

**STATE OF RHODE
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE COMPLEX, BLDG 68-69
1511 PONTIAC AVENUE
CRANSTON, RI 02920**

East Side Restaurant Holdings, LLC d/b/a	:	
Sports & Leisure,	:	
Appellants,	:	
	:	DBR No. 23LQ005
v.	:	
	:	
Providence Board of Licenses	:	
Appellee	:	

DECISION

I. INTRODUCTION

This matter arose from an appeal filed by East Side Restaurant Holdings, LLC d/b/a Sports & Leisure (“Appellant”) on June 21, 2023 with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 regarding the decision taken on June 14, 2023 by the Providence Board of Licenses (“Board”) to impose certain conditions on the Appellant’s Class BV liquor license (“License”). A hearing on this matter was held on October 11, 2023 with the parties resting on the record.¹ The parties were represented by counsel.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-2-2, R.I. Gen. Laws § 3-7-1 *et seq.*, R.I. Gen. Laws § 3-7-21, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

¹ The transcript of the Department hearing was received by the undersigned on October 25, 2023, and the City’s certified record was received by the undersigned on October 30, 2023.

III. ISSUE

Whether to uphold or overturn the Board's imposition of conditions on the Appellant's License.

IV. MATERIAL FACTS

This matter came before the Board on June 7, 2023² for a review of the Appellant's operations in relation to entertainment and to consider the possible impositions of conditions. At the Department hearing, the City referenced two (2) incidences of assault that had happened outside the Appellant but there was no evidence of a nexus between the Appellant and the assaults. There also had been complaints by the Appellant's neighbors that the patrons leaving the Appellant were not being dispersed by security. See neighbors' videos in certified record. The City indicated this was not a Show Cause hearing before the Board since there had been no violations, but the City was concerned about the public safety outside and sought conditions be imposed on the Appellant. The focus at the Board hearing was the Appellant's entertainment license. The Appellant indicated that it could accept some security requirements but expressed concerns about being responsible for the control of the sidewalk. The City did not want the Appellant to have a rope line for entry.

At the June 7, 2023 Board hearing, the Board requested the City and the Appellant try to work out an agreement in terms of conditions and then the Board imposed conditions on the entertainment license. The matter was then scheduled for June 14, 2023 to see if the matter had been resolved.

At the Board's June 14, 2023 hearing,³ the parties represented that they had not agreed to conditions and while the Appellant accepted a condition of outside security, it would not accept the

² June 7, 2023 Board hearing can be found at - <https://providenceri.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=14095&Format=Minutes> (see City's certified record as well).

³ June 14, 2023 Board hearing can be found at - <https://providenceri.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=14096&Format=Minutes>

condition about the control of the sidewalk. However, the parties agreed that the conditions would be imposed by the Board on the Appellant's liquor license so the Appellant could appeal to the Department rather than having to file a *writ of certiorari* to the Supreme Court for an appeal relating to its entertainment license.⁴

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 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 (R.I. 1998).

B. **The Appeal before the Department**

The Department has broad and comprehensive control over the traffic in alcohol. Indeed, the Department's power of review is so broad that it has been referred to as a "state superlicensing board." *Baginski v. Alcoholic Beverage Comm'n.*, 4 A.2d 265, 267 (R.I. 1939). Thus, the Director has the authority under R.I. Gen. Laws 3-7-21, "to make any decision or order he or she considers

⁴ The Board's minutes for both meetings make reference to the imposed conditions. No stay in this matter was requested. It was not disputed the Appellant has been complying with the conditions pending the Department hearing.

proper.”⁵ The hearing before the undersigned is a *de novo* hearing so that the parties start afresh during the appeal. *A.J.C. Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984); and *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964) (Department’s jurisdiction is *de novo* and the Department independently exercises the licensing function). The outcome of an appeal is a decision whether to uphold, overturn, or modify a licensing board’s decision. Thus, this appeal is not bound by the Board’s reasons for its decision but whether the Board presented its case before the undersigned. The undersigned will make her findings on the basis of the evidence and will determine whether that evidence justifies said decision.

C. Arguments

It was agreed by the parties that there had been no liquor violations by the Appellant. The Board argued the issue is whether the Board has the authority to impose conditions without a finding of a violation. The Board argued that it can impose conditions without a violation. The Board argued that this is a quality of life issue in that the Board was trying to address noise complaints.

The City argued the issue is whether the Board has the authority to impose conditions, period. The City argued that the Board has the authority to impose conditions during the year as well as when a liquor license is issued or renewed. The City argued that the Appellant has the power to ask people to leave when they are standing outside. The City argued that the Board has the authority to issue conditions after a notice of hearing which it did in this matter, and the conditions make sense.

⁵ 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.

The Appellant argued that the control of sidewalk condition was vague and could lead to further issues if someone standing outside refuses to move along. The Appellant argued that is unclear whether it being required to monitor people standing around or to monitor noise levels. The Appellant indicated that it would not have appealed the conditions if the condition imposed was only for outside security. The Appellant argued that under *401 Nightlife, LLC d/b/a Pregame Lounge v. City of Cranston, City Council, Safety Services Committee*, DBR No. 22LQ006 (8/17/22) conditions cannot be imposed when there is no finding of a violation.

D. The Conditions

Thompson v. East Greenwich, 512 A.2d 837 (R.I. 1986) found that a local licensing authority may grant a liquor license upon conditions that promote the reasonable control of alcoholic beverages.⁶ In that case, the local authority had imposed conditions on a liquor license renewal which the Court upheld finding that they were for the purpose of promoting the reasonable control of alcoholic beverages.⁷

At the same time, there are certain conditions that a liquor license are subject to by statute and by regulation. R.I. Gen. Laws § 3-5-21 provides in part as follows:

Revocation or suspension of licenses – Fines for violating conditions of license.
(a) Every license is subject to revocation or suspension and a licensee is subject to fine by the board, body or official issuing the license, or by the department . . . for:
(1) Breach by the holder of the license of the conditions on which it was issued;
or

⁶ *Thompson* relied on R.I. Gen. Laws § 3-1-5 which states as follows:

R.I. Gen. Laws § 3-1-5 states 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.

