

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE COMPLEX
1511 PONTIAC AVENUE
CRANSTON, RI 02920

*V created for
Administrative order
12-041
6/29/12*

JARR Realty, LLC d/b/a DaVinci's
Restaurant & Lounge,
Appellant,

v.

The City of Providence Board of Licenses,
Appellee.

DBR No. 11-L-0080

DECISION AND ORDER OF REMAND

This matter arose out of a filing by JARR Realty, LLC d/b/a DaVinci's Restaurant & Lounge ("Appellant") with the Department of Business Regulation ("Department") appealing the decision by the City of Providence Board of Licenses ("Board") on August 1, 2011 to deny Appellant's full liquor license application with a 2AM closing on the basis of legal remonstrance pursuant to R.I. Gen Laws § 3-7-19.

I. Facts and Travel

On July 21, 2011, Appellant had a hearing in front of the Board to apply for a full liquor license. Legal abutters created a legal remonstrance by objecting to the granting of a liquor license. Due to the legal remonstrance, the Board denied the liquor license application on August 1, 2011. Appellant appealed the Board's decision to the Department pursuant to R.I. Gen. Laws §3-7-21. At the time of the pre-hearing before the undersigned, Appellant presented letters from abutters rescinding their objections to granting a liquor license to Appellant so long as their enumerated conditions were met. The parties agreed to file briefs with the undersigned for consideration in deciding the

matter without further hearing. All briefs were filed with the undersigned by the end of January 2012. After consideration of the briefs, the Department issued an Order of Remand on February 22, 2012, directing the Board to reconsider whether there still exists a legal remonstrance and/or whether the application should be granted. On March 1, 2012, the Board issued a decision stating that it could not reopen the matter and reaffirmed its initial denial. Therefore, the Board failed to adhere to the Department's Order of Remand. On March 8, 2012, the Department received Appellant's notice of appeal requesting that the Department decide the matter.¹

II. Law and Analysis

The Supreme Court of Rhode Island concluded that R.I. Gen. Laws § 3-7-21 does not contemplate the Department's hearing as "an appeal, but a proceeding to transfer or remove a cause from the jurisdiction of a local board that acts adversely to the license under consideration". *Hallene v. Smith*, 98 R.I. 360,365 201 (1964). "[T]he cause, when removed to the jurisdiction of the administrator, stands as if no action thereon had been taken by the local board". *Id.* at 366. All decisions of the issuing authority are reviewable *de novo* by the Department. Therefore, the Department has the power to grant or deny a liquor license application without being prohibited by the legal remonstrance that stood before the Board.

The Board was initially correct in denying Appellant's liquor license application because it no longer had authority to grant the license pursuant to R.I.G.L § 3-7-19(a). When Appellant appealed to the Department, it gained an opportunity to have its case heard *de novo*. A pre-hearing took place where there were no objectors to the issuance of

¹ Although, the Department could have decided the matter in any number of ways, the Department's Order of Remand of February 22, 2012 was the option selected. However, due to the Board's decision of March 8, 2012, the Department must give this matter finality.

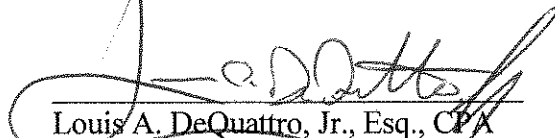
the license. At that time, the legal remonstrance that existed at the Board's initial hearing, no longer existed before the Department. Therefore, based on the foregoing, the Appellant should be issued a full liquor license.

Recommendation

It is recommended that this matter be remanded to the Board to issue Appellant a full liquor license as set-forth in its application, without restrictions, subject to any and all customary approvals such as fire, health and the like.

As recommended by:


Date: 3/29/2012


Louis A. DeQuattro, Jr., Esq., CPA
Hearing Officer
Deputy Director & Executive Counsel

I have read the Hearing Officer's recommendation and I hereby (circle one) adopt reject or modify the recommendation of the Hearing Officer in the above-entitled Decision and Order of Remand.

Date: 3/29/12

*Vacated per
Admin
12-041
6/29/12*


Paul McGreevy
Director

Entered as an Administrative Order No.: -12016 this 29th day of March, 2012.

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. 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.

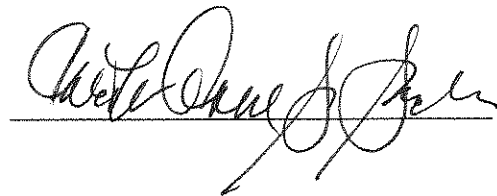
CERTIFICATION

I hereby certify on this 29th day of March, 2012 that a copy of the within Order and Notice of Appellate Rights was sent by e-mail and first class mail, postage prepaid to -

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and by email to Maria D'Alessandro, Deputy Director, Securities, Commercial Licensing and Racing & Athletics

A handwritten signature in black ink, appearing to read "Peter Petrarca", is written over a horizontal line.