, storing, transporting, keeping for sale, and selling beverages." Although ensuring compliance with statutory licensing provisions is within DBR's authority, restricting the discretionary decision-making of local licensing authorities beyond their statutory scope is clearly in excess of DBR's authority. If the City had wished to attach additional criteria to its granting order, then it could have done so. If the City had been concerned about speculation on the license,

[3] DBR's interpretation and conclusion are illogical because if no conditions or criteria are set forth in the granting order, then there are no conditions that must be met within one year and the one-year limitation is inapplicable.

it could have attached additional criteria to address the concern, or it could have established a timetable or benchmark to establish whether W&L was making reasonable progress complying with issuance conditions and criteria. There is nothing in the record to suggest that the City was concerned that W&L was not making reasonable efforts and progress toward compliance. Rather, the City was aware of the situation on the site and continued to renew W&L's license during the pandemic.

Furthermore, the one-year period set forth in Section 1.4.14 of the Liquor Regulation has no basis in the statutory text and seems crafted out of whole cloth. Likewise, the statutory text is devoid of any provision requiring a local liquor licensing authority to supply a "granting order." Although the abandonment statute limits the power of a local liquor licensing authority to grant a licensee a period "exceed[ing] one year" to reestablish its liquor business, this limitation does not apply outside of cases, as here, where a factual finding of abandonment has not been made according to established law. Therefore, by retroactively imposing a one-year limitation to fulfill issuance criteria on W&L's November 4, 2019 license transfer, DBR overstepped its statutory authority and ran roughshod over the discretionary powers granted to the City by statute.

Section 3-5-16.1 provides for granting a reasonable amount of time, not to exceed one year, for a licensee to reestablish their liquor retail business to prevent revocation due to abandonment. This is markedly different from Section 1.4.14's one-year period to comply with conditions in the granting order. Section 3-5-16.1 does not authorize DBR or local licensing authorities to revoke a license without a hearing, nor does it authorize DBR to prescribe rules lacking a statutory basis, or inconsistent with statute. W&L has the right to request a reasonable period to reestablish its liquor retail business before its license may be revoked due to abandonment. W&L was never

given the opportunity to make this request prior to its license being voided. As a result, voiding W&L's license without having this hearing violated the plain meaning of § 3-5-16.1.

Additionally, Section 1.4.14 shifts the burden of proof to the party subject to deprivation, requiring the licensee prove that they have complied with the conditions of the granting order. This is in contrast to § 3-5-16.1 which places no burden on a licensee. There is no showing required to request a reasonable amount of time to reestablish one's liquor retail business. The grant of such a request is within the discretion of the licensing authority.[4] Therefore, not only did DBR's error prejudice W&L's property interests but it also deprived the City of its discretional authority to grant W&L a reasonable amount of time to reestablish its business.

Next, the DBR Decision is at odds with DBR's earlier decision in *D'Ambra v. Narragansett Town Council*, DBR No. 14LQ058 (Apr. 21, 2015). The hearing officer in *D'Ambra* concluded that the license at issue became null and void because the licensee had failed to comply with "conditions and criteria set forth in the granting order" within one year—despite the fact that the licensee had been "diligent[ly]" constructing a hotel with a bar and restaurant. *D'Ambra*, at 14-17. However, DBR's Director modified that decision, stating that

> "Rule 14[5] gives a grantee one year to fulfill conditions precedent to the issuance of a liquor license, with extension granted for time during which the license is involved in litigation.
>
> "Neither Rule 14 nor the Town's granting order make the opening of the establishment or a Certificate of Occupancy a condition precedent to issuance of the liquor license.
>
> "The policy behind Rule 14 is to prevent grantees from sitting on liquor licenses without using them for an unreasonable period of time. In the instant case, the Intervenor was actively engaged in construction in order to prepare its facility to open as a boutique

[4] Here, it is likely that the City was quite familiar with the project (requiring substantial redevelopment) and the impact of the Covid-19 pandemic.

[5] Rule 14 corresponds to Section 1.4.14 in the numbering scheme in use at the time.

> hotel and restaurant/bar. The Intervenor's efforts cannot be characterized as sitting on a license for an unreasonable period of time. Therefore, the Town's renewal of the license does not violate the letter or the spirit of Rule 14." *Id.* at 20-21 (Director's Modification of Recommended Decision attached thereto).

The Court agrees that the Director's interpretation of the rule is the correct one. As in *D'Ambra*, the record here is devoid of evidence that W&L was "speculating" on the license. *See also Green Point Liquors, Inc. v. McConaghy*, No. PC/02-2837, 2004 WL 2075572 (R.I. Super. Aug. 10, 2004). DBR's Decision in the case at bar cannot be said to serve such a policy without evidence on the record tending to prove there has been speculation on a liquor license. Therefore, the hearing officer's rationale for departing from *D'Ambra* was inappropriate.

