

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

Montecristo Restaurant, LLC,	:	
Appellant,	:	
	:	
	:	
v.	:	DBR No.: 25LQ004
	:	
City of Providence, Board of Licenses,	:	
Appellee.	:	

DIRECTOR’S DECISION AND ORDER

The Director has received the Hearing Officer’s recommended decision and order with respect to the Motion for Stay filed by Montecristo Restaurant, LLC (“Appellant”) attached hereto. In order to make a decision thereon, further information is required regarding the status of the subject license. Accordingly, the Director requests that the Hearing Officer convene further hearing on the Motion as follows.

A. At the hearing, Appellant and Appellee shall present documentary, testimonial and other evidence sufficient for the Hearing Officer to make factual findings to address the following discrepancies in the record, which are a necessary precursor to render a decision:

1. While the attached recommended decision makes general reference to and presumption about licensure proceedings occurring toward the end of 2022 for the succeeding licensure period¹, it reflects no testimony or other evidence being presented or factual findings made as to whether: (a) Appellant filed a renewal application by October 1, 2022, with respect

¹ “Thus, the Appellant’s License would have expired toward the end of 2022 and would have been renewed at that time by the Board for 2023.” See attached at pages 2-3.

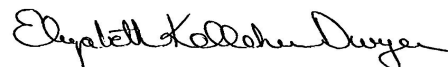
to the upcoming December 1, 2022 expiration date, (b) the Appellee/Board granted the renewal, and (c) whether any such grant was with or without conditions.

2. With respect to the licensure expiration date December 1, 2023, and the succeeding license period, the attached reflects no testimony or other evidence being presented or factual findings made as to whether after the Appellant's appeal of the Board's January 4, 2024 denial of Appellant's year end 2023 renewal application was dismissed on October 4, 2024², the Appellant and/or the Board took further action with respect to the denied renewal or to reinstate the license.

B. In addition to presentation of evidence and argument at the hearing, Appellant and Appellee shall each submit their Memorandum in support or opposition of the Motion with a statement of "Facts and Travel" that includes the history of the license from the October 1, 2021 application due date to the present, including dates of applications, board approvals, denials or other actions thereon, and all licenses and license renewals issued, and such party's "Arguments" specific to the four factors for issuance of a stay under *Narragansett Electric Company v. William W. Harsh et al.*, 367 A.2d 195, 197 (R.I. 1976).

C. Following the hearing and receipt of memoranda, the Hearing Officer will incorporate into the recommended decision findings regarding the license history and status of the license as indicated above, in addition to any other clarifications and modifications she deems appropriate.

Dated: June 16, 2025



Elizabeth Kelleher Dwyer, Esquire
Director

² "On September 13, 2024, the Appellant's counsel indicated that this matter could be dismissed. On September 13, 2024, the [Hearing Officer] notified the City that if she did not receive an objection by September 23, 2024, she would recommend dismissal. No objection was received by September 23, 2024. To date, there has been no communication by any of the parties that the matter should not be dismissed. Therefore, based on the foregoing, the Appellant's appeal is dismissed." See Final Order of Dismissal dated October 4, 2024 at page 1.

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 16th day of June, 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@dbri.gov.

Megan Mihara

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

Montecristo Restaurant, LLC,
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DBR No. 25LQ004

ORDER RE: MOTION FOR STAY

I. INTRODUCTION

This matter arose from an appeal and motion for a stay filed on May 31, 2025 by Montecristo Restaurant, LLC (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 regarding the decision taken on May 22, 2025 by the City of Providence, Board of Licenses (“Board”) to deny the Appellant’s renewal application for its Class BV a liquor license (“License”). A remote hearing on the motion to stay was heard on June 9, 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). 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 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. PRIOR TRAVEL OF THIS MATTER

Prior to this current appeal, the history of this licensee is as follows: On June 15, 2022 a decision was issued by the Department providing that the Appellant could continue to be licensed as a Class BV licensee but imposing nine (9) conditions on the License. Pursuant to R.I. Gen. Laws § 3-5-8, Class B licenses expire on December 1st of every year. Thus, the Appellant's

License would have expired toward the end of 2022 and would have been renewed at that time by the Board for 2023. At the January 4, 2024 Board hearing, the Board reviewed the conditions from the 2022 decision and found that there were at least two (2) or three (3) violations by the Appellant of those conditions. The Board then denied the Appellant's renewal application.

