

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

Gulliver's Tavern, Inc. d/b/a Foxy Lady,
Appellant,

v.

City of Providence, Board of Licenses,
Appellee.

DBR No.: 18LQ028

SECOND ORDER ON MOTION FOR STAY

This matter arose from a motion for stay filed on December 20, 2018 by Gulliver's Tavern, Inc. d/b/a Foxy Lady ("Appellant") with the Department of Business Regulation ("Department") pursuant to R.I. Gen. Laws § 3-7-21 regarding the decision taken on December 19, 2018 by the City of Providence, Board of Licenses ("Board") to revoke its Class BVX liquor license and Class N (nightclub) liquor licenses.¹ A hearing on the motion to stay was heard on December 21, 2018 before the undersigned who was delegated to hear this matter by the Director of the Department. 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.* An order was issued on December 24, 2018 in relation to the Appellant's Class N license granting a conditional stay.

The Appellant holds a B liquor license as well as a BX (extended hours) which is conditioned on a victualing license. The Board revoked the Appellant's victualing license. By order of the Rhode Island Supreme Court dated December 21, 2018, the Court did not grant a stay

¹ At the Board hearing, the Board also revoked the Appellant's other City licenses, but the Department does not have jurisdiction over those licenses. Appeals to the Department can only relate to the liquor license held by the Appellant. See *El Nido v. Goldstein*, 626 A.2d 239 (R.I. 1993) (victualing license is a separate and distinct license from a liquor license).

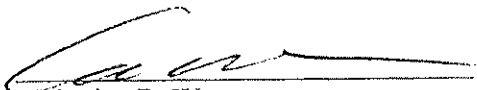
of that revocation but scheduled a Court conference on January 3, 2019. At the December 21, 2018 stay hearing, the parties agreed that even if the Department stayed the BVX license revocation, said license could not be used without a stay of the victualing license revocation. Therefore, the Department's December 24, 2018 stay order only addressed the Class N license.

However, the Rhode Island Supreme Court by order dated January 3, 2019 has now entered a stay of the revocation of the victualing license.² Therefore, the Appellant has requested that the Department amend its initial stay order. The City does not object to this request.

This order incorporates by reference the December 24, 2018 stay order.

Based on the foregoing, the undersigned recommends that a stay be granted for the Class BVX license revocation on the condition that it maintain a police detail on Friday and Saturday nights as well as any openings on the night before a State holiday.

Dated: January 4, 2019


Catherine R. Warren
Hearing Officer

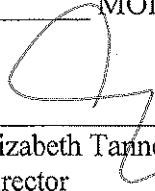
² The Rhode Island Supreme Court has held that when a town council acts in a quasi-judicial manner and does not provide for a right of appeal, the proper avenue for appeal is *writ of certiorari* to the Rhode Island Supreme Court. *Cullen v. Town Council of Town of Lincoln*, 893 A.2d 239 (R.I. 2000); and *Eastern Scrap Services, Inc. v. Harty*, 341 A.2d 718 (R.I. 1975).

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: 1/11/19



Elizabeth Tanner, Esquire
Director

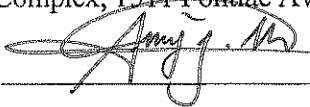
A hearing will be scheduled on a mutually convenient date to be determined by the parties.³

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 4th day of January, 2019 that a copy of the within Order was sent by email and first class mail, postage prepaid, to the following: Fausto Anguilla, Esquire, 56 Pine Street, Suite 200, Providence, R.I. 02903, James J. Lepore, Esquire, Coia & Lepore, Ltd., 226 South Main Street, Providence, R.I. 02903, Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, R.I. 02903, and Louis A. DeSimone, Jr., Esquire, 703 West Shore Road, Warwick, R.I. 02889 and by electronic delivery to Anthony Traini, Esquire at amt@atrainilaw.com, George Santopietro, Esquire, at gsantopi@coialepore.com, a coloianlaw@gmail.com; drobinson@dgrlaw.necoxmail.com by hand-delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.



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