Finally, it should be noted that the approach taken below by the hearing officer will inevitably lead to unreasonable results. If the approach is taken to its logical conclusion, then any licensee who relocates or expands their business by engaging in new construction would be hamstrung if they experienced construction delays exceeding one year—no matter how reasonable those delays were. The Legislature set the parameters but did not intend to lock in licensees nor did it intend to make expanding their businesses an untenable proposition. The Legislature also did not intend to provide a windfall to competitors by allowing them to exploit a liquor seller's misfortune in encountering construction delays and use that happenstance to knock out a marketplace contender. Such results not only offend free market sensibilities but also offend traditional notions of fairness.

For the reasons discussed above, DBR's conclusions of law violate statutory provisions, exceed DBR's statutory authority, are affected by other error of law, and are clearly erroneous in view of the whole record.

B

The Superior Court's Equitable Powers Allow It to Apply Equitable Estoppel to Administrative Appeals with Appropriate Facts

1. Application of Equitable Principles to Administrative Proceedings

In its Decision, DBR relied on *Nickerson v. Reitsma*, 853 A.2d 1202 (R.I. 2004) to conclude that the Superior Court "could not use its equitable powers for an administrative matter since equitable principals [*sic*] are not applicable to administrative procedures." (Decision 20.) This is an oversimplification of *Nickerson*. In *Nickerson*, our Supreme Court corrected the trial justice for "impermissibly consolidating an administrative appeal with a civil trial, [for] erroneously exceeding his authority by considering evidence outside the certified record in the administrative appeal, and lastly, [for] vacating a valid agency decision based upon unarticulated equitable grounds and in the absence of any authority to do so." *Nickerson*, 853 A.2d at 1206. The *Nickerson* Court recognized the Superior Court's inherent equitable powers and merely cabined the exercise of those powers in administrative controversies to the scope of judicial review afforded to the Superior Court by the APA, saying "the trial justice was not vested with any authority to circumvent the clear procedural limitations that the statutory and decisional law of this state placed upon him." *Id. Nickerson* does not prohibit a trial justice from applying equitable principles in an administrative appeal as long as doing so does not go beyond the procedural limitations placed by the APA (e.g. review of certified record only). Applying equitable principles in an administrative appeal may be appropriate in certain limited circumstances.

DBR is commended for declining to apply equitable principles that would violate its interpretations of the relevant statutes and regulations. However, as discussed *supra*, this Court is not bound by those interpretations and must review the issues pursuant to § 42-35-15(a) and case law. The administrative agency is not empowered to apply equitable powers. This Court may do so in appropriate circumstances and within the confines of case law.

Here, a determination of whether equitable estoppel applies to the case at bar can be made from an examination of the record. Doing so is within this Court's circumscribed authority sitting as an appellate court reviewing administrative matters with a limited scope of review. The Court will proceed to consider whether there is sufficient evidence on the record to apply equitable estoppel to the case at bar.

2. W&L's Reliance on the 2015 DBR Letter Was Reasonable

Through its counsel, W&L sent a letter to DBR on June 30, 2015 seeking guidance to plan for the relocation of a package store and transfer of a Class A liquor license. (Intervenor Ex. 1.) DBR responded on August 14, 2015 with a letter from its Senior Legal Counsel.[6] (Intervenor Ex. 2. (hereinafter DBR Letter).) The DBR Letter stated in pertinent part that

> "[o]nce transferred to a new location, R.I. Gen. Laws § 3-5-16.1 does not apply to the new location. That law only applies to abandonment of premises "from which the licensee has conducted his or her business" or "ceased to operate." It does not apply to new locations that have not opened yet due to pending construction. Thus, the new entity has a **reasonable time to complete construction and open at the new location.**" (DBR Letter, ¶ 2 (emphasis added).)

The DBR Letter also stated that

> "[o]nce the license is transferred/issued to the transferee/new location, the new entity can discontinue operations during the permitting and construction of the building for a reasonable time. The one year limit of Rule 14 only applies if the City Council

[6] The Senior Legal Counsel is not one of the attorneys appearing herein.

> expressly conditions the grant of the transfer on the satisfaction of certain conditions and criteria such as the construction of the premises. See *James and Laureen D'Ambra v. Narragansett Town Council*, DBR No. 14LQ058 (4/21/15). Otherwise, the time allowed to open is a reasonable time, which may be more than one year. See *Baker v. Rhode Island Department of Business Regulation*, 2007 WL 1156116 (upholding revocation of a Class B license where the establishment had not been open for 11 years)." (Footnote omitted.)

