

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

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Montecristo Restaurant, LLC,	:	
Appellant,	:	
	:	
v.	:	DBR No.: 25LQ004
	:	
City of Providence, Board of Licenses,	:	
Appellee.	:	
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DIRECTOR’S SECOND DECISION AND ORDER

The matter before the Department is Montecristo Restaurant, LLC’s (“Appellant” or “Montecristo”) May 31, 2025 emergency motion for stay (the “5/31/2025 Motion for Stay”) in its appeal (the “5/31/2025 Appeal”) of the City of Providence (“City”) Board of Licenses’ (“Board”) May 22, 2025 decision to deny Montecristo’s renewal application with respect to a class BV liquor license (the “5/22/2025 License Renewal Denial”). A hearing on the 5/31/2025 Motion for Stay was held by the Hearing Officer on June 9, 2025, who submitted a proposed Order Re: Motion for Stay to the undersigned Director (the “First Proposed Order”). By Director’s Decision and Order dated June 16, 2025 (the “6/16/2025 Order for Further Hearing”), the undersigned directed the Hearing Officer to convene further hearing for Montecristo and the Board to present documentary, testimonial and other evidence to address certain discrepancies in the record including “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, 2024, the Appellant and/or the Board took further action with respect to the denied renewal or to reinstate the license.” See Director’s Decision and Order dated June 16, 2025 at page 2, ¶ A.2. The Director also instructed each of the parties to

submit their Memorandum in support or opposition of the 5/31/2025 Motion for Stay to include a statement of “Facts and Travel”, a history of the license since October 1, 2021, and their respective “Arguments” specific to the four factors for issuance of a stay. *Id.*, ¶ B.

The Hearing Officer has submitted the attached proposed Second Order Re: Motion for Stay (the “Second Proposed Order”) to the undersigned. The Second Proposed Order states that instead of convening further hearing for the presentation of evidence “[b]y July 9, 2025, the parties submitted an agreed statement of facts and written memorandum and rested on the record.”

The record, as so supplemented, reflects the following:

1. On January 4, 2024, the Board denied the Appellant’s November 2023 class BV liquor license renewal application for calendar year 2024 licensure (the “1/4/2024 License Renewal Denial”).
2. On January 10, 2024, Appellant appealed the 1/4/2024 License Renewal Denial to the Department (the “1/10/2024 Appeal”).
3. By interim Order Re: Motion for Stay dated January 29, 2024 (the “1/29/2024 Stay Order”), the Department issued a conditional stay of the 1/4/2024 License Renewal Denial and remanded the matter to the Board for further action.
4. During the next 7+ months, no further action was taken by the Board, the City, or the Appellant.
5. The Hearing Officer reached out to the Appellant’s, City’s, and Board’s counsel in September 2024.
6. On September 13, 2024, Appellant’s counsel informed the Hearing Officer that the 1/10/2024 Appeal could be dismissed.

7. No objection was made by the City or Board counsel within the 10-day period prescribed by the Hearing Officer.
8. On October 4, 2024, the Department issued a Final Order of Dismissal (the “10/4/2024 Final Dismissal Order”), and Appellant’s 1/10/2024 Appeal of the Board’s 1/4/2024 License Renewal Denial was dismissed.
9. The 10/4/2024 Final Dismissal Order states:

“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.”
10. The 10/4/2024 Final Dismissal Order includes a notice of the right to appeal to Superior Court within thirty (30) days under R.I. Gen. Laws § 42-35-15; neither the Appellant nor the Board appealed to Superior Court.
11. In November 2024, Montecristo contacted the Board about license renewal.
12. The Board’s Interim License Administrator directed an inquiry about the license status to the City solicitor.
13. The City solicitor, Board counsel, and Montecristo’s counsel discussed the status of the license and agreed the City solicitor would reach out to the Hearing Officer to discuss the status.
14. On January 23, 2025, the City solicitor emailed the Hearing Officer¹ as follows:

“I was hoping you could weigh in on the matter listed above that was previously before you. I spoke to both Nick and Lou already. In 2023 the Board denied the renewal of Montecristo. The matter was appealed to the Department and on January 29, 2024 you granted a stay in the matter. For the sake of brevity you granted the stay subject to several conditions and remanded the matter to the Board. The Board took no further action on the license. On October 4, 2024 the matter was dismissed by DBR. The question that has

