

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

_____	:	
101 North Main Street Condominium	:	
Association, Pamelee and Raymond F.	:	
Murphy, Jr.,	:	
Appellants,	:	
	:	
v.	:	DBR No.: 16LQ003
	:	
City of Providence, Board of Licenses,	:	
Appellee.	:	
	:	
and	:	
	:	
Oh Night Lounge, LLC d/b/a Olive's	:	
Hookah Lounge and Bar,	:	
Intervenor.	:	
_____	:	

**DECISION**

**I. INTRODUCTION**

Pursuant to R.I. Gen. Laws § 3-7-21, 101 North Main Street Condominium Association, Pamelee and Raymond F. Murphy, Jr., (“Appellants”) filed an appeal of the City Providence, Board of Licenses’ (“Board”) decision taken on February 11, 2016 to transfer a Class BVX liquor license (“License”) to Oh Night Lounge, LLC d/b/a Olive’s Hookah Lounge and Bar (“Intervenor”) from Olive’s Lounge, Inc. (“Transferor”). The Appellants requested a stay which was denied by order of the Department dated March 1, 2016. The Appellants then filed a motion to remand this matter to the Board for further proceedings to which the City and Intervenor objected which was denied by order of the Department on April 28, 2016. The parties chose to base the appeal on the record below and briefs were timely filed by July 8, 2016. Additionally, the Appellants filed a notice of appeal on July 5, 2015 regarding the Board’s decision on June 29, 2016 to grant a temporary

seasonal expansion to the Intervenor. The parties agreed that that the seasonal appeal would be included in the initial appeal<sup>1</sup> and that the parties would also rest on the record below regarding the seasonal expansion.<sup>2</sup>

## II. JURISDICTION

The Department has jurisdiction over this matter pursuant R.I. Gen. Laws § 3-7-21, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

## III. ISSUES

Whether to uphold or overturn the Board's decision to grant the Intervenor's transfer application for the License.

## IV. MATERIAL FACTS AND TESTIMONY

The Board held two (2) days of hearing regarding the application to transfer the License. The testimony is from its hearings.

The Intervenor represented to the Board that it proposed to drop the N license so that the location would no longer hold a night club license and instead would be an upscale Lebanese hookah lounge. The Intervenor represented that the licensee would be run by a married couple, Roger and Marina Kallab. The Intervenor represented that Mrs. Kallab has been the manager of Byblos, a hookah lounge on Meeting Street, since 2011 without any licensing issues there and that Mr. Kallab has a business background. The Intervenor represented that there is a security plan and the plan is to have entertainment on Fridays and Saturdays such as a D.J. or live jazz and to keep the noise within the four (4) corners of the building. The Intervenor represented that the stage in the building is being removed from the building and replaced with additional seating in the form

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<sup>1</sup> See stipulation filed by the parties on August 4, 2016.

<sup>2</sup> The Board transcript of that hearing on June 29, 2016 was received by the undersigned on July 27, 2016.

of booths and any entertainment provided will be incidental to hookah. The Intervenor represented that the lounge will be 21 years plus.

Forest Bulton, president of the Appellant condominium association, testified that he lives across from the proposed location and is concerned that the Intervenor's plan is to have its doors open from 5:00 p.m. to 11:00 p.m. so that the noise will not be contained inside the building. His wife, Christine Bulton, also testified that the Intervenor will be too noisy. Robin Kennedy testified to a concern about underage tobacco sales at a hookah bar. Dan Bogel testified that he lives nearby and is a member of the condominium board at 2 Thomas Street. He testified that he is nervous that the location is too large for hookah and there are too many unknowns with the plan and the 2:00 a.m. closing. Sharon Steele testified regarding the problems with the hookah bars on Federal Hill and there could be the same problems in this location. Pamelee Murphy testified that she lives across the street from the proposed location and at 2:00 a.m., there will be 40-50 patrons congregating when they exit the establishment and they will be very loud. She testified that patrons of the prior licensee at that location would park in the private driveways of the condominium and the art club (next door). She testified that there is no reason to think that would change with the new licensee. She testified that the nearby restaurants, XO and Mills Tavern, have worked with the neighborhood and a hookah lounge is not an appropriate addition to the neighborhood. The Board also received a letter from the Providence Preservation Society objecting to the grant of the License and stating that a lounge is no longer appropriate for the neighborhood since it is a peaceful residential area with eclectic businesses, student classroom buildings, and tourists.

