

**JTD, Inc. d/b/a General Country Store and
Nicholas Izzi,
Appellants**

**The Town Council of Scituate sitting as the
Beverage Licensing Board,
Appellee**

Chopmist Hill Liquors, LLC
Intervenor

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. Background

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, audios of the Board's hearings for November 14 and December 12, 2024, February 13 and March 13, 2025 were available online, and the undersigned listened to those recordings.¹

Pursuant to R.I. Gen. Laws § 3-5-16, the Town of Scituate is permitted two (2) Class A liquor licenses. There is already another licensed Class A establishment. Thus, the license at issue here would be the only available Class A liquor license in the Town of Scituate.

The Appellants have had a Class A liquor license located at 10 Hope Farm Road. It is undisputed that a fire destroyed this property in 2016, and since then the Appellants have not reopened. The Appellants represented that after the fire, the owner went through a divorce with his assets being frozen, then the pandemic in 2020, and then a storm destroyed the almost rebuilt building. The Appellants believe they can reopen that building and complete what is needed by this summer. The Appellants represented that they filed with the town a renewal for that license.

The status of the Appellants' renewal application on that license is in dispute.

At the November 14, 2024 Board meeting, the Board did not deny or approve the Appellants' renewal application. In fact, the Board decided that a denial could affect the Appellants' financing so instead moved and tabled the renewal application. It was said on the record that no decision was made either to approve or deny the application, and it was indicated that a Class A license would be available for anyone to apply. It then also indicated that at the next

¹ See <https://clerkshq.com/scituate-ri> for links to the various meetings.

meeting, the Board would decide if there should be a moratorium on issuing Class A licenses for three (3) months. No vote was taken on the tabling motion.

At the December 12, 2024 meeting, the Board did not approve a three (3) month moratorium on the issuance of Class A licenses. It was indicated on the record that the moratorium was being considered specifically for the Appellants. A councilor indicated the Board had given the Appellants many chances, but time was running out.

The Appellants filed a new application for a Class A liquor license at a different location.² The Appellants' new application and the Intervenor's application for a Class A liquor license both were considered by the Board at the February 13, 2025 meeting. At that time, the Board tabled both applications and moved to continue consideration of them to the March 13, 2025 meeting. At the March 13, 2025 meeting, the Appellants' new application was denied, and the Intervenor's application was granted.

b. Arguments

The Intervenor argued the Appellants' old license would be considered abandoned pursuant to R.I. Gen. Laws § 3-5-16.1.³ It argued the statute is clear so that the license is void, there was no license to renew, and the Board chose to grant the Intervenor the new license. The Intervenor

² It should be noted that the Appellants' prior store was licensed pursuant to R.I. Gen. Law § 3-7-1 for towns and cities with a population under 10,000. However, it appears that Scituate now has a population of over 10,000 which would necessitate compliance with R.I. Gen. Laws § 3-7-3 which limits what can be sold in a liquor store. In other words, the Appellants would no longer be able to run a grocery store and liquor store as one entity. The statute does not provide grandfather rights and certainly not for new applications.

³ R.I. Gen. Laws § 3-5-16.1 provides as follows:

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 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.

argued that no stay should be granted as it was ready to open and willing to risk opening without a final decision on the appeal.

The Appellants argued that pursuant to *The Wine and Liquor Company, Inc. v. DBR*, 2023 WL 185515 (R.I. Super.), the old license was not abandoned as no hearing had been held on that issue. The Appellants argued that no decision was ever made on the renewal so the license is not available for other applicants. The Appellants argued that there were no grounds to deny the new application because there was no finding that they were unfit to operate the a Class A business.

The Board argued that no license had been issued to the Appellants since 2016. It argued at the November, 2024 meeting, the Board did not renew the license so that it expired. It argued the Appellants instead of appealing that decision to the Department chose to file a new application. The Board argued the license was not renewed in November, 2024 because the Appellants' premises remained unavailable for use, and the owner had lost credibility with the Board.

c. The Motion for Stay

The Wine and Liquor Company, Inc. v. DBR, 2023 WL 185515 (R.I. Super.) addressed the issue of Class A liquor licensee that did not open within one (1) year as set forth in § 1.4.14 of 230-RICR-30-10-1, *Liquor Control Administration* regulation. That rule related to the time an applicant must open after a license had been granted but not issued. The Court found that said rule had been promulgated beyond the Department's scope of authority.⁴ The Court found the rule's

⁴ That now deleted rule provided 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 the 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

timeline was “markedly different” (p. 8) from the abandonment statute which provides for a granting of reasonable time not to exceed a year for a licensee to reestablish their liquor retail business to prevent revocation after abandonment. That statute provides that a hearing must be held on the issue of abandonment.

Wine and Liquor spoke of rule’s requirement to meet conditions of licensing placed on the granting of license. In contrast, the abandonment statute speaks of the local licensing authority ascertaining that a Class A liquor licensee has either abandoned the premises or ceased to operate under the license for a period of ninety (90) days. In that case, the local licensing authority must hold a hearing on the matter. The statute provides that if the abandonment or cessation of operations were due to fire, the authority may grant a reasonable period of time not to exceed one (1) year to reestablish the business. The Appellants seem to argue the statute allows the one (1) year provision to be triggered on renewal. But the statute clearly provides that once it comes to the local licensing authority attention that a Class A liquor license has been abandoned or ceased operation, the authority shall cancel the license after hearing unless there are grounds to grant a reasonable extension of up to one (1) year. The statute is not tied to the renewal statute. Obviously, at hearing, a licensee may be able to show that it has not abandoned or ceased operating for over 90 days which in that case, the license would not be canceled.

