



Appellant for January 14, 2010. -The Appellant filed a second motion for stay to which the Board objected which was heard on January 14, 2010. At that time the Appellant argued that the Board had suspended its License indefinitely and the Board argued that it would further decide at hearing on January 15, 2010 whether to further suspend the License for January 15 and 16, 2010. On January 14, 2010, the Department issued an order denying the request for stay for January 14, 2010 suspension of License and indicated that the Board needed to address the length of suspension of Appellant's License and the reasons why.

On February 22, 2010, the Board issued a written decision. At that time, the Board found that the Appellant's License was "revoked" but stayed the revocation pending a transfer application being filed no later than March 12, 2010 but that if said application was not filed by that date the revocation would be final.<sup>3</sup> The Board later extended the transfer filing application deadline. Subsequent to February 22, 2010, the Appellant filed a further appeal and motion for stay and the Board objected (again) to

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<sup>3</sup> During the course of these proceedings, the undersigned indicated to counsel that while the Board may have termed its action regarding the Appellant's License as a "revocation" and "final revocation," the actual substance of its actions in the February 22, 2010 letter was to suspend the License until March 12, 2010 pending the filing of a transfer application and if a transfer application was not filed by that date, the "revocation would be final." (See February 22, 2010 Board letter).

Indeed, the Board stated that the revocation would be stayed pending a transfer application being filed by March 12, 2010 which arguably would mean that on February 22, 2010 the revocation was stayed and was not in effect until March 12, 2010 when it would have become effective if no transfer application has been filed. That would have meant that the liquor license could have been used between February 22, 2010 and March 12, 2010 (the revocation being stayed so not in effect). However, the Board actually was suspending the License between February 22, 2010 and March 12, 2010 so that it could not be used and then the Board planned to make that suspension permanent by revoking the license if the application was not filed. A revocation by its own definition is permanent.

As under the tenets of statutory construction, the Board's terminology of revocation and final revocation is not controlling. The substance of the action rather than the form is controlling on the action taken by the Board. See *Orthopedic Specialists, Inc. v. Great Atlantic & Pacific Tea Co., Inc.*, 388 A.2d 352 (R.I. 1978). The License was suspended pending the filing of a transfer application. Arguably, once the application was filed, the suspension was lifted but apparently the Appellant never sought to re-open once the transfer application was filed. However, the filing of the transfer application avoided the revocation of the License. Thus, the License still existed at the time of the transfer application being filed.

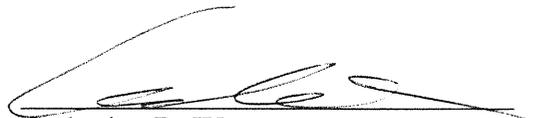
same. A hearing was not held on that third stay request by agreement of the parties in anticipation of the filing of the transfer application.

Upon information and belief, the Board approved the transfer of the License on May 24, 2010. While no document evidencing that the transfer application was approved, the Board's counsel represented to all parties and the undersigned that the License had been transferred.<sup>4</sup>

Based on the foregoing, the Appellant's appeal is dismissed.

As recommended by:

Date: 6/16/10

  
Catherine R. Warren  
Hearing Officer

I have read the Hearing Officer's recommendation and I hereby ADOPT REJECT the recommendation of the Hearing Officer in the above-entitled Order of Dismissal.

Date: 06-17-2010

  
A. Michael Marques  
Director

Entered as an Administrative Order No.: 10-058 this 17<sup>th</sup> day of June, 2010.

<sup>4</sup> The application was scheduled to be heard on May 24, 2010. For the agenda of the Board's meeting on that day, see <http://sos.ri.gov/documents/publicinfo/omdocs/notices/4749/2010/91126.pdf>. The minutes of said meeting have not been filed with the Secretary of State. However, upon information and belief, the License was transferred on the provision that no one under 21 would be allowed in. In addition, the Board's counsel indicated in its filing that there were other conditions imposed on the transfer. 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. However, the transfer of the License was not before the undersigned in this matter. This appeal solely related to the Board's actions taken on January 1, 2010 and at other subsequent hearings and in the Board's February 22, 2010 letter (those actions all concerned the Board's rulings regarding what happened at the Appellant's on New Year's Eve, 2009 and New Year's Day, 2010). The Board's counsel requested the undersigned dismiss this matter without an objections being filed.

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 17<sup>th</sup> day of June, 2010 that a copy of the within Order was sent by first class mail, postage prepaid to -

Kevin McHugh, Esquire  
Assistant City Solicitor  
275 Westminster Street  
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John J. DeSimone, Esquire  
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735 Smith Street  
Providence, RI 02908  
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Paul T. Jones, Esquire  
578 Smith Street  
Providence, RI 02903

and by electronic-delivery to Maria D'Alessandro, Associate Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI.

*A B Ellison*