

On or about October 12, 2011 and October 13, 2011, the undersigned received confirmation from the parties that the appeal was exclusively relating to an administrative penalty. The undersigned forwarded to both parties the Department's decision in *Friendship, Inc. d/b/a Club Ultra v. City of Providence Licensing Board*, DBR No. 08-L-00289 that held that the Department did not have jurisdiction over appeals of administrative penalties. Based on the foregoing, the Appellant withdrew the DBR appeal and subsequently filed an appeal in Superior Court. The Department did not and has not to this date received any objection from the City regarding Appellant's action of withdrawing the DBR appeal. On November 11, 2011, the Appellant sent an e-mail to the Department with a copy to the Appellee advising the Department that the City did not agree to Appellant's withdrawal of the DBR appeal, and therefore, requests that the Department hear the appeal or dismiss the appeal. The City has not responded to the Department regarding the Appellant's e-mail of November 11, 2011. The Department hereby issues this order of dismissal.

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).

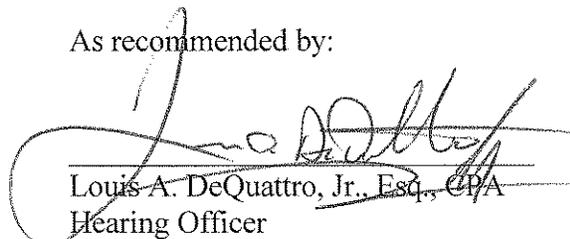
The legislature chose to limit appeals to suspensions or revocations of license. The types of issues that are heard under R.I. Gen. Laws § 3-2-2 are those that relate to the enforcement of Title 3 (e.g. statewide regulations or inconsistent or arbitrary sanctions). See *Sidebar, LLC, d/b/a Side Bar v.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

Based on the above, in *Friendship, Inc.* the Department dismissed an appeal of the imposition of a \$1,000 administrative penalty concluding that such a matter does 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.

Based on the forgoing, the Department does not have jurisdiction over the Appellant's appeal of the \$2,000 (fine) administrative penalty imposed by the Appellee. 3-7-21. Therefore, it is hereby ordered that the above-captioned matter is dismissed with prejudice.

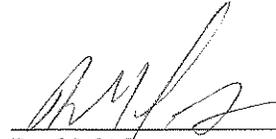
Date: 11/17/2011

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: 17 Nov 2011



Paul McGreevy
Director

Entered as an Administrative Order No.: -11-0846 this 17th day of November, 2011.

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 18th day of November, 2011 that a copy of the within Order and Notice of Appellate Rights was sent by first class mail, postage prepaid to -

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and by email to Maria D'Alessandro, Deputy Director, Securities, Commercial Licensing and Racing & Athletics

A Brooke Ellison