

A pre-hearing conference was held on June 3, 2009 for the purposes of clarifying the issues. The parties agreed to work on an agreed statement of facts. By order dated July 21, 2009, the Coastal Resources Management Council (“CRMC”) was granted leave to intervene as the Board represented it relied on a CRMC right-of-way in decreasing the licensed area at issue. A hearing was scheduled for October, 2009 but was continued by agreement of the parties and a further continuance was granted in March, 2010 by request of the parties who were seeking the resolution of a Superior Court lawsuit related to this issue. Also on February 22, 2010, the undersigned granted The Pier of Newport LLC’s (“The Pier”) Motion to Intervene as The Pier had become the holder of the License.

R.I. Gen. Laws § 3-5-8 states as follows:

Expiration date of licenses. – Every license except retailer's Class F licenses and retailer's Class G licenses shall expire on December 1 after its issuance.

Therefore, the License at issue expired November 30, 2009 and pursuant R.I. Gen. Laws § 3-7-6³ if a renewal application was timely filed by October 1, the License was entitled to renewal until a decision was issued on any denial of renewal. There is now currently pending before the Department a matter entitled *J Class Management, Inc. v. Board of License Commissioners of the City of the Newport; and The Pier of Newport, LLC as intervenor*, DBR 10-L-00176. That matter involves the same license as the above-captioned matter. In that matter, it was represented that the License was

³ R.I. Gen. Laws § 3-7-6 states in part as follows:

Renewal of Class A, Class B, Class C, Class D, Class E, and Class J licenses. – The holder of a Class A, Class B, Class C, Class D, Class E, or Class J license who applies before October 1 in any licensing period for a license of the same class for the next succeeding licensing period is prima facie entitled to renewal to the extent that the license is issuable under § 3-5-16. This application may be rejected for cause, subject to appeal as provided in § 3-7-21. A person whose application has been rejected by the local licensing authorities shall, for the purpose of license quotas under § 3-5-16, be deemed to have been granted a license until the period for an appeal has expired or until his or her appeal has been dismissed.

See also R.I. Gen. Laws § 42-35-14 (renewal of licenses)

transferred and service allowed in the north patio (the subject of the CRMC right-of-way). The J Class appeal arose out of the renewal of The Pier's License on October 13, 2010 allowing service in the north patio. The Board's minutes submitted in the J Class appeal indicate that the parties believed that this NAJ appeal was resolved.

J Class has now filed a motion to intervene in the above-captioned matter to which The Pier objected.

In *Lynch v. Rhode Island Dept. of Environmental Management*, 994 A.2d 64, 70-71 (R.I. 2010), the Supreme Court held as follows:

We are now called upon to resolve the competing arguments as to mootness. We have frequently "recognized the need, apart from certain exceptional circumstances, to confine judicial review only to those cases that present a ripe case or controversy." *City of Cranston v. Rhode Island Laborers' District Council, Local 1033*, 960 A.2d 529, 533 (R.I. 2008); *see also State v. Lead Industries Association, Inc.*, 951 A.2d 428, 469-70 (R.I.2008). A question is moot if a court's "judgment would fail to have a practical effect on the existing controversy * * *." *City of Cranston*, 960 A.2d at 533; *see also H.V. Collins Co. v. Williams*, 990 A.2d 845, 847 (R.I. 2010); *Morris v. D'Amario*, 416 A.2d 137, 139 (R.I.1980).

In *Lynch*, the Court declined to dismiss an appeal of the issuance of 2003 solid waste facility as moot despite the subsequent issuance of a 2006 renewal and a 2008 transfer because the validity of the issuance of the 2003 license affected the validity of the renewal and transfer of said license. The Court cited with approval a Texas case that found that the "expiration of a license will not moot the controversy if the appeal arises from the renewal or refusal to renew a license under a statutory scheme that contemplates a continuous cycle of license renewals." *Id.*, at 72 (internal citation omitted).

