

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

JMA Inc. d/b/a Mezzo Lounge, Appellant,	:	
	:	
	:	
	:	DBR No. 24LQ012
v.	:	
	:	
	:	
City of Providence, Board of Licenses, Appellee.	:	
	:	

ORDER RE: MOTION FOR STAY

I. INTRODUCTION

This matter arose from an appeal and motion for stay filed on November 22, 2024 by JMA Inc. d/b/a Mezzo Lounge (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21. This matter revolves around an incident that occurred on November 18, 2024. The Providence Board of Licenses (“Board”) held an emergency meeting on November 18, 2024 and under the City’s Home Rule Charter § 1102(b)(3) suspended the Appellant’s licenses for 72 hours and scheduled the matter for hearing on November 19, 2024 which was then continued to November 21, 2024. The Appellant was to remain closed pending the November 21, 2024 hearing. On November 21, 2024, the Board continued the hearing as it had not gathered all evidence and ordered the Appellant closed pending a hearing before the Board. The parties represented the Board hearing would be held on December 19, 2024 based on the attorney’s schedules. A remote hearing on the motion to stay was heard on November 25, 2024 before the undersigned who was delegated to hear this matter by the director of the Department.

After discussion with counsel and the City's further discussion with the Providence Police department, the parties agreed to a consented to reopening of the Appellant pending the full hearing scheduled for December 19, 2024.¹

II. JURISDICTION

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

A liquor appeal to the Department pursuant to R.I. Gen. Laws § 3-7-21 is considered a *de novo* hearing. The Department's jurisdiction is *de novo* and the Department independently exercises the licensing function. *A.J.C. Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984); *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964); and *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964). Because the Department's has such broad and comprehensive control over traffic in intoxicating liquor, its power has been referred to as a "super-licensing board." *Baginski v. Alcoholic Beverage Comm.*, 4 A.2d 265, 267 (R.I. 1939). See also *Board of Police Com'rs v. Reynolds*, 133 A.2d 737 (R.I. 1957). The purpose of this authority is to ensure the uniform and consistent regulation of liquor statewide. *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964).

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*

¹ There was no dispute there were gunshots fired in the parking lot used by the Appellant's patrons on the night in question at about 2:00 a.m. Not all evidence had been reviewed prior to the November 21, 2024 Board meeting but it continued to be reviewed after that date. The parties represented the evidence indicated that no disturbance had taken place inside the club before the gunshots outside.

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 parties represented that they agreed the Appellant could reopen pending the full hearing by the Board on December 19, 2024 with the following conditions:

1. No under 21 events;
2. Appellant to specifically provide a list of DJ's who will be on the premises, and they must match the advertising; and
3. Either have a police detail at night OR have extra security in the parking lots (Walmart and Wendy's) on duty at least 30 minutes before closing.

V. RECOMMENDATION

Based on the foregoing, the undersigned recommends the Appellant be allowed to reopen with the conditions set forth in this Order pending the Board's full hearing scheduled for December 19, 2024 at which time, the Board can decide on the violations, if any, etc.

Dated: November 26, 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: November 26, 2024



Elizabeth Kelleher Dwyer, Esquire
Director

NOTICE OF APPELLATE RIGHTS

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

CERTIFICATION

I hereby certify on this 26th day of November, 2024 that a copy of the within Order and Notice of Appellate Rights were sent by email and 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, John C. Manni, Esquire, 1405 Plainfield Street, Johnston, R.I. 02919, and Louis A. DeSimone, Jr., Esquire, 1554 Cranston Street, Cranston, R.I. 02920 and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.