¹ The email was copied to the Board’s counsel and Montecristo’s counsel.

come up is what the current status of the license is. The Board has not renewed and DBR has not granted the renewal. Nick's position is as follows "the non-renewal has been stayed, the Board has failed to take any further action, the dismissal by DBR was due to the Board's inaction, not the inaction of the Applicant. Therefore, my position is that the license remains valid and it is in the board's court to take further action." If we need to have a hearing or conference on the matter please let us know. While I am the one sending this email I previously sent it for review to both attorney Hemond and Desimone."

15. In an email reply on January 23, 2025², the Hearing Officer stated:

"In my view, the DBR order would stay in place as it was remanded to the BOL, and the BOL never followed up. However, it also could be that the licensee never filed a renewal application in 2024 so that its license expired.

There could be other factors at issue as well of which I am not aware and could impact the license status.

This matter was dismissed so there is no hearing or conference to be held before the DBR as DBR no longer has jurisdiction. Obviously, if the BOL takes an action on this entity/license after a BOL hearing, an appeal would lie with DBR.

Cc'ing Pam Toro so she is aware of this inquiry."

16. Per the parties' July 9, 2025 agreed statement of facts: "[City solicitor], counsel for the Board, and [c]ounsel for the Appellant agreed to accept the Hearing Officer's determination of the status[,]" and "[u]pon learning of [Montecristo's] new application, counsel for the Appellant met with the City and it was agreed that the application should have been treated as a renewal application."³

17. The May 22, 2025 Minutes further reflect the Board denied Montecristo's application to renew class BV liquor license for calendar year 2025 noting "the location is prohibited from operating effective immediately."⁴

² The email reply was sent to the City solicitor, the Board's counsel, Montecristo's counsel with copy to the Department's legal counsel.

³ Per the Board's Minutes of its May 22, 2025 meeting, Montecristo's new application for a class BV license "for the location passed off the agenda with no vote as it is being considered as a renewal application Agenda Item #57." See Minutes at: [Meeting Calendar - City of Providence](#)

⁴ See Minutes at: [Meeting Calendar - City of Providence](#)

When the Department's 10/4/2024 Final Dismissal Order issued, it terminated Montecristo's 1/10/2024 Appeal and, by operation of law, it nullified the 1/29/2024 Stay Order, which was an interlocutory order. See *White v. White*, 36 A.2d 661, 665 (R.I. 1944); *Ash v. Ash*, 144 A. 437, 438-439 (R.I. 1929); *Duke v. Duke University*, 455 S.E.2d 470, 471 (N.C. App. 1995); 11 A.L.R.2d 1407 §§ 3-5. Consequently, the Board's 1/4/2024 License Renewal Denial remained intact such that Montecristo no longer had a license. The parties cannot create a license by way of counsel agreement or stipulations and the Department cannot issue a stay as to the renewal of a license where no license exists. That would be erroneous and in excess of the Department's authority. See R.I. Gen. Laws § 3-5-15.

There being no license to renew, Appellant is unable to make the required strong showing that it will prevail on the merits of its 5/31/2025 Appeal. Accordingly, the undersigned **REJECTS** the Hearing Officer's recommendation in the Second Proposed Order and Appellant's 5/31/2025 Motion for Stay is **DENIED**.

Dated: August 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 August, 2025, that a copy of the within Second 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.

Megan Mihara

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

**Montecristo Restaurant, LLC,
Appellant,**

v.

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

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DBR No. 25LQ004

SECOND 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. By order dated June 16, 2025, the director modified the undersigned’s recommended order for a conditional stay and remanded the matter for a further stay hearing and requested the parties either agree or present testimony regarding the timeline in this matter. The parties were represented by counsel. By July 9, 2025, the parties submitted an agreed statement of facts and written memorandum and rested on the record.

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. **DIRECTOR'S REMAND**

In the director's remand, she made the following findings as it relates to the remand:

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:

While the attached recommended decision makes general reference to and presumption about licensure proceedings occurring toward the end of 2022 for the succeeding licensure period (footnote omitted), 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 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.

