

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

Ada's Creations, Inc.	:	
Appellant,	:	
	:	
v.	:	DBR No. 13-LQ045
	:	
The City of Providence Board of Licenses,	:	
Appellee.	:	

RECOMMENDATION AND INTERIM ORDER GRANTING MOTION FOR A STAY

I. INTRODUCTION

On April 25, 2013, the City of Providence Board of Licenses (“Board”) rendered a (“Decision”) imposing a three-day closure and \$4,000.00 fine against liquor licensee Ada’s Creations, Inc. (“Appellant”). Appellant timely appealed the Decision to the Department of Business Regulation (“Department”) and made a motion for a stay of the Decision pending resolution of the appeal. This matter came before the undersigned in his capacity as Hearing Officer sitting as the designee of the Director of the Department. This Recommendation and Interim Order follows consideration of brief oral argument from counsel of record for both parties on May 10, 2013.

II. JURISDICTION

The Department has jurisdiction to hear appeals from decisions of local liquor licensing authorities under R.I. Gen. Laws § 3-7-21, subject to relevant provisions of the Rhode Island Administrative Procedures Act, § 42-35-1 *et seq.*

III. ISSUE

The issue is whether the Department should order a stay of the Board's Decision pending the outcome of the *de novo* appeal before the Department.

II. DISCUSSION

Under R.I. Gen. Laws § 3-7-21, the Department has the power "to make *any* decision or order he or she considers proper." The grant of an order staying the decision of the local licensing authority pending the outcome of a *de novo* appeal to the Department is thus within the Department's sole discretion. *See Burton v. Lefebre*, 53 A.2d 456, 460 (R.I., 1947)(the appeal itself does not automatically stay the Board's decision; rather, an order based on the circumstances of each case is required). In deciding whether to grant the stay in this case, effectively postponing the implementation of the disciplinary measures set forth in the Board's Decision, the Department has broad discretion and flexibility to balance the interests of the local authority and the general public against the interests of the licensee.¹

In the instant case, the interests of the licensee in avoiding the Board's disciplinary measures during the pendency of its *de novo* appeal outweigh the interests of the Board and the public in immediate closure and fines. This determination is supported by the background information on the treatment by the Board of the alleged incidences giving rise to the discipline at issue. The alleged incidences occurred on January 1, 2013. However, the Board did not hold a Show Cause Hearing until March 27, 2013. The final Decision rendered by the Board was further delayed from the date of the hearing until April 25, 2013, at which time the Board determined to impose a three-day closure at the future dates of May 16-18, 2013. This delay can

¹ Another factor that the Department may consider in deciding whether to issue a stay is Appellant's likelihood of success on the merits. However, given the outweighing interest of the Appellant as discussed herein, the limited record as of the date of the consideration of the motion for a stay, and the Appellant's right to a *de novo* review of the evidence, further discussion of the likelihood of success on the merits is not required here.

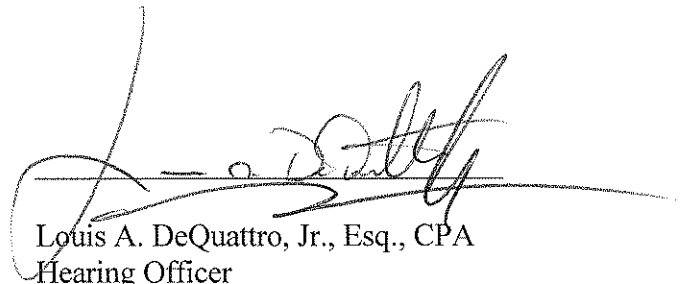
be reasonably construed as a determination that the incidences did not pose an immediate harm to the public. The fact that no emergency orders were issued further evidences a determination that the incidences were not of the requisite severity to trigger the Board's emergency powers, *i.e.* to order an emergency closure followed by an Emergency Show Cause Hearing.

In contrast to the lack of severity evidenced by the Board's series of delays and non-invocation of emergency powers, the interest of the Appellant in a *de novo* hearing prior to imposition of disciplinary measures is great. If the Appellant prevails on the merits of the Department appeal, the damage caused by pre-appeal imposition of the discipline sought by the Board may be irreparable. More specifically, if the Appellant suffers the three-day closure, it may not be able to recover the economic harm incurred. Any claim for recovery against the Board to recoup this business loss is subject to the complex issue of governmental immunity² and the difficult quantification of damages.

III. RECOMMENDATION

Based on the forgoing, the undersigned recommends that Appellant's motion for a stay be granted. Accordingly, the effectiveness of the Board's Decision is postponed until the resolution of the *de novo* hearing, which, as of the date of this Order, is tentatively scheduled for either May 15 or May 17, 2013.

Date: 5/13/2013


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

² See, e.g., *Martinelli v. Hopkins*, 787 A.2d 1158, 1167 (R.I. 2001)

INTERIM ORDER

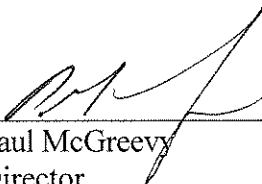
I have read the Hearing Officer's recommendation and take the following action

ADOPT

REJECT

MODIFY

Date: 13 May 2013



Paul McGreevy
Director

Entered as an Administrative Order No.: 13-026 this 13th day of May, 2013.

NOTICE OF APPELLATE RIGHTS

THIS ORDER IS REVIEWABLE BY THE SUPERIOR COURT PURSUANT TO R.I. GEN. LAWS § 42-35(a) 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 A PETITION DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER.

CERTIFICATION

I hereby certify on this 13th day of May, 2013 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 "Sergio Spaziano", written over a horizontal line.