Mr. Kallab testified that the proposal is for the Intervenor to be a lounge with small tables where one can go at night to enjoy a lounge atmosphere. He testified that it will have food and small plates, but its focus will be hookah and not the food. He testified that the Intervenor

requested a 2:00 a.m. closing because the other nearby establishments have late night closings. Mrs. Kallab testified that she has worked at Byblos since 2005 and has been the manager since 2008. She testified that Byblos never has had a licensing problem and it serves liquor. The Intervenor was questioned about its security and identification (“ID”) plans, and its attorney represented that it is working to identify fake IDs and will continue with video security.

At the second hearing before the Board, the Intervenor represented that it will make sure the music does not permeate the walls of the building and will move some of the sound equipment that is not needed and that the security plan will ensure that patrons will not go into the property across the street. The Intervenor represented on the record that the nearby liquor licensees, XO, Harry’s, Fat Belly’s, XS nightclub all have 2:00 a.m. closings. The Intervenor represented that the Appellants had suggested it make a private agreement about the nature of the business, but the Intervenor rejected that proposal as the License is granted by the City which can enforce any violations of statutory or regulatory licensing requirements. Mrs. Kallab further testified that it will not have a live band every weekend, but maybe once or twice a year. Mr. Kallab testified that the licensee will not have a dance floor and will not charge a cover. He testified that the Intervenor is putting in more booths that will be screwed to the floor so cannot be moved.

Dan Ruko, who lives on Thomas Street, testified to the concerns as to having too many 2:00 a.m. closings in that area. The Appellants still objected to the grant of the License as they were unable to make a separate agreement with the Intervenor.

The Board approved the transfer of all licenses (except for the Class N license which was not requested). The Board imposed a 60 day review after the Intervenor completed its build out and a 60 day review from when it opened.

At the June 29, 2016 Board hearing on the seasonal expansion (outside seating) request, the Intervenor represented that it was seeking permission to have three (3) tables with four (4) chairs outside that would have hookah. The Board approved the seasonal expansion request.

## V. DISCUSSION

### A. **Standard of Review**

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 act (sic) 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 (1975). The Department has the same broad discretion in the granting or denying of liquor licenses. *Id.* at 177. See also *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 Commissioners*, LCA–CU-98-02 (8/26/98).

R.I. Gen. Laws § 3-5-19<sup>3</sup> governs the transfer or relocation of a liquor license. The transfer of a liquor license pursuant to R.I. Gen. Laws § 3-5-19 is treated the same as a new application.

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<sup>3</sup> R.I. Gen. Laws § 3-5-19 provides in part as follows:

Transfer or relocation of license. – (a) The board, body or official which has issued any license under this title may permit the license to be used at any other place within the limits of the town or city where the license was granted, or, in their discretion, permit the license to be transferred to another person, but in all cases of change of licensed place or of transfer of license, the issuing body shall, before permitting the change or transfer, give notice of the application for the change or transfer in the same manner as is provided in this chapter in the case of original application for the license, and a new bond shall be given upon the issuance of the license provided, that notice by mail need not be made in the case of a transfer of a license without relocation. In all cases of transfer of license, indebtedness of the licensee incurred in the operation of the licensed premises shall be paid to or released by an objecting creditor before the issuing body permits the transfer. In cases of dispute as to the amount of indebtedness, the issuing body, may, in its discretion, permit the transfer upon statement of the licensee, under oath, that the claim of indebtedness is disputed and that the statement of dispute is not interposed for the purpose

*Ramsay v. Sarkas*, 110 R.I. 590 (1972). See also *Island Beverages v. Town of Jamestown*, DBR No. 03-L-0007 (3/13/03) and *BDR v. City of Providence, Board of Licenses*, LCA-PR-00-07 (9/18/00).

While the Department has the same discretion as the local licensing authority to grant or deny a liquor license application, 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.

Furthermore, the Department has 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.