As the Court found in *Green Point v. McConaghy*, 2004 WL 2075572 (R.I. Super.), allowing the transfer and prolonged non-use of liquor licenses contravenes public policy in that it promotes private market speculation of licenses that are otherwise difficult to obtain through proper application to a licensing authority. As also found in *Marty's Liquors v. Warwick Board of*

calculated when the license at issue is involved in litigation, from the date of commencement of the action to final disposition.

Commissioners, 1985 WL 663587 (R.I. Super.), the General Assembly enacted legislation specifically providing to reduce the number of Class A liquor licenses so that Class A licenses cannot be kept “alive” for improper purposes.^{5 6}

Here, the Board was well aware of the Appellants non-use of its Class A liquor license but never held a hearing on whether said license had been abandoned under the statute.

The Board’s arguments also supported a finding of abandonment, but the Board never noticed a hearing on said statute as it applied to the Appellants.⁷

If the old license had been abandoned, then it did not exist to be renewed, and there was an available license for which both the Appellants and the Intervenor could apply.

Nonetheless, assuming the continuous renewal of the old license, the Board never acted on the renewal application in November, 2024. It tabled the application. It indicated on the record that there would be an available license when one had not been available before. But it decidedly did not deny the renewal application because a councilor withdrew a motion to deny because that could affect the Appellants’ financing. In the Board’s consideration, the tabling may had have had

⁵ The Department has consistently ensured that new life is not breathed into licenses that have been revoked, expired, abandoned, or are null and void. *Baker v. DBR*, 2007 WL 1156116 (R.I. Super.) (cannot transfer a Class B liquor license that was not issued to a *bona fide* tavern keeper or victualer). See also *Wines and More, Inc. v. City of Cranston, Board of Licenses*, DBR No.: 19LQ009 (8/2/19) (Class AE liquor could not be split by locality in order to transfer Class A license); *City of Cranston and A. Jeffrey Bucci d/b/a Plainfield Pike Liquors*, DBR No. 01-L-0050 (8/10/01) (over statutory cap for new Class A license and cannot transfer expired Class A license); and *Newport Paragon Group d/b/a Wellington Square Liquors & Newport County Package Store Association v. Newport Board of License Commissioners*, LCA-NE-98-09 (12/18/98) (Class A license cannot be transferred as it was abandoned).

⁶ If a liquor licensee abandons or ceases to operate its store, it means the store is not open, and it is not selling liquor to patrons. The point behind the statute is to ensure that stores are open and operating for people to use. If a store is not operating to be patronized, the local authority shall cancel the Class A license. The statute specifically targets Class A licenseholders because of the statutory cap for Class A licenses. This ensures that licenses are not held in abeyance for various reasons.

⁷ Over the years as the license came for renewal, the Board expressed frustration with the pace of rebuilding but then also noted problems faced by the Appellants, but for whatever reason never addressed the abandonment statute. Indeed, it appeared that at some points the Board wanted to ensure the Appellants could hold onto the only available Class A license until the Board found the process had gone on too long. See the November 9, 2017, November 19, 2018, November 14, 2019, December 10, 2020, March 11, 2021, November 30, 2021, November 10, 2022 Board meetings in addition to the ones referenced above. The minutes and audio for these meetings can also be accessed via <https://clerkshq.com/scituate-ri>.

a *de facto* effect of denying the license renewal application, but the Board at its next meeting then entertained a three (3) month moratorium on the granting of Class A liquor licenses which was solely to help the Appellants in terms of their license application. The consideration of a moratorium just muddled the water in terms of the November, 2024 action of tabling the renewal application. If the three (3) month moratorium was approved (which it was not) would that have purportedly allowed the renewal to be granted? Whatever the intentions of the Board, it is undisputed the Board never made a yes or no decision on the renewal application.

Before reaching the decision on the new applications by the Appellants and the Intervenor, the Board must decide whether the 2016 license was abandoned pursuant to R.I. Gen. Laws § 3-5-16.1.

Furthermore, the Board should also vote yes or no on the renewal application – assuming the license was not abandoned.

If the old license was abandoned, it was available for a new application.

If the old license was denied renewal, it was available for a new application.

If the Board's answers lead to a Class A liquor license being available for application, the undersigned will hear the Appellants' appeal of denial of its new application. And depending on the Board's answers on remand, those answers may also be heard on appeal.

d. Conclusion

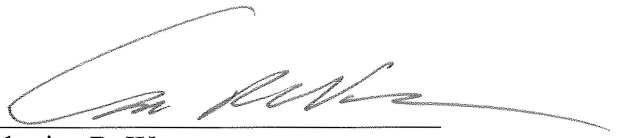
It is discretionary to issue a stay in order to maintain the *status quo* pending an appeal. In this matter, the Board needs to consider the abandonment issue and the renewal application in order to ascertain the actual availability of the Class A license for application. The granting of a stay of both the denial of the Appellants' application for a Class A license and the grant of the

Intervenor's Class A liquor license application maintains the *status quo* pending the remand and any potential Department appeal hearing after remand.

V. RECOMMENDATION

Based on the foregoing, the undersigned recommends that a stay be granted of both the denial of the Appellants' application for a Class A license and the grant of the Intervenor's Class A liquor license application pending the remand and any potential Department appeal hearing after remand.

Dated: April 7, 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:

☒ ADOPT
☐ REJECT
☐ MODIFY

Dated: April 9, 2025


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 9th day of April, 2025 that a copy of the within Order and Notice of Appellate Rights 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, R.I. 02903, Timothy F. Kane, Esquire, 627 Putnam Pike, Greenville, R.I. 02828, Robert E. Craven Esquire, 7405 Post Road, North Kingstown, R.I. 02852, and Wyatt A. Brochu, Esquire, Ruggiero Brochu & Petrarca, 1130 Ten Rod Road, Suite D102, North Kingstown, RI 02852 and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.

Megan Mihara