However, the above-captioned appeal does not attack the validity of the issued License but rather appeals conditions imposed on the License. The licenseholder in this

appeal no longer holds the License. The License has been transferred and renewed with different conditions.⁴ Those conditions relate to the same north patio and the CRMC right-of-way but are different. Those conditions are the subject of the J Class appeal.

There are exceptions to process of dismissing an appeal because of mootness but none of those exceptions would be implicated by a dismissal of this matter. See *Hallsmith-Sysco Food Services, LLC v. Marques*, 970 A.2d 1211, 1214 (R.I. 2009) (exception to mootness are cases of extreme public importance such as important constitutional rights, voting rights, or a person's livelihood that are capable of repetition but evade review). Indeed, the issue of the CRMC right-of-way is being reviewed in the J Class appeal.

The Rhode Island Supreme Court has stated that the legislature expressly provided for state control and has adopted a system for administering such control in a manner which it deems the "most likely to be productive of the public good." *Bd. of License Comm'rs v. Daneker*, 78 R.I. 101, 107 (R.I. 1951). The Courts have consistently recognized that the Department has broad and comprehensive state control over the traffic in intoxicating liquors. *Baginski v. Alcoholic Beverage Comm'n.*, 4 A.2d 265 (1939). Furthermore, *Baginski* found that consistent with the Department's wide powers of regulation and supervision, it is, in effect, a "state superlicensing board." *Id.*, at 268. The Department's oversight ensures that the state liquor licensing statute is consistently and uniformly enforced throughout the State of Rhode Island.

Based on the above analysis, I find that this License has changed hands and has been transferred and renewed with different conditions and the issue of the CRMC right-of-way

⁴ Thus, this matter is not like the consolidated appeals of *The Chanler and Jon Cohen v. Newport City Council* for the renewal of that license on appeal there for the years 2005-2006, 2006-2007, 2007-2008, 2008-2009 and for which appeals were filed every renewal year regarding the same conditions being imposed. See Order of Dismissal in *The Chanler, Inc. and Jon Cohen v. Newport City Council*, DBR No. 05-L-0266, DBR No. 06-L-0200, DBR No. 06-L-285, DBR No. 08-L-0272 (1/14/10).

will be addressed during the J Class appeal. The above-appeal did not attack the validity of the License but rather the conditions imposed on the License. Therefore, the undersigned recommends that this appeal be dismissed and J Class Management's Motion to Intervene be denied.

As recommended by:

Date: 12/3/10


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: 12-07-2010


A. Michael Marques
Director

Entered as an Administrative Order No.: 10- 145 this 7th day of December, 2010.

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 7th day of December, 2010 that a copy of the within Order and Notice of Appellate Rights was sent by first class mail, postage prepaid to -

Brian A. Goldman, Esquire
Goldman Law Offices
681 Smith Street
Providence, RI 02908

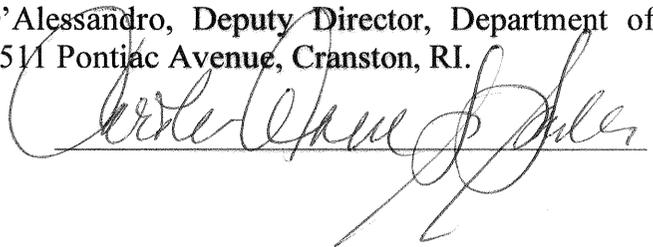
Joseph J. Nicholson, Jr., Esquire
City of Newport Solicitor
43 Broadway
Newport, RI 02840

Evan Scott Lewis, Esquire
15 Old Beach Road
Newport, RI 02840

Joseph R. Palumbo, Esquire
294 Valley Road
Middletown, RI 02842

Robert Silva, Esquire
David Martland, Esquire
Silva, Thomas, Martland & Offenber, Ltd.
1100 Aquidneck Avenue
Middletown, RI 02842

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

A handwritten signature in cursive script, appearing to read "Maria D'Alessandro", is written over a horizontal line.