Therefore, the Department 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 that still is 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

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of inducing transfer of the license. No creditor is allowed to object to the transfer of a license by a receiver, trustee in bankruptcy, assignee for the benefit of creditors, executor, administrator, guardian or by any public officer under judicial process. In case of the death of any licensee, the license becomes part of the personal estate of the deceased. The holders of any retail Class A license within the city or town issuing or transferring a Class A license have standing to be heard before the board, body, or official granting or transferring the license.

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. See also *Kenney v. Providence Board of Licenses*, DBR No. 14LO044 (11/20/14); *Sugar, Inc. and Sharlene Alon v. City of Providence, Board of Licenses*, DBR No.: 09-L-0119 (3/9/10); *Crazy 8's Bar/Billiards v. Providence Board of Licenses*, DBR No.: 09-L-0042 (8/24/09); and *Krikor S. Dulgarian Trust v. Providence Board of Licenses*, DBR No.: 08-L-0175 (6/18/09).

**B. Relevant Statute**

R.I. Gen. Laws § 3-7-7 provides that a *bona fide* restaurant or victualing house may obtain a Class B liquor license.

**C. Arguments**

The Appellants argued that only a city or town is authorized to grant a victualing license so the Intervenor's victualing license is invalid. The Appellants argued that the Mr. Kallab has no experience running this kind of establishment. The Appellants argued that if the License is granted, conditions relating to noise and ensuring patrons quickly leave the area and do not park in private driveways and the establishment be 21 plus be imposed. The Appellants argued that concern over noise and parking were specific concerns related to the proximity of the neighbors to the Intervenor. The Appellants argued that since the Intervenor represented that it would be a smoking bar, it provide the Board copies of its quarterly reports required to be filed with the Division of Taxation regarding its smoking bar status and if the Intervenor changes its business plan that it returns to the Board with notice to the neighbors.

The Intervenor argued that its management is qualified to run the establishment. The Intervenor argued that pursuant to R.I. Gen. Laws § 3-5-15, the Board has the right to issue all licenses including victualing licenses and Providence's Home Rule Charter expressly granted the power to the

Board to sit in place of the city council on all licensing matters. The Intervenor argued that the Appellants' proposed conditions would unfairly micromanage the establishment especially as there is no history of the Intervenor or prior licensees being subject to discipline.

The Board argued that it has the authority to grant victualing licenses since municipalities have been granted broad power to regulate licenses and that the Providence Ordinance delegates the authority to issue victualing licenses to the Bureau of Licenses (part of the Board). The Board argued that the Appellants' request to impose the condition of the Intervenor to submit its quarterly smoking bar reports to the Board be rejected as the issue of smoking bars has not been delegated to municipalities. The Board also agreed with the Intervenor's arguments.

**D. Whether the Grant of the License Should be Upheld**

The Board's reasons for granting the License can be summed up as follows: 1) the Intervenor is qualified; 2) there has been a Class BVX in that same location for many years; 3) the other nearby liquor licensees are Class BVX as well; and 4) the Intervenor is abandoning the existing Class N license.

The Appellants objected to the granting of the license for the following reasons: 1) local objections; 2) the authority to grant a victualing license; and 3) the fitness of the Intervenor to obtain the License. The Appellant further argued that if the License is granted, certain conditions should be imposed on the License.

**i. Local Objections**

Some neighbors testified about their concern that the Intervenor's patrons would park in private driveways and that noise would emanate from the Intervenor's premises as happened with the prior licensee. There was also testimony that a hookah lounge was not appropriate for the area.



The neighbors' objections did not link the Appellant to any specific incidents. See *International Yacht Restoration School Inc. and Jose F. Batista v. Newport City Council et al.*, DBR No. 02-L-0037 (6/30/03) (while there were 42 objectors to the granting of the license, the applicants had relevant experience, the town followed a policy of business development, and the objectors did not focus on specific incidents related to the applicants). See also *Krikor S. Dulgarian Trust v. Providence Board of Licenses*, DBR No.: 08-L-0175 (6/18/09). However, neighborhood objections can demonstrate the negative impact a proposed licensee may have. See *Crazy 8's*; See *Domenic J. Galluci d/b/a Dominic's Log*.

