

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

**Pitino Fine Foods, Inc.,
Appellant,**

v.

**City of Providence, Board of Licenses,
Appellee.**

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DBR No.: 25LQ002

DIRECTOR'S DECISION AND ORDER

The Director modifies the Hearing Officer's recommendation and issues this decision and order with respect to the motion for stay filed by Pitino Fine Foods, Inc. ("Appellant").

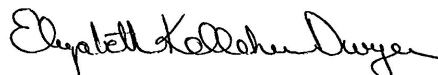
Sections I-IV(a)-(c) and the first paragraph of Section IV(d) of the Hearing Officer's recommended decision attached hereto are incorporated herein by reference. The second paragraph of Section IV(d) of the recommended decision is modified and replaced with the following:

"Although in considering a request for stay, the Department may determine to maintain the *status quo* in its the discretion, the Department declines to do so here. Considering the multitude of violations, which the parties agreed to in their submission to the Board, Appellant's disciplinary history and the arguments, Appellant has not made the required strong showing that it will prevail on the merits of its appeal, it will suffer irreparable harm if the stay is not granted, and issuance of a stay will not harm the public interest.

Based upon the foregoing, the Appellant's request to stay the Board's decision of April 10, 2025, is denied.

Regarding Appellant's indication that it would be amenable to a stay conditioned on Appellant not operating and the City's indication that a stay conditioned as such was a reasonable request, this order denying Appellant's request for stay does not preclude the parties from reaching a consensual agreement to effectuate that and/or from working together to expedite a full hearing."

Dated: May 5, 2025



Elizabeth Kelleher Dwyer, Esquire
Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION 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 APPROPRIATE TERMS.

CERTIFICATION

I hereby certify on this 5th day of May, 2025, that a copy of the within Decision and Order was sent by first class mail, postage prepaid, and by electronic delivery to the following: Nicholas Hemond, Esquire, DarrowEverett, LLP, 1 Turks Head Place, Suite 1200, Providence, RI 02903 nhemond@gmail.com, James Smith, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, RI 02903 JimSmith@providenceri.gov, Louis A. DeSimone, Esquire, 1554 Cranston Street, Cranston, RI 02920 ldatty@gmail.com, and by electronic-delivery to Pamela J. Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI 02920 pamela.toro@dbr.ri.gov.



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DBR No. 25LQ002

ORDER RE: MOTION FOR STAY

I. INTRODUCTION

This matter arose from an appeal and motion for a stay filed on April 18, 2025 by Pitino Fine Foods, Inc. (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 regarding the decision taken on April 10, 2025 by the City of Providence, Board of Licenses (“Board”) to revoke the Appellant’s Class BV liquor license (“License”). A remote hearing on the motion to stay was heard on April 30, 2025 before the undersigned who was delegated to hear this matter by the director of the Department.

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. 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

a. The Violations

An audio of the Board's hearing for April 3, 2025 was available online,¹ and the undersigned listened to that recording. The decision was made on April 10, 2025, and the undersigned was able to review the transcript of the decision hearing.

¹ See <https://providenceri.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=15168&Format=Minutes> (audio of Board's April 3, 2025 meeting).

The parties submitted to the Board a list of agreed to violations on which the Board based its decision.

1. February 2, 2025:
 - a. Breach of the conditions on which the license was issued - R.I. Gen. Laws § 3-5- 21;
 - b. Permitting the laws of the state to be violated in the neighborhood - R.I. Gen. Laws § 3-5-23;
 - c. Hours of Operation - R.I. Gen. Laws § 3-7-7;
 - d. Entertainment without a license - C.O. 14-193;
 - e. Sale of alcohol by the bottle - R.I. Gen. Laws § 3-8-14;
 - f. Excessive noise prohibited - C.O. 16-93.
2. February 23, 2025:
 - a. Breach of the conditions on which the license was issued - R.I. Gen. Laws § 3-5-21;
 - b. Permitting the laws of the state to be violated in the neighborhood - R.I. Gen. Laws § 3-5-23;
 - c. Hours of Operation - R.I. Gen. Laws § 3-7-7;
 - d. Excessive noise prohibited - C.O. 16-93.
3. March 2, 2025:
 - a. Breach of the conditions on which the license was issued - R.I. Gen. Laws §3-5-21;
 - b. Permitting the laws of the state to be violated in the neighborhood - R. I. Gen. Laws § 3-5-23;
 - c. Hours of Operation - R.I. Gen. Laws § 3-7-7;
 - d. Excessive noise prohibited - C.O. 16-93.
4. March 29, 2025:
 - a. Breach of the conditions on which the license was issued - R.I. Gen. Laws § 3-5-21;
 - b. Permitting the laws of the state to be violated in the neighborhood - R.I. Gen. Laws § 3-5-23;
 - c. Hours of Operation - R.I. Gen. Laws - § 3-7-7;
 - d. Excessive noise prohibited - C.O. 16-93.

