

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF BUSINESS REGULATION  
JOHN O. PASTORE COMPLEX  
1511 PONTIAC AVENUE  
CRANSTON, RI 02920**

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<b>The Rack, Inc. d/b/a Smoke</b>	:	
<b>Appellant,</b>	:	
	:	
<b>v.</b>	:	<b>DBR No. 12-L-0017</b>
	:	
<b>City of Providence Licensing Board,</b>	:	
<b>Appellee.</b>	:	

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**ORDER OF DISMISSAL**

This matter arose out of a filing by The Rack, Inc. d/b/a Smoke (“Appellant”) with the Department of Business Regulation (“Department”) purporting to appeal the decision by the Providence Board of Licenses (“Board”) issued on or about January 20, 2012 imposing a \$3,000 (fine) administrative penalty on the Appellant. Said appeal as well as a Motion to Stay was filed with the Department.

Pursuant to R.I. Gen. Laws § 3-7-21, appeals of local liquor licensing authorities are limited to suspension or revocation of a liquor license. Said statute states in part as follows:

Appeals from the local boards to director. – (a) Upon the application of any petitioner for a license, or of any person authorized to protest against the granting of a license, including those persons granted standing pursuant to § 3-5-19, or upon the application of any licensee whose license has been revoked or suspended by any local board or authority, the director has the right to review the decision of any local board, and after hearing, to confirm or reverse the decision of the local board in whole or in part, and to make any decision or order he or she considers proper, but the application shall be made within ten (10) days after the making of the decision or order sought to be reviewed. Notice of the decision or order shall be given by the local or licensing board to the applicant within twenty-four (24) hours after the making of its decision or order and the decision or order shall not be suspended except by the order of the director.

Counsel for the litigants appeared before the undersigned on February 3, 2012 and made arguments for and against a stay and whether the Department has the jurisdiction to hear the appeal. After considering the arguments presented, the Department hereby issues this order of dismissal.<sup>1</sup>

It should be noted that the Department has broad and comprehensive control over the traffic in intoxicating liquors. Indeed, the Department's power of review is so broad that it has been referred to as a "state superlicensing board." *Baginski v. Alcoholic Beverage Comm'n.*, 4 A.2d 265, 267 (R.I. 1939). Because of this broad authority to enforce Title 3, the Department may review matters on appeal pursuant to its authority under R.I. Gen. Laws § 3-2-2 rather than R.I. Gen. Laws § 3-7-21. The Department exercises its authority under R.I. Gen. Laws § 3-2-2 when the matter rises to a level that impacts its broad authority over statewide licensing. See *City of Providence Bd. of Licenses v. State Department of Business Regulation*, 2006 R.I. Super. LEXIS 37 (Department has authority to hear a matter on appeal regarding the applicability of the Department's liquor regulations pursuant to the Department's sua sponte authority under R.I. Gen. Laws § 3-2-2); *Bourbon Street, Inc. d/b/a Senor Froggs/Sully's Sports Bar v. Newport Board of Licenses Commissioners*, 1999 R.I. Super. LEXIS 18 (Department has power under R.I. Gen. Laws § 3-2-2 to ensure consistency of statewide sanctions).

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<sup>1</sup> It should be noted that Counsel for the Board of Licenses conceded on the record before the undersigned that the City dismissed Count 1 with a related fine of \$1,500.00. However, the Board of Licenses voted to impose a \$1,500 fine for Count 1 and a \$1,500 for Count 2 for total fines of \$3,000. Had the Department retained jurisdiction over this matter, it is more likely than not that the Department at a minimum would have dismissed the Count 1 penalty of \$1,500.

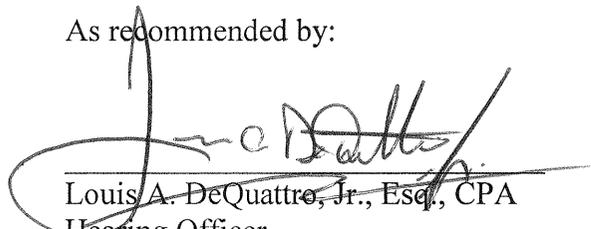
The legislature chose to limit appeals to suspensions or revocations of license. The types of issues that are heard under R.I. Gen. Laws § 3-2-2 are those that relate to the enforcement of Title 3 (e.g. statewide regulations or inconsistent or arbitrary sanctions). See *Sidebar, LLC, d/b/a Side Bar v. Providence Board of Licenses*, DBR No.: 05-L-0262 (5/29/07).

Based on the above analysis, the Department previously dismissed two (2) appeals of the imposition of a monetary administrative penalty concluding that such matters do not rise to the level appropriate for Department review under R.I. Gen. Laws §3-2-2 and that allowing such an appeal to go forward would be contrary to the clear language of R.I. Gen. Laws §3-7-21 (See *Friendship, Inc. d/b/a Club Ultra v. City of Providence Licensing Board*, DBR No. 08-L-0289 and *The Rack, Inc. d/b/a Smoke v. City of Providence Licensing Board*, DBR No. 12-L-0017).

Based on the forgoing, the Department does not have jurisdiction over the Appellant's appeal of the \$3,000 (fine) administrative penalty imposed by the Appellee. Therefore, it is hereby ordered that the above-captioned matter is dismissed with prejudice.

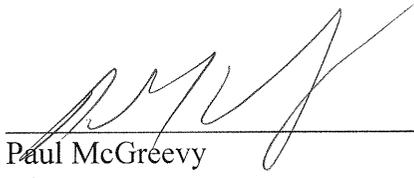
Date: 2/10/2012

As recommended by:

  
Louis A. DeQuattro, Jr., Esq., CPA  
Hearing Officer  
Deputy Director & Executive Counsel

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

Date: 10 Feb 2012

  
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Paul McGreevy  
Director

Entered as an Administrative Order No.: 12007 this 10<sup>th</sup> day of February, 2012.

**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.**

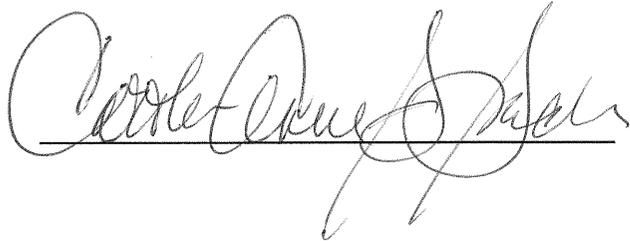
**CERTIFICATION**

I hereby certify that on this 10<sup>th</sup> day of February, 2012 that a copy of the within Order and Notice of Appellate Rights was sent by e-mail and first class mail, postage prepaid to:

Peter Petrarca, Esq.  
Petrarca & Petrarca  
330 Silver Spring Street  
Providence, RI 02904  
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Sergio Spaziano  
City of Providence, Law Department  
275 Westminster Street  
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and by email to Maria D'Alessandro, Deputy Director, Securities, Commercial Licensing and Racing & Athletics

A handwritten signature in black ink, appearing to read "Sergio Spaziano", written over a horizontal line.