In this matter, a few neighbors presented general concerns regarding noise from entertainment in the evening and from late night patrons exiting rather than objections specifically related to the application. The Appellants argued that the Intervenor's proximity to the neighbors made the concern about noise a specific concern. The Intervenor indicated that it would keep the noise within the building.<sup>4</sup> The Appellants are concerned about patrons parking in private driveways. The Intervenor represented that to prevent such instances, it amended its security plan to station staff outside. A liquor licensee is subject to statutory and regulatory requirements regarding noise and other type of incidences caused by licensees that are disorderly and disturb neighbors.<sup>5</sup> If the

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<sup>4</sup> The Intervenor represented that it was replacing the dance floor with un-movable booths and removing some sound equipment. The testimony regarding noise and patrons exiting referred to the prior licensee. It should be noted that the prior licensee held a Class N, nightclub license, and the Intervenor did not request a Class N license and does not hold one so will not be operating as nightclub.

<sup>5</sup> R.I. Gen. Laws § 3-5-23 states in part as follows:

(b) If any licensed person permits the house or place where he or she is licensed to sell beverages under the provisions of this title to become disorderly as to annoy and disturb the persons inhabiting or residing in the neighborhood . . . he or she may be summoned before the board, body, or official which issued his or her license and before the department, when he or she and the witnesses for and against him or her may be heard. If it appears to the satisfaction of the board, body, or official hearing the charges that the licensee has violated any of the provisions of this title or has permitted any of the things listed in this section, then the board, body, or official may suspend or revoke the license or enter another order.

Intervenor creates disorderly conditions due to noise or other causes, the Board can impose sanctions and/or conditions on the license.<sup>6</sup> However, at this time, there was no basis for assuming that the Intervenor will be noisy or that its patrons will illegally park.

**ii. The Authority to Grant a Victualing License**

R.I. Gen. Laws § 5-24-1<sup>7</sup> provides that city or town councils shall issue victualing licenses. Thus, the Appellants argued that the Board did not have the power to grant the Intervenor's victualing license so that the Intervenor cannot obtain a BVX license as that license is conditioned

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In imposing a sanction on a liquor license, it is not necessary to find that a liquor licensee affirmatively permitted patrons to engage in disorderly conduct. Rather, the Rhode Island Supreme Court held in *Cesaroni v. Smith*, 202 A.2d 292, 295-6 (R.I. 1964) as follows:

[T]he legislature, in enacting the pertinent provision of the statute, intended to impose upon such licensee the obligation to maintain an efficient and affirmative supervision over the conduct of his patrons in his place to such an extent as is necessary to maintain order therein. It is our opinion that as a practical matter a licensee assumes an obligation to affirmatively supervise the conduct of his patrons so as to preclude the generation therefrom of conditions in the neighborhood of like character to conditions that would result from maintenance of a nuisance therein.

It is to be conceded that this imposes upon a licensee an onerous burden in the management of the licensed premises. It is, however, within the authority of the legislature, the liquor traffic being peculiarly within the police power of the state.

Thus, a liquor licensee has the "responsibility to control the conduct of its patrons both within and without the premises in a manner so that the laws and regulations to which the license is subject will not be violated." *Schillers, Inc. v. Pastore*, 419 A. 2d 859, 859 (R.I. 1980).

<sup>6</sup> The Intervenor rejected a request by the Appellants to sign a private agreement with the objectors. Instead, the Intervenor acknowledged that the Board had power to impose sanctions on licensees that are disorderly or are in violation of any other statutory or regulatory or local requirements.

<sup>7</sup> Based on P.L. 1987, ch. 207, § 1, R.I. Gen. Laws § 5-24-1 states in part as follows:

(a) The town council of every town and the city council of every city shall have the power to regulate, including the setting of hours of operation, the keeping of taverns, victualing houses, cookshops, oyster houses and oyster cellars therein, by granting licenses therefor, upon such compensation for the benefit of the town or city as they shall see fit to impose, or by refusing to grant them, provided, however, except as provided in subsection (b) hereof, all licenses issued pursuant to this section shall entitle the holder thereof to operate continuously after six o'clock (6:00) a.m. but not after two o'clock (2:00) a.m.

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For the purposes of this chapter a victualling house is a business where food is prepared and/or consumed on the premises.

