

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

L & T LLC d/b/a Sakonnet Liquors
Appellant,

v.

Tiverton Town Council,
Appellee.

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DBR No.: 25LQ006

ORDER RE: REMAND

I. Introduction

This matter arose from an appeal and stay filed by L & T LLC d/b/a Sakonnet Liquors (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21¹ regarding the decision taken on June 9, 2025 Tiverton Town Council (“Tiverton” or “Board”) to deny the Appellant’s application for a Class A liquor license.

II. Travel of the Matter

The number of Class A liquor licenses available in a town or a city is dependent on population pursuant to R.I. Gen. Laws § 3-5-16. Due to Tiverton’s change in population, it is now allowed to have three (3) Class A liquor licenses rather than only two (2). It currently has two (2) Class A liquor licenseholders. It received two (2) applications for the one (1) new Class A license.

¹ R.I. Gen. Laws § 3-7-21 provides in part as follows:

Appeals from the local boards to director. (a) Upon the application of any petitioner for a license, or of any person authorized to protest against the granting of a license, including those persons granted standing pursuant to § 3-5-19, or upon the application of any licensee whose license has been revoked or suspended by any local board or authority, the director has the right to review the decision of any local board, and after hearing, to confirm or reverse the decision of the local board in whole or in part, and to make any decision or order he or she considers proper, but the application shall be made within ten (10) days after the making of the decision or order sought to be reviewed.

Both applicants appeared at the Board hearing where it was planned to hold a lottery. However, prior to the lottery, a councilor raised the issue of the Appellant's owner's criminal history and his fitness for a license. As a result, the Board voted to only go forward with one (1) application and granted the Class A liquor license to the other applicant. The Appellant appealed its denial of its application.

III. 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).

IV. Applicable Law

It is a matter of law that local licensing boards have broad discretion in deciding whether or not to grant a liquor license application. "The granting or denying of such licenses is in no sense an exercise of the judicial process. On the contrary it is purely administrative. In performing that function the board (sic) act as agents of the legislature in the exercise of the police power. . . . [I]t is a

matter of discretion whether or not they shall grant the license and this court has no control over their decision.” *Bd. of Police Comm’rs v. Reynolds*, 86 R.I. 172, 176 (1957).

The Department has the same broad discretion in the granting or denying of liquor licenses. *Id.*, at 177. See *Domenic J. Galluci, d/b/a Dominic’s Log Cabin v. Westerly Town Council*, LCA–WE-00-04 (10/25/00); *Donald Kinniburgh d/b/a Skip’s Place v. Cumberland Board of License Comm’rs*, LCA–CU-98-02 (8/26/98). However, the Department will not substitute its opinion for that of the local town but rather will look,

for relevant material evidence rationally related to the decision at the local level. Arbitrary and capricious determinations, unsupported by record evidence, will be considered suspect. Since the consideration of the granting of a license application concerns the wisdom of creating a situation still non-existent, reasonable inferences as to the effect a license will have on a neighborhood must be logically and rationally drawn and related to the evidence presented. A decision by a local board or this Office need not be unassailable, in light of the broad discretion given to make the decision. *Kinniburgh*, at 17.

In discussing the discretionary standard enunciated in *Kinniburgh*, the Department has also found as follows:

[T]he Department, often less familiar than the local board with the individuals and/or neighborhoods associated with the application, will generally hesitate to substitute its opinion on neighborhood and security concerns if there is evidence in the record justifying these concerns. To this end, the Department looks for relevant material evidence supporting the position of the local authority. (citation omitted). *Chapman Street Realty, Inc. v. Providence Board of License Commissioners*, LCA-PR-99-26 (4/5/01), at 10.

As articulated through liquor licensing decisions at the State court level and the Departmental level, the standard of review for a new license or a transfer of license is subject to the discretion of the issuing authority. Arbitrary and capricious determinations not supported by the evidence are considered suspect. *Infra*. See *W&D Parkview Enterprise, Inc. d/b/a Parkview v. City of Providence, Board of Licenses*, DBR No.: 19LQ021 (12/12/19).

V. Board's Decision

The Board² relied on *DeCredico v. Providence Board of Licenses*, 1996 WL 936872 (R.I. Super) to deny the Appellant's application. *DeCredico* relied on *Bd. of Police Comm'rs* when discussing the local authorities' discretion to grant a license. *DeCredico* also summarized the City of Providence's standards for licensing in determining the fitness of the person to be licensed. These factors included suitable character, that is, those without a history of trouble with the law, as well as the financial stability and responsibility of the applicant, the persons interested pecuniarily in the enterprise, the fitness of the applicant, and moral character.

VI. Appellant's Appeal

Pursuant to § 2.7 of 230-RICR-10-00-2 *Rules of Procedure for Administrative Hearings*,³ a LLC must be represented by an attorney at hearing before the Department. The Appellant has not been able to retain an attorney. If the Department heard this matter, any error by Tiverton would have been of no consequence as the Department's appeal is *de novo*.

Now, the Appellant's owner is unable to address the issue of his fitness for a license. At the Tiverton hearing, the issue of the owner's criminal history was raised for the first time at the Board's hearing. The owner had no notice that could be an issue for his application. He was unable to explain or refute any findings made under *DeCredico* as he had no notice the Board would be raising this issue. The Board has discretion in the granting of a license, but at the same time, an applicant has the right to be heard in a meaningful manner on its application after notice. *Matthews v. Eldridge*, 424

² The Board's June 9, 2025 hearing can be heard at <https://www.youtube.com/watch?v=KGF3i6IkY6w>.