On the basis of these violations, the City recommended to the Board that the Appellant's hours be reduced for a period of one (1) year. The Appellant argued for a lesser penalty. Initially, the Board moved to permanently reduce the Appellant's hours. However, during the meeting, the Board members noted the Appellant was currently advertising a DJ on its social media channel at the time of the Board hearing. The Board then chose to revoke the License. Obviously, the advertisements the Board reviewed during the hearing were not properly before the Board.

b. Prior Sanctions

The Appellant had two (2) prior instances of entertainment without a license and bottle service which occurred on April 7, 2023 and October 20, 2023. The Appellant received a warning and a \$1,000.00 fine for the initial violation in April and a \$1,000.00 fine and a five (5) five day reduction of hours for the second violation in October.

In May, 2024, the Appellant appealed to the Department further sanctions imposed by the Board for a variety of violations for bottle service and entertainment without a license. There were three (3) instances of entertainment without a license in three (3) months in an area for which no entertainment was allowed and three (3) instances of bottle service. Due to the closeness in time of the violations and the fact that the Board's rules for sanctions² acted as a *de facto* revocation of the Appellant's extended license, the Appellant's extended hours license was revoked, and the hours were reduced for 60 days. *Pitino Fine Foods, Inc. d/b/a El Destacamento v. City of Providence Board of Licenses*, DBR No. 24LQ003 (5/21/24).

² That decision relied on the Board's rules and regulations in relation to operations and procedures for licensing adopted in 2022. Those rules have been updated effective January 1, 2025 but with no changes to those type of sanctions.

c. Arguments

The Appellant argued that revocation of the License was not the appropriate sanction for the agreed to violations. It further argued that it would agree not to operate if a stay was granted as it is in the midst of an asset purchase so it would like time to apply to the Board to transfer the License and furthermore, it would be amenable to a deadline being put on the filing of the transfer application. In the alternative, the Appellant requested a stay of the revocation in order that it have the opportunity for a meaningful hearing. It indicated it would be amenable to a conditional stay with reduced hours and/or police detail.

The Board argued the Appellant's recent violations took place only one (1) year after committing several similar violations. It indicated the City took that history into account when requesting an appropriate penalty of (1) year of reduced hours but the Board chose revocation. It noted the Board chose revocation while looking at advertisements on the Appellant's social media which were not before the Board. It argued there could be expedited hearing, and no stay was warranted as a suspension would at least be imposed for these violations. The City agreed with the Board's arguments.

Both the Board and the City indicated that the Appellant's request for a stay pending non-operation was a reasonable request.

d. Conclusion

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, entertainment without license).

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 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 stay maintains the *status quo* pending the full hearing. The undersigned would usually in this type of circumstances recommend a stay with conditions such as reduced hours (as initially requested to the Board at hearing). However, the Appellant indicated that if a stay is issued it would agree not to operate pending the stay. Thus, a stay is granted for the revocation of the License on the condition the Appellant does not operate the License. The Appellant may always request to be allowed to re-open pending the stay.

V. RECOMMENDATION

Based on the foregoing, the undersigned recommends that a stay be granted for the revocation of License on the condition that the Appellant not operate pending a full hearing before the Department. The parties shall have 60 days to see if this matter can be resolved prior to scheduling the hearing.

Dated: May 1, 2025


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:

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| _____ | ADOPT |
| _____ | REJECT |
| <u> X </u> | MODIFY (attached) |

Dated: 5/5/2025



Elizabeth Kelleher Dwyer, Esquire
Director

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CERTIFICATION

I hereby certify on this 5th day of May, 2025 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: James Smith, 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.