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, 2024 (footnote omitted), the Appellant and/or the Board took further action with respect to the denied renewal or to reinstate the license.

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).

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.

V. PRIOR TRAVEL OF THIS MATTER

The parties submitted the following agreed statement of facts:

1. On March 16, 2022, the City of Providence Board of Licenses denied the Appellant's renewal application.
2. On March 17, 2022, the Appellant appealed the Board's denial of its renewal application for 2022 and the decision was stayed by order of the Department issuing on March 24, 2022.
3. After a full hearing held on May 24, 2022, the Department reversed the Board's decision by order dated June 14, 2022 and allowed the renewal of the license upon nine conditions. No appeal of the Department's decision was taken by the Board to Superior Court.
4. The Appellant appeared before the Board and was subsequently allowed to open. In November 2022, the Appellant applied for renewal of the Class BV liquor license and said application was granted by the Board for 2023.
5. In November 2023, the Appellant again applied for renewal for the year 2024.
6. At a hearing on January 4, 2024, the Board denied the renewal application finding that the Appellant failed to comply with the conditions of the 2022 decision in year 2023.
7. The Appellants appealed the denial arguing that the Board had not called for the required hearings under the 2022 decision and therefore waived the requirements when it renewed the license without any conditions other than those related to hours of operation for 2023.
8. Following a stay hearing, the Department stayed the nonrenewal of the license for 2024 and remanded the matter to the Board for further consideration as to whether it wanted to further condition the license. Said order entered on January 24, 2024.
9. The Appellant opened and was not cited for any show cause hearings since its last show cause hearing in 2021.
10. Following the remand, the Board did not schedule any further hearings or review related to the Appellant's Class BV liquor license for the 2024 renewal.
11. In early November 2024, the applicant contacted the Board of Licenses in order to renew its BV license. As a result, Solicitor Martone, counsel for the Board, and counsel for the Appellant discussed the status of the license. It was agreed that the Solicitor would reach out to the Hearing Officer to discuss the status given that the Board had not held any further hearing.

12. Prior to the Solicitor reaching out to the Hearing Officer, the Hearing Officer inquired if the matter could be dismissed since she had not heard from anyone since the stay order entered in January 2024.

13. The parties agreed that the matter could be dismissed since it had been remanded to the Board.

14. The 2025 renewal application was initially refused by the Interim License Administrator Jose Giusti. As Mr. Giusti was uncertain as to the status of the license given the travel of the case he directed an inquiry to the solicitor's office for review of the matter.

15. As a result of the attempted application, Solicitor Mario Martone reached out to the Hearing Officer to inquire as to the status of the license, given that the matter had been remanded and then dismissed.

16. The Hearing Officer replied on January 23, 2025 indicating that it was her position that the matter was remanded to the Board as the last action prior to dismissal and the remand and stay remained in place as to the 2024 renewal application.¹

¹ The undersigned adds the text of this email exchange in which she replied to the City's counsel, Board's counsel, and Appellant's counsel, and also included legal counsel for the Department.

The Board's inquiry was as follows:

I was hoping you could weigh in on the matter listed above that was previously before you. I spoke to both Nick and Lou already. In 2023 the Board denied the renewal of Montecristo. The matter was appealed to the Department and on January 29, 2024 you granted a stay in the matter. For the sake of brevity you granted the stay subject to several conditions and remanded the matter to the Board. The Board took no further action on the license. On October 4, 2024 the matter was dismissed by DBR. The question that has come up is what the current status of the license is. The Board has not renewed and DBR has not granted the renewal. Nick's position is as follows "the non-renewal has been stayed, the Board has failed to take any further action, the dismissal by DBR was due to the Board's inaction, not the inaction of the Applicant. Therefore, my position is that the license remains valid and it is in the board's court to take further action." If we need to have a hearing or conference on the matter please let us know. While I am the one sending this email I previously sent it for review to both attorney Hemond and Desimone.

The undersigned's reply was as follows:

In my view, the DBR order would stay in place as it was remanded to the BOL, and the BOL never followed up. However, it also could be that the licensee never filed a renewal application in 2024 so that its license expired.

There could be other factors at issue as well of which I am not aware and could impact the license status.