³ Said regulation provides in part as follows:

2.7 Representation

A. Appearances.

2. Individuals, and partners of partnerships, may appear *pro se* if they choose. Corporations may not appear *pro se*.

US 319 (1976); and *Kaveny v. Town of Cumberland Zoning Board of Review*, 875 A.2d 1 (R.I. 2005),

VII. Sua Sponte Authority

Because of the Department's broad authority to enforce Title 3, the Department may review matters on appeal pursuant to its authority under R.I. Gen. Laws § 3-2-2⁴ rather than R.I. Gen. Laws § 3-7-21.

The Department exercises its authority under R.I. Gen. Laws § 3-2-2 when the matter rises to a level that impacts its broad authority over statewide licensing. The Superior Court in *City of Providence Bd. of Licenses v. State Department of Business Regulation*, 2006 WL 1073419 (R.I. Super.), upheld the Department's authority to hear a matter on appeal pursuant to the Department's *sua sponte* authority under R.I. Gen. Laws § 3-2-2. See *Green Point Liquors v. McConaghy*, 2004 WL 2075572 (R.I. Super) (discussion of *sua sponte* authority on part of Department to bring actions and to review local actions); and *Bourbon Street, Inc. d/b/a Senor Froggs/Sully's Sports Bar v. Newport Board of Licenses Commissioners*, 1999 WL 1335011 (R.I. Super.). See also *James and Laureen D'Ambra v. Narragansett Town Council*, DBR No.: 14LQ058 (4/21/15) (Department had jurisdiction under R.I. Gen. Laws § 3-2-2 as the Department has jurisdiction to ensure compliance with the Title 3); and *Volare, Inc. d/b/a Barry's v. City of Warwick Board of*

⁴ R.I. Gen. Laws § 3-2-2 provides as follows:

Supervision. – (a) The department has general supervision of the conduct of the business of manufacturing, importing, exporting, storing, transporting, keeping for sale, and selling beverages.

(b) The department may lease a warehouse for the purpose of efficiently exercising its powers and duties of inspection and may upon reasonable charges store beverages for license holders in the warehouse. No lease shall be for a longer period than five (5) years and every lease shall contain the provision that if it becomes unlawful to manufacture, keep for sale, and to sell beverages in this state it shall become void.

(c) The department has the power at any time to issue, renew, revoke and cancel all manufacturers', wholesalers' and retailers' Class G licenses and permits as are provided for by this title.

(d) The department shall supervise and inspect all licensed places to enforce the provisions of this title and the conditions, rules and regulations which the department establishes and authorizes.

Public Safety, LCA-WA-95-01 (7/17/95) (finding that the Department also had jurisdiction under R.I. Gen. Laws § 3-2-2 as the Department has jurisdiction to ensure compliance with Title 3).

VIII. Discussion

If the Board had allowed the lottery to go forward with both applicants, it could be that the other applicant was chosen, and there might have been no appeal. However, right now, the Appellant has not had a chance to have a full hearing on its owner's fitness for licensing. While the Fair Chance Licensing Act, R.I. Gen. Laws § 28-5.1-14, applies to statewide licensing and does not apply to town or city licensing, the policy behind it is there must be a connection between the type of license and the felony conviction on which a denial of application is based. In other words, a felony conviction cannot act as an automatic bar for a license application. Additionally, a denial cannot be based on a misdemeanor conviction. These types of questions were not able to be answered at the Board hearing as the Appellant had no notice of the issue to be raised at hearing.

In order to ensure the owner is heard, it is appropriate for the Department to exercise its *sua sponte* authority to remand this appeal to the Board for the Board to hold another hearing on the Appellant's fitness. At that time, the Appellant will be aware of the issue of fitness and what factors the Board is reviewing and considering. If the Appellant no longer wishes to pursue its application, it shall inform the Board and the Department.

The remand may end up being of no consequence to the other applicant in that 1) the Appellant decides it is no longer interested in a Class A liquor license; 2) the Board rules against the Appellant who does not appeal; or 3) the Board decides to qualify the Appellant, and the lottery is held for both Class A liquor license applicants, and the other applicant is chosen, and the Appellant does not pursue an appeal. However, the result of this remand could also impact the other applicant in that the Appellant could be granted a liquor license via the lottery.

IX. Conclusion

Based on the foregoing, this matter is remanded to the Board for it to hold a further hearing on the Appellant's fitness for a license and whether its application for a Class A liquor license should be included in the Class A liquor license lottery.

While the Board is holding further proceedings, its grant of a Class A liquor license to East Horizon, Inc. d/b/a Hot Shot Liquors is stayed.

It is noted that assuming the Appellant continues to pursue its application, both applicants have interests in the outcome of this hearing so that it behooves the Board to hold the remand hearing as soon as possible.

Dated: July 15, 2025



Catherine R. Warren
Hearing Officer

ORDER

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

 X ADOPT
 REJECT
 MODIFY

Dated: 7/15/2025


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 16th day of July, 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: Mr. Patrick Burns, L&T LLC d/b/a Sakonnet Liquors, 68 Harbor Ridge Lane, Tiverton, R.I. 02878, Michael Marcello, Esquire, Lewis Brisbois, One Citizens Plaza, Suite 1120, Providence, R.I. 02903, and Richard S. Humphrey, Esquire, Law Offices of Richard S. Humphrey, 3852 Main Rd, Tiverton, RI 02878 and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.

Megan Mihara