On appeal to the Department, the Department found the 2022 decision did not indicate that any violation of the condition(s) mandated revocation or denial of renewal – which had been the understanding by the Board - but rather indicated the failure to comply with conditions could lead to revocation. The Department concluded that any decision by the Board was appealable to the Department but the Board as the licensing authority would have an interest in ensuring that its licensees comply with conditions of licensing. Thus, the Department by order dated January 29, 2024 remanded the matter to the Board for further consideration of the renewal application and its consideration of whether the 2022 conditions had been violated and if so, whether that merited denial or renewal or other sanctions. The order also granted a conditional stay.

On May 1, 2024, the Board informed the undersigned that it had never heard the matter despite the January 29, 2024 remand. On September 13, 2024, the Appellant's counsel indicated that the matter could be dismissed. No objection was received from the parties by September 23, 2024 so that the appeal regarding the 2024 renewal was dismissed on October 7, 2024.

V. ARGUMENTS

The Appellant argued that despite the Board being given an opportunity by the Department to weigh in on the licensing of the Appellant, it failed to do so. The Appellant indicated it offered to remove the speakers that it has as they are not compliant with City law. It argued the City has not brought any actions against it for noise violations. It argued that while the neighbors might

complain of noise, there has been no verified complaint(s) by the police about noise. The Appellant argued that it had a substantial likelihood of success on the merits so a stay should be granted.

The City and Board argued there were six (6) neighbors complaining which lends credence to the noise complaints. The Board agreed that there had been no noise complaints brought against the Appellant before the Board but argued the neighbors' peace and quiet has been disturbed.

VI. DISCUSSION

At the May 22, 2025 Board hearing, the Board considered the renewal for 2025. The undersigned listened to the audio of the hearing.¹ A neighbor of the Appellant's testified. At the stay hearing, it was agreed that prior to the Board's May 22, 2025 hearing, six (6) neighbors had presented testimony to the Board about the Appellant and noise. At the May 22, 2025 hearing, the neighbor testified that the week after the Department dismissed the appeal, the noise started up.² The neighbor indicated the Appellant has oversized speakers that he can hear in his house and his neighbors can hear as well.

In 2024, the Department remanded this matter to the Board so the Board could exercise its licensing judgment in this matter. The Board never heard this matter after the remand so that it never discussed the 2022 conditions and whether there had been violations and if so, what should the Board's approach be to its licensee's violations. The Board failed to exercise its authority in this matter in 2024 so that the matter was dismissed by the agreement of the parties. Now the Board denied the renewal after never addressing the nine (9) conditions from 2022 on the 2024 remand. At the Board's May 22, 2025 hearing, the Board apparently denied the renewal based on noise issues and the licensing history.

¹ <https://providenceri.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=15174&Format=Minutes> (May 22, 2025 hearing).

² This is at approximately at an hour and two (2) minutes on the audio.

At the Board hearing, the neighbor's testimony was that any problems started up once the Department's dismissed the stay matter. At the stay hearing, the Appellant indicated it had not changed its hours of operation and had provided a letter of good standing for the 2025 renewal and was not operating as a smoking bar.

The Appellant also argued the City had not found any noise violations despite complaints so it argued the neighbors' complaints were not reliable. The City and the Board argued the number of neighbors showed there were noise issues.

Based on the foregoing, the Appellant should continue to operate within similar confines of the conditional 2024 stay.

It is discretionary to issue a stay in order to maintain the *status quo* pending an appeal. In this matter, it cannot be ascertained whether denial of the renewal is appropriate without a full hearing. If a stay is not granted, the Appellant will not have a meaningful appeal. The granting of a partial stay maintains the *status quo* that existed prior to the October, 2024 dismissal. Thus, the following conditions shall be imposed on the granting of the stay.

1. Only incidental or ambient music can be played by the Appellant so that the Appellant's music does not go over 50 dB.
2. No advertisements about music allowed in any venue or forum. This is because Appellant is only to play incidental music for background music.³
3. The Appellant shall close by 10:00 p.m.⁴
4. The Appellant shall remove the speakers referenced by its attorney at the stay hearing, and not use them prior to their removal.


³ The point of the music advertisement ban is to ensure that the Appellant does not present itself as a destination for music.

⁴ It was noted at the stay hearing that the Appellant was closing at 11:00 p.m. at weekends. However, the 2022 conditions included closing every night at 10:00 p.m. This condition was included in the 2024 remand order. See DBR website – enforcement actions at www.dbr.ri.gov.

VII. RECOMMENDATION

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

Dated: June 10, 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: _____

Elizabeth Kelleher Dwyer, Esquire
Director

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

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

CERTIFICATION

I hereby certify on this _____ day of June, 2025 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: James Smith, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, R.I. 02903, Nicholas Hemond, Esquire, DarrowEverett, LLP, 1 Turks Head Place, Suite 1200, Providence, R.I. 02903, 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.