This matter was dismissed so there is no hearing or conference to be held before the DBR as DBR no longer has jurisdiction. Obviously, if the BOL takes an action on this entity/license after a BOL hearing, an appeal would lie with DBR.

Cc'ing Pam Toro so she is aware of this inquiry.

17. Solicitor Martone, counsel for the Board, and Counsel for the Appellant agreed to accept the Hearing Officer's determination of the status.

18. However, shortly thereafter, Solicitor Martone left City employment without indicating to Mr. Guisti to accept the application for renewal.

19. Instead, Mr. Guisti informed the Appellant it needed to apply for a new license. This communication was made directly to the Appellant and did not involve counsel for the Appellant.

20. Upon learning of the new application, counsel for the Appellant met with the City and it was agreed that the application should have been treated as a renewal application.

21. On May 22, 2025, a hearing on the renewal application for the 2025 Class BV license was held.

22. At that hearing, the Board again denied the renewal application. Timely appeal was made to the Department together with a request for stay of the nonrenewal pending full hearing on May 31, 2025.

Prior to the submission of the agreed statement of facts, the undersigned indicated to the parties that some of the facts requested by the director could be found in prior decisions and those facts would also be included in this matter. These further details include the following:² The Appellant's renewal application for 2022 was not filed prior to October 1, 2021 but was filed on November 21, 2021 prior to the expiration of license.³ The Board denied the 2022 renewal on January 26, 2022 but that was appealed to the Department and the denial was remanded back to the Board. That remand is dated January 29, 2022.⁴

The Board again denied the 2022 renewal on March 16, 2022 with a conditional stay being entered by the Department on March 24, 2022.⁵ A full hearing was held on May 24, 2022 with the

² The 2022 decision dated June 15, 2022 can be found on the Department's website (<https://dbr.ri.gov/media/23441/download>) and includes the relevant timelines for the 2022 renewal filed in 2021.

³ Pursuant to R.I. Gen. Laws § 3-5-8, Class B licenses expire on December 1st of every year.

⁴ <https://dbr.ri.gov/media/27651/download>.

⁵ <https://dbr.ri.gov/media/22746/download>.

2022 decision being issued on June 15, 2022. That June 15, 2022 decision renewed the license for 2022 with conditions. The June 15, 2022 a decision imposed nine (9) conditions on the License.⁶

At the January 4, 2024 Board hearing for the 2024 denial, 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 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.⁷ As agreed to by the parties, the Board never heard the matter on remand, and the appeal regarding the 2024 renewal was dismissed on October 7, 2024.⁸

VI. 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 a stay should be issued as it has a substantial likelihood of success on the merits. It argued there is no evidence of any noise violations dating back to 2021. It argued that Board relied

⁶ See footnote one (1).

⁷ <https://dbr.ri.gov/media/27651/download>.

⁸ <https://dbr.ri.gov/media/29811/download>.

on unsubstantiated complaints from the neighbors despite no police reports regarding noise. The Appellant argued that it is suffering irreparable harm as it has been closed for 48 days (and counting) due to the Board's arbitrary actions, and it poses no public safety threat as the only complaint is noise.

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. They argued that the Appellant is not entitled to a *prima facie* renewal of the license because the renewal application was after October 1, 2024. It argued the Board has grounds to deny the renewal as the Appellant is unfit as shown by neighborhood complaints so that a stay should not be issued.

VII. DISCUSSION

The parties agreed the Appellant filed for renewal in 2022 for 2023 which was granted by the Board. The renewal for 2024 was denied and the matter remanded to the Board for a further decision by the Board, but the Board never held that hearing. The appeal of that 2024 denial of renewal was dismissed by the Department. Despite some confusion over that dismissal, the parties agreed the Appellant filed a timely renewal application for 2025.

In 2024, the Appellant filed an appeal of the denial of license renewal by the Board. The decision whether to deny the license was sent back to the Board for a further hearing and decision. Thus, the Board never again denied the license renewal. The failure by the Board to hold a hearing as ordered could be considered remiss or a deliberate omission. However, the Board's failure is characterized, the fact that it failed to act as instructed does not result in the license going away after the Department's dismissal. The dismissal was of an appeal of a denial. The denial was sent back to the Board. The Board never acted on the application as instructed so the license

application was never denied by the Board. The only matter dismissed by the Department was an appeal of a denial. That denial was no longer in effect because the matter had been remanded to the Board, and the Board never again denied the license renewal application.

