

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

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D&L Enterprises,	:	
Appellant,	:	
	:	
v.	:	DBR No.: 15LQ012
	:	
City of Providence, Board of Licenses,	:	
Appellee.	:	

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**RECOMMENDATION AND INTERIM ORDER GRANTING MOTION  
FOR STAY AND NOTICE FOR DE NOVO HEARING**

**I. INTRODUCTION**

D&L Enterprises (“Appellant”) seeks a stay of the City of East Providence, Board of Licenses’ (“Board”) decision dated July 28, 2015 to revoke its Class B liquor license (“License”). The Appellant has appealed this decision to the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21. The Board objected to the Appellant’s request for a stay. This matter came before the undersigned<sup>1</sup> on August 7, 2015 in her capacity as Hearing Officer as the designee of the Director of the Department.

**II. JURISDICTION**

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-2-1 *et seq.*, R.I. Gen. Laws § 3-5-1 *et seq.*, 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.*

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<sup>1</sup> The stay hearing was held by telephone.

### III. STATUTORY BASIS FOR REVOCATION OR SUSPENSION

R.I. Gen. Laws § 3-5-21 states in part as follows:

Revocation or suspension of licenses – Fines for violating conditions of license. – (a) Every license is subject to revocation or suspension and a licensee is subject to fine by the board, body or official issuing the license, or by the department or by the division of taxation, on its own motion, for breach by the holder of the license of the conditions on which it was issued or for violation by the holder of the license of any rule or regulation applicable, or for breach of any provisions of this section.

(b) Any fine imposed pursuant to this section shall not exceed five hundred dollars (\$500) for the first offense and shall not exceed one thousand dollars (\$1,000) for each subsequent offense. For the purposes of this section, any offense committed by a licensee three (3) years after a previous offense shall be considered a first offense.

The revocation of a liquor license is a relatively rare event and is reserved for a severe infraction or a series of smaller infractions that rise to a level of jeopardizing public safety. See *Stagebands, Inc. d/b/a Club Giza v. Department of Business Regulation*, 2009 WL 3328598 (R.I. Super.) (disturbances and a shooting on one night justified revocation) and *Pakse Market Corp. v. McConaghy*, 2003 WL 1880122 (R.I. Super.) (upholding revocation when had four (4) incidents of underage sales within three (3) years). See also *Cardio Enterprises, d/b/a Comfort Zone Sports Bar v. Providence Board of Licenses*, DBR No.: 06-L-0207 (3/29/07) (killing of patron with incident starting inside and escalating outside justified revocation); *PAP Restaurant, Inc. v. d/b/a Tailgate's Grill and Bar v. Town of Smithfield, Board of License Commissioners*, DBR No.: 03-L-0019 (5/8/03) (series of infractions justified revocation).

Thus, the Department will uphold a revocation where an incident is so egregious as to justify revocation without progressive discipline. However, the Department will decline to uphold a revocation where the violation is not so egregious or extreme and the local authority has not engaged in progressive discipline. *Infra.*

#### IV. STANDARD FOR ISSUANCE OF A STAY

Under *Narragansett Electric Company v. William W. Harsch et al.*, 367 A.2d 195, 197 (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.

#### V. DISCUSSION

The undersigned did not have a transcript of the Board hearing. Instead, the arguments are based on representations made by the parties. Based on the representations at hearing, the basis for the revocation was the non-payment of the police detail bill of \$690 by the Appellant. The Appellant represents that it had entered into a *de facto* payment plan prior to the July 28, 2015 hearing so should not have had its License revoked pursuant to R.I. 3-5-21(c).<sup>2</sup> (Attached to the Appellant’s stay motion were copies of four (4) checks from April, May, June, and July,

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<sup>2</sup> R.I. Gen. Laws § 3-5-21(c) provides as follows:

(c) In the event that a licensee is required to hire a police detail and the police refuse to place a detail at the location because a licensee has failed to pay outstanding police detail bills or to reach a payment plan agreement with the police department, the license board may prohibit the licensee from opening its place of business until such time as the police detail bills are paid or a payment plan agreement is reached.

