

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF BUSINESS REGULATION  
1511 PONTIAC AVENUE, BUILDINGS 68 AND 69  
CRANSTON, RHODE ISLAND 02920**

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224 Atwells, LLC d/b/a Forbidden City,	:	
Appellant,	:	
	:	
v.	:	DBR No. 11-L-0096
	:	
City of Providence Board of Licenses,	:	
Appellee.	:	
	:	

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**ORDER OF DISMISSAL**

This matter arose out a filing by 224 Atwells, LLC d/b/a Forbidden City (“Appellant”) with the Department of Business Regulation (“Department”) purporting to appeal the decision by the Providence Board of Licenses (“Board”) issued on or about September 9, 2011 which revoked all licenses issued to the Appellant. Said appeal was filed with the Department on September 19, 2011. A pre-hearing conference was held on October 12, 2011, at which time the Appellee raised a motion to dismiss based on the Department’s lack of jurisdiction due to the alleged untimely appeal of the Appellant. The Appellee was given until the close of business on Friday, October 21, 2011, to file a written motion to dismiss which the Department received. The Appellant was given until the close of business on Friday, October 28, 2011, to file a response. No response has been received by the Apellant. A full-hearing was tentatively scheduled for Thursday, November 3, 2011, subject to a final ruling on the aforementioned motion.

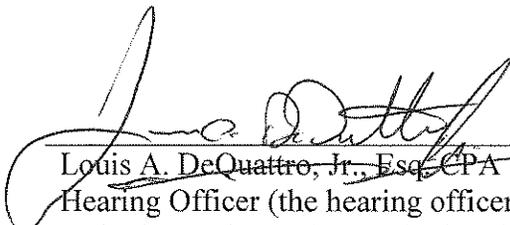
Pursuant to R.I. Gen. Laws §3-7-21, appeals of local liquor licensing authorities are required to be filed “within ten (10) days after the making of the decision or order sought to be reviewed.” The Appellant did not file within the ten (10) day window. Pursuant to R.I. Gen. Laws §43-3-13 the time period to file an appeal began on September 10, 2011, as this was the day after the Board made its decision. The statute, nor Rule 6, R.C.P, exclude the counting of all Saturdays, Sundays or holidays into the appeal filing period. These two facts taken together mean that the appeal period ended on Monday, September 19, 2011. It is true that the notice of appeal by Appellant is *dated* September 19, 2011, but a date on a notice does not supersede the filing date, which in this case is September 23, 2011, well outside of the filing period.

The Department lacks any subject matter jurisdiction to hold an appeal hearing if the appeal was not timely filed. *Di Ruzzo v. Corner Pizza, Inc.*, 1991 WL 789827 (R.I. Super. 1991). It could be argued that the Department could use its authority as a “state super-licensing board” to disregard precedent and hear this appeal. See *Baginski v. Alcoholic Beverage Comm’n*, 4 A.2d 265, 267 (R.I. 1939). This is a flawed argument as it relates to this appeal because the Department can only use its *sua sponte* powers when a matter rises to the level where it would be “appropriate to be heard by the Department pursuant to R.I. Gen. Laws § 3-2-2.” *Friendship, Inc. d/b/a Club Ultra v. City of Providence Licensing Board*, DBR No. 08-L-0289 (1/8/2009). This matter does not appear to rise to that level as the Appellant has not presented any arguments to the contrary, therefore, the Department must respect precedent in *Di Ruzzo* and dismiss the Appellants untimely appeal.

WHEREFORE, as a result of the foregoing and upon due consideration thereof, it is hereby ordered that the above-captioned matter be dismissed with prejudice.

Dated:

10/31/2011

  
Louis A. DeQuattro, Jr., Esq. CPA  
Hearing Officer (the hearing officer has delegated  
authority to sign orders and other documents on  
behalf of Director Paul McGreevy)

**NOTICE OF APPELLATE RIGHTS**

**THIS ORDER 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 ITSELF DOES NOT 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 that on this 1<sup>st</sup> day of November a copy of this Order was sent by e-mail, fax and first class mail postage prepaid and certified mail to

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*A B Ellison*

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