Furthermore, R.I. Gen. Laws § 42-35-14(b) provides that a license does not expire until a final decision made after a timely renewal. *Chernov Enterprises, Inc. v. Sarkas*, 284 A.2d 61 (R.I. 1971) discussed this statute as if the Board was an “agency” as defined by the Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 *et seq.* In *Giraud v. Pastore*, 1984 WL 559294 (R.I. Super.), the Superior Court cited to *Chernov*, to apply R.I. Gen. Laws § 42-35-14(b) to a liquor license renewal. That decision found that since the local licensing authority never made a final determination to deny the renewal of a liquor license after the timely renewal application was filed, the license still existed after its expiration date. Here, the Board never made a final decision to deny the application for renewal because it failed to hold a hearing on that issue as remanded.

The parties agreed that a timely renewal application was made for 2025. At the May 22, 2025 Board hearing, the Board considered the renewal for 2025. The undersigned listened to the audio of the hearing.⁹ 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 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.¹⁰ The neighbor indicated the Appellant has oversized speakers that he can hear in his house and his neighbors can hear as well.

At the Board’s May 22, 2025 hearing, the Board denied the renewal based on noise issues and the licensing history. The Appellant argued the City had not found any noise violations despite

⁹ <https://providenceri.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=15174&Format=Minutes> (May 22, 2025 hearing).

¹⁰ This is at approximately at an hour and two (2) minutes on the audio.

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.

The purpose of a stay is to evaluate whether the action being appealed should continue in place or should be halted pending the full hearing on the merits. There has not been a full hearing on the merits before the Department. Rather the Department is considering whether to grant a stay pending a full hearing.

The parties agreed there have been no violations by the Appellant since 2021. The parties agreed the Board renewed the Appellant's license for 2023 with the only condition being the hours of operation. The Board never made a decision on the 2024 renewal. In terms of discipline, pursuant to the Board's *Operations and Procedure*, effective January 1, 2025, the Board limits its review for discipline to the prior three (3) years (for those violations in sole control of the licensee such as entertainment, bottle service). The Appellant has had no violations since 2021. The Board renewed the License for 2023 with the only condition being the hours of operation. The evidence at the Board's May, 2025 hearing was there were noise complaints from Fall, 2024.

There is no evidence before the undersigned that the Appellant's licensing history merits the denial of renewal as there have been no violations since 2021, the License was renewed with one (1) condition (hours of operation) for 2023, and the Board failed to take action on the 2024 renewal. The only evidence appears to be some noise complaints from the Fall, 2024. The Appellant has made a strong showing that it will prevail on the merits to overturn the renewal denial. Currently, the Appellant has been shut for over 48 days. In addition, there are no threats to the public as there are no public safety issues. There is a public interest in the proper application of licensing laws. The Appellant has met its burden pursuant to *Harsch* for the granting of a stay. *Supra.*


Furthermore, it is discretionary to issue a stay in order to maintain the *status quo* pending an appeal. *Supra*. The only apparent evidence is some noise issues after October, 2024. There is no other evidence regarding the licensing history. The only issues that may have arisen appear to have started after the matter was dismissed so if a conditional stay is granted, there would be no change to the way the Appellant's license has been operating. 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.¹¹
3. The Appellant shall close by 10:00 p.m.¹²
4. The Appellant shall remove the speakers referenced by its attorney at the stay hearing, and not use them prior to their removal.

VIII. 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: July 15, 2025


Catherine R. Warren
Hearing Officer

¹¹ The point of the music advertisement ban is to ensure that the Appellant does not present itself as a destination for music.

¹² It was noted at the stay hearing that the Appellant was closing at 11:00 p.m. at weekends. However, this condition was included in the 2024 remand order. See footnote seven (7).

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
 X REJECT (see Director's Second Decision
 MODIFY and Order)

Dated: 8/5/2025



Elizabeth Kelleher Dwyer, Esquire
Director

A hearing will be scheduled on a mutually convenient date to be determined by the parties.¹³

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 5th day of ^{August}~~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: 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.



¹³ Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant is responsible for the stenographer.