2015 from Appellant to the City of East Providence for a total of \$180). The Appellant argued that after the July 28, 2015 hearing, the police detail bill was paid in full. The Board agreed that the police detail has now been paid in full but disputed whether there had been a prior payment plan and pointed out that the Appellant had delayed payment of the bill which is from February, 2014. The Appellant paid a further \$510 on July 29, 2015. (See motion). The Board also raised other allegations against the Appellant regarding an altercation and serving of liquor while the License was revoked, but those allegations are to be heard by the Board next week.

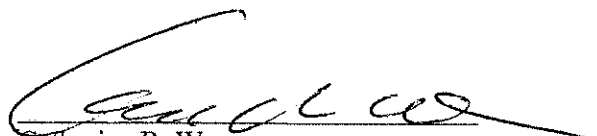
The only issue before the undersigned is that the License was revoked last week on the basis on non-payment of police detail bill. The bill has now been fully paid. Under *Department of Corrections*, it is within the agency's discretion to hold the matter in *status quo* pending the appeal on the merits to the Department.

**VI. RECOMMENDATION**

Based on the forgoing, the undersigned recommends that a stay of the revocation of License be granted.

**The parties will be notified of the date of the appeal hearing.**

Dated: 8/7/15

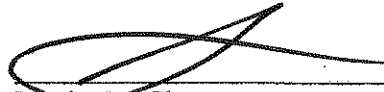
  
Catherine R. Warren  
Hearing Officer

**INTERIM ORDER**

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

ADOPT  
 REJECT  
 MODIFY

Dated: 8/7/15

  
Macky McCleary  
Director

Entered this day as Administrative Order Number 15-34 on 7<sup>th</sup> of August, 2015.

**NOTICE OF APPELLATE RIGHTS**

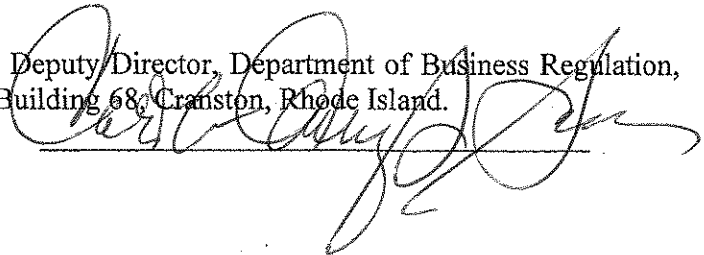
**THIS ORDER IS REVIEWABLE BY THE SUPERIOR COURT PURSUANT TO R.I. GEN. LAWS § 42-35-15(a) WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF A PETITION DOES NOT STAY ENFORCEMENT OF THIS ORDER.**

**CERTIFICATION**

I hereby certify on this 7<sup>th</sup> day of August, 2015, that a copy of the within Order was sent by first class mail, postage prepaid to William Maaia, Esquire, Law Offices of William C. Maaia & Associates, 349 Warren Avenue, East Providence, RI 02914  
[wcm@maaiaw.com](mailto:wcm@maaiaw.com) and

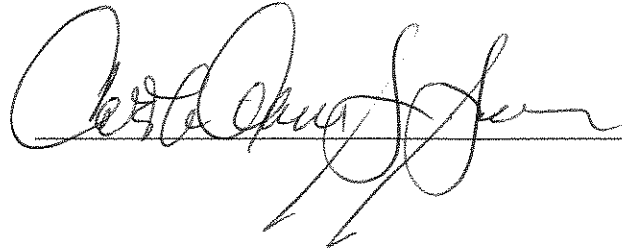
Robert E. Craven, Esquire, City of East Providence, Assistant Solicitor, 7405 Post Road, North Kingston, RI 02852  
[bob@robertcraven.com](mailto:bob@robertcraven.com) and

by hand-delivery to Maria D'Alessandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 68, Cranston, Rhode Island.



CERTIFICATION

I hereby certify on this <sup>15<sup>th</sup></sup> day of August, 2015, that a copy of the within Order was also sent by first class mail, postage prepaid, to City of East Providence Law Department, 145 Taunton Avenue, East Providence, RI 02914.

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to read "John J. ...".