The above version is the version that is referenced in *El Nido, Inc. v Goldstein*, 626 A.2d 239 (R.I. 1993) (the case on which the Appellants relied). The current "hard copy" version of this statute is slightly different and changes in text appear online (lexisnexis) in 1999 and 2004. However, there are no public laws that support those textual changes. However, in light of P.L. 1962, ch. 145, it is not necessary to construe the grant of authority in this statute.

on a valid victualing license. However, P.L. 1962 ch. 145 specifically provides that the Providence City Council can delegate its licensing power to the Bureau of Licenses and that such delegation shall take effect upon an enactment of an ordinance by the City of Providence. P.L. 1962 ch. 145<sup>8</sup> provides in part as follows:

Said city council of the city of Providence is hereby expressly authorized to delegate to the bureau of licenses the licensing power herein vested in said city council and to the superintendent of health the enforcement of any ordinances and pursuance thereof, with full power to make rules and regulations with respect to persons, places and the licensing thereof, not otherwise inconsistent with law.

Said city council is further authorized to establish fees or a system of fees for said licenses.

. . . This act shall take effect upon its passage but the licensing and enforcement powers herein referred to shall take effect only upon the enactment of an ordinance or ordinances of the city of Providence in accordance with the provisions of this act. All acts or parts of acts inconsistent with this act are hereby repealed.

As provided for by P.L. 1962 ch. 145, the City Council's licensing authority has been delegated to the Bureau of Licenses in Section 1102 of the City's Home Rule Charter which provides that "[t]here shall be a board of licenses which shall have and exercise such power and duties relating to licenses as may be prescribed by law or ordinance." Additionally, Article II, § 10-23 of the Providence City Ordinances provides that "[i]t shall be unlawful for any person to operate any victualing house or restaurant . . . unless such person first shall have procured a license therefor from the bureau of licenses."

Therefore, the Board had the authority to issue the Intervenor's victualing license.<sup>9</sup> This argument is not supported by law.

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<sup>8</sup> This public law amended P.L. 1948 ch. 2009 regarding victualing licenses in the City of Providence.

<sup>9</sup> It should be noted that the right and authority to issue various liquor licenses (including Class B) is statutorily granted to either town councils or licensing boards of the cities and towns in R.I. Gen. Laws § 3-5-15.

### **iii. The Fitness of the Intervenor to Run the Licensed Establishment**

The Intervenor represented that it planned an upscale hookah lounge with small plate food servings. Its proposed manager already has experience managing a hookah lounge. This is not a situation like *Crazy 8's* where there was no evidence that applicant had any experience in running a liquor establishment especially in light of the fact that location had a long history of licensing problems. Instead, this License will be in the name of Mr. Kallab who has extensive business experience (though none in the hospitality industry), but the Intervenor will be managed by Mrs. Kallab who has for at least five (5) years managed a liquor licensed hookah establishment, Byblos, on Meeting Street in close proximity to Brown University. The evidence was that there have been no violations or sanctions at Byblos while Mrs. Kallab has managed it. The Appellants objected that the Intervenor will be larger than Byblos and that Mrs. Kallab cannot be in two (2) places at once. However, that type of argument would preclude any applicant from being able “progress” from working as a server to being a manager to being an owner. In other words, people gain experience and then use that experience to move on to something different, like a larger restaurant.

### **iv. Seasonal Expansion<sup>10</sup>**

The Board allowed a seasonal expansion of three (3) tables with four (4) chairs each. At the Board hearing, the Appellants raised a concern about noise. As stated above, if there is a future issue about noise (or other issues) that can be addressed through the disciplinary process.

### **E. Conclusion**

As articulated through liquor licensing decisions at the State court level and the Departmental level, the standard of review for a new license is subject to the discretion of the issuing authority. Such discretion must be based on reasonable inferences drawn from the

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<sup>10</sup> See R.I. Gen. Laws § 3-5-17.

evidence. Arbitrary and capricious determinations not supported by the evidence are considered suspect. *Infra*. In light of the broad discretion given to the Board, the undersigned only reviews the Board's decision for evidence to support it. The Board's decision need not be unassailable but rather there must be evidence to support the Board's decision.

A licensee is not obligated to stay with the business plan presented to the board but if a licensee changes its business plan and that causes problems, the local licensing authorities take dim views.<sup>11</sup> However, under *Thompson v. East Greenwich*, 512 A.2d 837 (R.I. 1986), a town may grant a liquor license upon conditions that promote the reasonable control of alcoholic beverages. See *Kenney; Sugar, Inc., and Newport Checkers Pizza, Inc. d/b/a Scooby's Neighborhood Grille v. Town of Middletown*, LCA-MI-00-10 (12/7/00).