W&L contends the DBR Letter supports application of equitable estoppel. (R. 23 Post-Hr'g Mem. Submitted on Behalf of W&L). While not wholly inapplicable to the context of administrative proceedings, equitable estoppel will only apply in the particularly rare factual scenarios where an agency (1) made "an affirmative representation or equivalent conduct . . . for the purpose of inducing the [claimant] to act or fail to act in reliance thereon," and (2) "that such representation or conduct in fact did induce the other to act or fail to act to his injury." *Cigarrilha v. City of Providence*, 64 A.3d 1208, 1213 (R.I. 2013) (internal quotation omitted); *see also Green Point Liquors*, 2004 WL 2075572, at *10-12 (ruling that equitable estoppel did not apply in liquor license appeal when record was devoid of affirmative representations by DBR on which the petitioner had relied).

W&L has demonstrated that it has pursued license transfer and relocation to its detriment. W&L and its principals have spent millions of dollars on this project. W&L and its principals released its workforce, left its previous premises, purchased and leased real estate, engaged in construction and environmental remediation contracts, and have made equipment purchases for their new store. Realizing returns on any investments made in this project wholly depends upon the valid renewal of W&L's license. Without the license, W&L faces significant losses because it will not be able to make any returns on its investments unless it can legally operate as a liquor retailer. Furthermore, W&L would have significant difficulty selling the business without a valid license because it cannot currently operate as a liquor retailer. In all likelihood, without the license,

W&L would be left to selling its assets at a discount rate to attract any buyers at all, leaving its realty in the state of mid-construction. W&L has shown that it has acted in reliance on DBR's Letter.

W&L has shown that DBR provided its Letter so that W&L would follow DBR's instructions. Obviously, W&L was seeking to determine which procedure DBR would follow so that it could plan the complex course of transactions and legal procedures it would need to follow to pursue license transfer in order to expand its liquor retail business. DBR provided the Letter knowing full well that W&L would invest and risk significant resources to bring its plan to fruition and knowing full well that W&L would follow DBR's instructions to mitigate risks and protect the resources it would be investing.[7] W&L was attempting to follow DBR protocols and directives, not to challenge DBR. Although DBR has an established procedure for obtaining declaratory judgment under § 42-35-8,[8] W&L has proven that it detrimentally relied on the DBR Letter, and that DBR's instructions were consistent with state law and were not *ultra vires*.

Taking a full view of these circumstances, this Court concludes that DBR's Letter was an affirmative representation made to induce reliance on the part of W&L and that W&L did in fact rely on it to its detriment. Therefore, DBR is equitably estopped from reversing its position in this case.

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[7] DBR has established a procedure for declaratory rulings per § 42-35-2 and following that procedure would have improved W&L's argument for equitable estoppel. *See Romano v. Retirement Board of the Employees' Retirement System of Rhode Island*, 767 A.2d 35, 37-38 (R.I. 2001). However, DBR was accommodating so the need for formal litigation was unnecessary. Clearly W&L was not operating in the dark of the night but asking DBR which course to take to comply. W&L followed DBR's directive. DBR should be equitably estopped from providing a Letter and then reversing its course.

[8] "A person may petition an agency for a declaratory order that interprets or applies a statute administered by the agency or states whether, or in what manner, a rule, guidance document, or order issued by the agency applies to the petitioner." Section 42-35-8(a).

C

DBR's Liquor License Transfer Regulatory Scheme Violates Due Process

The Fifth Amendment to the United States Constitution is applicable to the states through the Fourteenth Amendment and provides, in pertinent part, that: "No person shall be . . . deprived of life, liberty, or property, without due process of law." Similarly, article 1, section 2, of the Rhode Island Constitution mandates: "No person shall be deprived of life, liberty or property without due process of law[.]" Our state Supreme Court has declared that "the Due Process Clause not only ensures fair procedure, it also prohibits 'certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them.'" *Rhode Island Economic Development Corp. v. The Parking Co., L.P.*, 892 A.2d 87, 97 (R.I. 2006) (quoting *L.A. Ray Realty v. Town Council of Cumberland*, 698 A.2d 202, 210 (R.I. 1997) (internal quotation marks omitted). With regard to administrative rulemaking, our state Supreme Court has clearly stated that "regulations are legislative rules that carry the force and effect of law and enjoy a presumption of validity" and that "[l]egislative rules are valid if they are within the power granted by the General Assembly, are issued pursuant to proper procedure, and are reasonable as a matter of due process. *Parkway Towers Associates v. Godfrey*, 688 A.2d 1289, 1293 (R.I. 1997) (citing *Lerner v. Gill*, 463 A.2d 1352, 1358 (R.I. 1983)).