Thompson also found R.I. Gen. Laws § 3-5-21 allows municipalities to impose conditions on liquor licensees in accordance with R.I. Gen. Laws § 3-5-1 which restricts such conditions to be in the promotion of the control of alcoholic beverages.

⁷ Thus, it is within the Board's discretion to grant the liquor license application with conditions. E.g. *Megan Kenney v. Providence Board of Licenses*, DBR No.: 14LQ044 (11/20/14). The conditions become part of the liquor license. E.g. *Krikor S. Dulgarian Trust v. Providence Board of Licenses*, DBR No.: 10-L-143 (5/20/11).

- (2) Violation by the holder of the license of any rule or regulation applicable;
or

(4) Breach of any provisions of this chapter. ***

Maintaining enough security and providing security is a condition of liquor licensing. *FabCity Cigar Lounge, Inc. d/b/a FabCity Cigar Lounge v. Board of License Comm'ers for the City of Pawtucket*, DBR No. 22LQ005 (6/22/22); and *Ciello, LLC d/b/a Luv v. City of Providence, Board of Licenses*, DBR No.: 17LQ008 (9/14/17). That is a condition of an issuance of a liquor license.

In this matter, the Appellant agreed to the condition regarding the provision of outside security at about 10:00 p.m. to closing on the nights when entertainment is offered. The Appellant found the condition about controlling the sidewalk to be vague and argued that the Board did not have the authority to impose such a condition without a violation. In *401 Nightlife*, the Department director declined to impose a condition of a police detail without a finding of a statutory violation. In this matter, no statutory violation was found. Nonetheless, the Board may impose conditions regarding the promotion of the reasonable control of liquor so that a statutory violation is not always required.

However, the Board's hearing was on the entertainment license. The parties agreed to put the conditions on the liquor license so the matter could be appealed. It would appear the imposition of conditions - without the finding of violations - are most likely to be imposed on the issuance or renewal of a liquor license during a hearing before the Board. Nonetheless, any condition on a liquor license must be related to the promotion of the reasonable control of liquor. The condition cannot be imposed on a liquor license just to make it easier for a licensee to appeal when there was no notice given for a hearing and no hearing held regarding the liquor license. There should have been a hearing before the Board with notice given to the Appellant regarding its liquor license, and whether the condition to be imposed relates to the promotion of the reasonable control of liquor. The Department does not have jurisdiction over entertainment licenses, and the initial hearing before the Board was

for the entertainment license. Thus, while the conditions were imposed on the liquor license, there was no hearing below on that issue.

Based on the foregoing, the undersigned recommends that this matter be remanded back to the Board for a hearing on the liquor license regarding any potential imposition of conditions in relation to the control of the sidewalk. It may be on remand the parties are able to resolve the issue of sidewalk control. Meanwhile, as the Appellant consented to the outside security condition, that will not be disturbed as the appeal was on the condition about the control of the sidewalk. And it is noted that all liquor licenses must maintain security as a condition of licensing. *Supra*.

VI. FINDINGS OF FACT

1. On June 21, 2023, the Appellant filed an appeal pursuant to R.I. Gen. Laws § 3-7-21 with the Department over the Board's decision taken in relation its Class BV License.
2. The Board's decision imposed two (2) conditions on the Appellant's liquor license despite that the Board hearing being for the entertainment license.
3. The conditions required outside security and to maintain control of the sidewalks.
4. The Appellant did not challenge the outside security condition.
5. The Appellant challenged the control of the sidewalk condition.
6. A hearing was held before the undersigned on October 10, 2023 with the parties resting on the record with the undersigned receiving the City's certified record on October 30, 2023.
7. The Department only has jurisdiction over liquor licensing appeals.
8. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-2-2, R.I. Gen. Laws § 3-7-1 *et seq.*, R.I. Gen. Laws § 3-7-21, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

VIII. RECOMMENDATION

Based on the foregoing, the issue of the condition of control of the sidewalk is remanded to the Board – if the Board chooses to pursue this matter - so it can notice the matter to the Appellant as a liquor licensing action regarding the potential imposition of conditions in terms of the reasonable control of alcohol. If there is a further Board hearing, the parties may argue before the Board whether it is appropriate to impose conditions when there is not a renewal or grant of license before the Board. The parties may also be able to resolve this matter. However, if they cannot, any appeal to the Department would then be after a hearing being held before the Board that put the Appellant on notice of potential action against its liquor license.

Dated: December 4, 2023

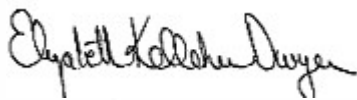

Catherine R. Warren
Hearing Officer

ORDER

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

ADOPT
 REJECT
 MODIFY

Dated: December 5, 2023


Elizabeth Kelleher Dwyer, Esquire
Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.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 THE APPROPRIATE TERMS.

CERTIFICATION

I hereby certify on this 6th day of December, 2023 that a copy of the within Decision was sent by first class mail, postage prepaid to the following Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, R.I. 02903, Louis A. DeSimone, Jr., Esquire, 1554 Cranston Street, Cranston, R.I. 02920, and Nicholas Hemond, Esquire, DarrowEverett, LLP, 1 Turks Head Place, Suite 1200, Providence, R.I. 02903 and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.

Megan Mihara