The Intervenor's business plan presented to the Board included that the establishment would be 21 years plus. The Intervenor indicated it was willing to accept a plus 21 age as a condition of granting the License. Therefore, such a condition will be imposed.

The Board imposed 60 day reviews on the Intervenor. Such reviews ensure that a licensee is meeting all statutory and regulatory obligations.

The Appellants requested other conditions that are not warranted. If this licensee had had several noise violations than a condition regarding noise could be appropriate. However, at this time, there have been no issues regarding noise (or anything else). Obviously a licensee is to comply with all pertinent statutory and regulatory requirements or be subject to sanctions.

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<sup>11</sup> The Department has previously ruled on the issue of a change in business format and disorderly conduct that may arise from such a change. In *C & L Lounge, Inc. d/b/a Gabby's Bar and Grill*, the Department found that the licensee had adopted a new business format that caused regular disorderly incidents and that it had been warned by the town but had continued to operate with that type of business. That decision also found that when a licensee changes its business format, it does so at its own peril and must face the consequences. See also *Picasso's Pizza and Pub, Inc. d/b/a Score's RI Ultimate Sports Pub v. North Providence Board of License Commissioners*, DBR No. 03-L-0250 (6/3/04) and *Tropics, Inc. d/b/a Club Tropics v. City of Warwick, Board of Public Safety*, LCA-WA-97-05 (2/28/97).

## VI. FINDINGS OF FACT

1. On or about February 11, 2016, the Board granted the Intervenor's application for transfer of the License.

2. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellants appealed that decision by the Board to the Director of the Department.

3. By order dated March 1, 2016, the Department denied the Appellants' request to stay the Board's grant of the License.

4. By order dated April 28, 2016, the Department denied the Appellants' request to remand this matter to the Board for further consideration.

5. On July 5, 2016, the Appellants appealed the Board's approval on June 29, 2016 of the Intervenor's request for seasonal expansion. The parties agreed and stipulated on August 4, 2016 that this issue would be included in the initial appeal.

6. The parties rested on the record below and timely filed briefs by July 8, 2016.

7. The facts contained in Section IV and V are reincorporated by reference herein.

## VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

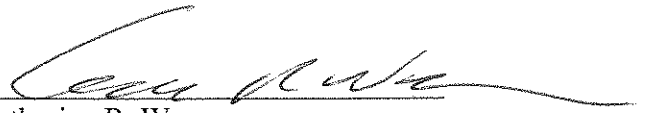
1. The Department has jurisdiction over this matter pursuant to R.I. Gen. § 3-7-21 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

2. Based on the forgoing, the Appellants did not make a showing that would warrant the overturning of the grant of the License by the Board to the Intervenor.

**VIII. RECOMMENDATION**

Based on the above analysis, the Hearing Officer recommends that the Board's decision granting the License be upheld except that the granting of the License shall be conditioned on being 21 years plus.

Dated: August 9, 2016


  
Catherine R. Warren  
Hearing Officer

**ORDER**

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

ADOPT  
 REJECT  
 MODIFY

Dated: 8/9/16

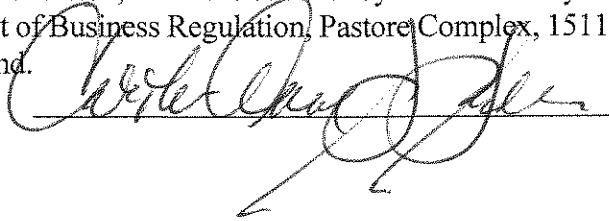
  
Macky McCleary  
Director

**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 10<sup>th</sup> day of August, 2016, that a copy of the within Decision was sent by first class mail, postage prepaid to Mario Martone, Esquire, and Stephen Ryan, 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., and John J. Garrahy, Esquire, 2088 Broad Street, Cranston, R.I. 02905 and by hand-delivery to Maria D'Alessandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 68, Cranston, Rhode Island.

A handwritten signature in black ink, appearing to read "Maria D'Alessandro", is written over a horizontal line. The signature is stylized and cursive.