The importance of constitutional procedural due process rights has been well settled by clear pronouncements from our United States Supreme Court:

> "The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decisionmaking when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment—to minimize substantively unfair or mistaken deprivations of property, a danger that is especially great when the State seizes goods simply upon the

> application of and for the benefit of a private party. So viewed, the prohibition against the deprivation of property without due process of law reflects the high value, embedded in our constitutional and political history, that we place on a person's right to enjoy what is his, free of governmental interference." *Fuentes v. Shevin*, 407 U.S. 67, 80-81 (1972) (citing *Lynch v. Household Finance Corp.*, 405 U.S. 538, 552 (1972)).

At a minimum, parties whose rights are to be affected by government action are entitled to be provided notice and an opportunity to be heard in a fair proceeding with a neutral decisionmaker—and critically, for this right to "serve its full purpose, . . . it must be granted at a time when the deprivation can still be prevented . . . "—for although property may be returned, "no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred." *Id.* at 81-82. Generally stated, "'consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action.'" *Goldberg v. Kelly*, 397 U.S. 254, 263 (1970) (internal quotation omitted).

The question of whether due process standards apply to a deprivation of a liquor license has also been well settled by our state's Supreme Court:

> "'Although a lawfully issued liquor license may not be property in the strict legal sense, it has some of the aspects of a property right, and it is reasonable to suppose that the legislature intended that a holder of such a license should have [constitutional due process] protection from arbitrary interference therewith by the local licensing board.'" *Vitterito v. Sportsman's Lodge & Restaurant*, 102 R.I. 72, 78, 228 A.2d 119, 124 (1967) (quoting *Burton v. Lefebvre*, 72 R.I. 478, 485, 53 A.2d 456, 460 (1947)).

Therefore, to analyze W&L's due process claim, the Court must consider whether W&L was given notice, opportunity to be heard, and a fair hearing prior to the revocation of W&L's license.

The required notice depends on the circumstances of the procedure and interest and question, which rule, our United States Supreme Court has summarized as follows: "[The] fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (citing e.g., *Milliken v. Meyer*, 311 U.S. 457 (1940)). Such notice must reasonably convey the required information, reasonable time to appear, and be reasonably certain of reaching the affected party. *Id.* at 314-15 (citing cases).

Our state Supreme Court has clarified the notice requirement:

> "[I]n order for a constitutional claim like this one to succeed, one must show that he had been illegally deprived of a 'legally protected right.' This court has held that the right to a hearing attaches only to the deprivation of an interest encompassed within the fourteenth amendment and that the right to a hearing prior to the taking of property by eminent domain is not such a right." *Paiva v. Providence Redevelopment Agency*, 116 R.I. 315, 320, 356 A.2d 203, 206 (1976).

The United States Supreme Court has held that some form of hearing is required prior to an individual being deprived of a property interest by the government, that this right is *to be heard before* being deprived of the property interest, and that the fundamental requirement of due process is that the opportunity to be heard occur "'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965); *see also Goldberg v. Kelly*, 397 U.S. 254 (1970) (holding that federal welfare beneficiaries were entitled to an evidentiary hearing prior to deprivation of their benefits).

Here, Section 1.4.14 of the Liquor Regulation (as interpreted by DBR) dispenses with the notice and hearing requirements because it enables DBR and local licensing authorities to void a granted license without any hearing at all. Worse still, as shown in this case, Section 1.4.14 enables

DBR and local licensing authorities to retroactively void a license while giving neither past nor present notice or opportunity to be heard. As applied in this case, W&L was denied hearing before their license was deprived and they were denied hearing after their license was deprived because the license was voided retroactively. Indeed, W&L had no notice that the license was at risk until they appeared at a renewal hearing. Neither the City nor DBR called a hearing to determine if the license had been abandoned under § 3-5-16.1, and therefore W&L never had the opportunity to request a "reasonable amount of time" to reestablish its business or to be heard. Without having had such hearing, it would be fundamentally unfair to deprive W&L of its license. Thus, Section 1.4.14 denies due process on its face. Furthermore, as applied in this case, Section 1.4.14 clearly violated the due process rights of W&L.

V

Conclusion

For the reasons stated herein, the Court sustains W&L's administrative appeal. DBR's Decision is reversed. Counsel shall prepare an order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**The Wine and Liquor Company, Inc., et al. v. Rhode Island Department of Business Regulation, et al.**
CASE NO:	**PC-2022-02539**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**January 9, 2023**
JUSTICE/MAGISTRATE:	**Lanphear, J.**
ATTORNEYS:	
For Plaintiff:	**John M. Verdecchia, Esq.** **Lauren E. Jones, Esq.** **Robert D. Murray, Esq.**
For Defendant:	**Louis DeSimone, Jr., Esq.** **Sara Tindall-Woodman, Esq.**