

exercises the licensing function. See *A.J.C. Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984); *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964); and *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964). Because the Department's has such broad and comprehensive control over traffic in intoxicating liquor, its power has been referred to as a "super-licensing board." *Baginski v. Alcoholic Beverage Comm.*, 4 A.2d 265, 267 (R.I. 1939). 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).

III. STANDARD FOR ISSUANCE OF A STAY

Under *Narragansett Electric Company v. William W. Harsch et al.*, 367 A.2d 195, 197 (R.I. 1976), a stay will not be issued unless the party seeking the stay makes a "strong showing" that "(1) it will prevail on the merits of its appeal; (2) it will suffer irreparable harm if the stay is not granted; (3) no substantial harm will come to other interested parties; and (4) a stay will not harm the public interest." Despite the ruling in *Harsch*, the Supreme Court in *Department of Corrections v. Rhode Island State Labor Relations Board*, 658 A.2d 509 (R.I. 1995) found that *Harsch* was not necessarily applicable in all agency actions and the Court could maintain the *status quo* in its discretion when reviewing an administrative decision pursuant to R.I. Gen. Laws § 42-35-15(c). The issue before the undersigned is a motion to stay a Decision which is subject to a *de novo* appeal and does not fall under R.I. Gen. Laws § 42-35-15(c). Nonetheless, it is instructive to note that the *Department of Corrections* found it a matter of discretion to hold matters in *status quo* pending review of an agency decision on its merits.

IV. DISCUSSION

The information received by the undersigned is based on representations of the parties. The undersigned did not have a transcript of the Board hearing; however, an audio of the Board's

hearing for May 3, 2024 was available online, and the undersigned listened to that recording² as well as the recording of the decision made on May 9, 2024.³

The parties agreed that in October, 2023, the Appellant had two (2) after hours violations, one at 2:30 a.m. and one at 3:30 a.m. After those violations, the Appellant and the Board entered into an agreement on November 9, 2023 for a two (2) day closure and 14 day reduction of hours and a \$1,000 administrative penalty as well as agreeing that Andre Samuel would not be allowed on the Appellant's premises.

In February, 2024, there were two (2) allegations of after hours operation (one at 1:25 a.m. and one at about 1:35 a.m.) by the Appellant as well as Mr. Samuel being on premises on those two (2) nights. The Board did not argue that Mr. Samuel was acting as a manager but that he was on premises in violation of the November, 2023 agreement. The Board represented the Appellant agreed to the February, 2024 violations, and then allowed the Board to impose a sanction. However, it is unclear from the May 9, 2024 recording as such an agreement to the violations was not put on the record, and the attorney for the Appellant at the stay hearing was not the attorney for the Board hearing. The undersigned has not received a copy of the Board's decision letter.

It was represented at hearing that since February, 2022, there have been six (6) different incidences with the Appellant representing a total of 12 violations of after hours operation and bottle service, etc.

The Appellant's attorney argued that its client had not agreed to the condition about Mr. Samuel. However, the Board represented that a week after the signing of the agreement by the Appellant's attorney, the Appellant's owner was present with the Appellant's attorney at the

² See <https://providenceri.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=14865&Format=Minutes> (audio of Board's May 3, 2024 meeting).

³ See <https://providenceri.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=14762&Format=Agenda> (audio of Board's May 9, 2024 meeting).

License renewal hearing before the Board where the Board Chair stated on the record that the “personality” [Mr. Samuel] was no longer associated with the Appellant which gave the Board more comfort in renewing the license. The undersigned listened to the renewal hearing⁴ in which the Board Chair stated about the personality and a six (6) month review was set for the renewal of License to April, 2024. At the hearing, the Appellant was also warned that progressive discipline would result in higher sanctions for further violations. [It is noted again that the Appellant had a different lawyer at its Board hearing than at the stay hearing].

The parties agreed that the November, 2023 stipulation was signed by the parties (Appellant’s attorney). The undersigned has not reviewed it, but the Appellant has raised the issue in terms of whether it was appropriate to agree to ban Mr. Samuel. See *Fuller Mill Realty, LLC v. Department of Revenue*, -- A.3d - (R.I. 2024) 2024 WL 1917934 (enforce clear and unambiguous agreement).

There is an issue of whether revocation is appropriate in light of the Appellant’s past violations and past sanctions. Applying the criteria from *Harsch*, a stay will not be issued if the party seeking the stay cannot make a strong showing that it will prevail on the merits of its appeal. The Board (an interested party) has an interest in ensuring that liquor licensees – where the public gather - are compliant with their statutory obligations. The Department has consistently followed progressive discipline barring an egregious act. There were no allegations of disorderly conduct but rather many violations over the past two (2) years that were within the Appellant’s control (hours, bottle service, Mr. Samuel).

It is discretionary to issue a stay in order to maintain the *status quo* pending an appeal. In this matter, it cannot be ascertained what would be an appropriate sanction for the recent violations,

⁴ <https://providenceri.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=14141&Format=Minutes> (audio for Board meeting on November 15, 2023).


if proved, without a full hearing. If a stay is not granted for the revocation, the Appellant will not have a meaningful appeal. The granting of a partial stay maintains the *status quo* pending the full hearing. Thus, the following conditions shall be imposed on the granting of the stay.

1. Pursuant to the November 9, 2023 stipulation as represented by the parties, Mr. Samuel shall not be on the Appellant's premises for any reason.
2. The Appellant shall only open to midnight every night.

V. RECOMMENDATION

Based on the foregoing, the undersigned recommends that a stay subject to the conditions delineated above be granted for the revocation of license pending a full hearing before the Department.

Dated: May 14, 2024

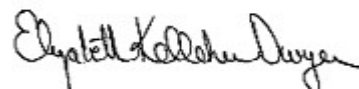

Catherine R. Warren
Hearing Officer

INTERIM ORDER

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

ADOPT
 REJECT
 MODIFY

Dated: May 14, 2024


Elizabeth Kelleher Dwyer, Esquire
Director

A hearing will be scheduled on a mutually convenient date to be determined by the parties.⁵

⁵ Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant is responsible for the stenographer.

NOTICE OF APPELLATE RIGHTS

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

CERTIFICATION

I hereby certify on this 14th day of May, 2024 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail, postage prepaid and by electronic delivery 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 Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, R.I. 02904, and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.

Megan Mihara
