

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION**

JD/Hallmark Properties,	:	
Appellant,	:	
	:	
v.	:	DBR No.: 10-L-0063
	:	
City of Providence, Board of Licenses ,	:	
Appellee.	:	

**ORDER REMANDING THIS MATTER AND
STAYING THE GRANT OF THE LICENSE**

On or about May 24, 2010, the City of Providence Board of Licenses (“Board” or “Providence”) granted Karma, Inc.’s (“Karma”) application to transfer the Class BVX and N liquor licenses (“License”) from Club Elements, Inc. to Karma. On or about May 26, 2010, JD/Hallmark (“Appellant”) filed an appeal pursuant to R.I. Gen. Laws § 3-7-21 with the Department of Business Regulation (“Department”). This matter came before the undersigned on July 7, 2010 in her capacity as Hearing Officer as the designee of the Director of the Department of Business Regulation (“Department”).¹

Karma was notified of this hearing and filed a motion to dismiss. While no formal motion to intervene in this appeal was filed by Karma, neither the Appellant nor the Board objected to Karma’s right to appear and represent its interest in upholding the Board’s transfer of the License to Karma. Therefore, Karma is considered to have intervened in this matter pursuant to Section 23 of the *Central Management Regulation 2 Rules of Procedure for Administrative Hearings*.

¹ The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-2-1 *et seq.*, R.I. Gen. Laws § 3-5-1 *et seq.*, R.I. Gen. Laws § 3-7-1 *et seq.*, R. I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

The Appellant filed a Motion to Vacate the transfer of License or in alternative Remand the Matter to the Board and stay the opening of Karma.² The Appellant based its motion to vacate on the following: 1) failure of notice of Karma's application to be given to all owners within 200 feet of the property pursuant to R.I. Gen. Laws § 3-5-17; 2) Karma's failure to comply with the R.I. Gen. Laws § 3-7-16.6 (required to post notice of any Class N hearing on property); and 3) advertised notice of hearing failed to comply with Rule 3 of *Commercial Licensing Regulation 8 Liquor Control Administration* ("CLR8"). The Board acknowledged that it had failed to provide notice to the abutting owners as required by statute.

The Appellant argued that because of the procedural deficiencies, the License should be vacated but in the alternative the matter should be remanded and Appellant's opening stayed. The Board's hearing was held without notice being given to all abutting property owners as required by statute. Thus, the Board may have failed to consider pertinent testimony/evidence. The Board did not object to the matter being remanded.

Without statutory notice, the Board's hearing was incomplete and its decision to grant the transfer was premature. This may be remedied by remanding the matter back to the Board in order for statutory notice to be given rather than vacating the License. After the statutory notice of hearing is given, the Board shall hold a further hearing in addition to the one already held on the transfer application. At the close of that hearing, the Board will make its decision on said application.

² Under *Narragansett Electric Company v. William W. Harsch et al.*, 367 A.2d 195, 197 (1976), a stay will not be issued unless the party seeking the stay makes a "strong showing" that "(1) it will prevail on the merits of its appeal; (2) it will suffer irreparable harm if the stay is not granted; (3) no substantial harm will come to other interested parties; and (4) a stay will not harm the public interest." Nonetheless, the Supreme Court in *Department of Corrections v. Rhode Island State Labor Relations Board*, 658 A.2d 509 (R.I. 1995) found that *Harsch* was not necessarily applicable in all agency actions and the Court could maintain the *status quo* in its discretion when reviewing an administrative decision pursuant to R.I. Gen. Laws § 42-35-15(c). The issue before the undersigned is a motion to stay the Decision to transfer the License which is subject to a *de novo* appeal and does not fall under R.I. Gen. Laws § 42-35-15(c).

The Board indicated at hearing that it would consider that Karma still holds a License even without the statutory notice. Nonetheless, the Department must ensure that all statutory and regulatory requirements are followed by local licensing boards so that all proper notices are given and the local authorities have the benefit of hearing all affected individuals when making a decision. Without such notice, such a decision cannot be made. There is no dispute that there was a lack of statutory notice. Such statutory notices are required to safeguard the public's interest in the granting of liquor licenses. It is in the public interest that such licensing decisions are not made prematurely and such statutory notice requirements are not ignored (even by mistake).

In light of the fact that the License was granted without compliance with the statutory notice provision, the granting of the License is stayed until the completion of the hearing on the application. While the undersigned is mindful of the fact that Karma plans to open, the fact remains that the hearing granting the License was not properly notified so that the granting of the License was premature. If after the hearing is completed (with proper notice) and the transfer of the License is approved, the stay is lifted.

The granting of the stay is consistent with previous Department decisions. In *Providence Journal Company v. Providence Board of Licenses et al.*, DBR No. 04-L-0096 (1/18/05) upheld by *City of Providence Board of Licenses v. Department of Business Regulation* 2006 WL 1073419 (R.I. Super.), the Department vacated a seasonal expansion granted by Providence when Providence had not complied with the requirement to notice the abutters and hold a hearing as set forth Rule 27 of CLR8 and R.I. Gen. Laws § 3-5-17.³ In that matter, the Department and the Court found that Rule 27 required that a hearing must be held to give the abutters a

³ R.I. Gen. Laws § 3-5-17 has been amended since these decisions.

meaningful opportunity to be heard. The Court in upholding the decision found that the Department has the power to vacate licenses issued in disregard of rules and regulations.

In this matter, the undersigned is not recommending that the License be vacated but is staying the grant of the License so that the hearing may be completed with the proper notice given. In this way, the Board can consider the testimony already given by objectors and the Appellant but will complete its hearing process by allowing the abutters a meaningful opportunity to be heard after the statutory notice is given.⁴ In an effort to conserve resources and promote administrative efficiencies, the undersigned has determined that a stay of the grant of the License serves to ensure compliance with R.I. Gen. Laws § 3-1-1 *et seq.*

Karma has filed a motion to dismiss on the basis that the Appellant has not shown that it has the authority to file an appeal. Karma indicated at hearing that the notice issue would be moot if the motion was granted. However, the Department as the “superlicensing” authority has the *sua sponte* authority to ensure the uniform and consistent regulation of liquor throughout the State. See *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964); *Standard Bottling Co. v. Brewster*, 65 R.I. 279 (1940). For a thorough discussion of how the Department’s authority relates to issues of notice, see the *Providence Journal* cases cited above. Proper notice and a complete hearing must held by the Board before the undersigned rules on the motion to dismiss.

On the basis of the forgoing, this Hearing Officer recommends the following:

1. This matter is remanded to the Board for it to complete its hearing on Karma’s application to transfer such Licenses at issue by proper statutory notice being provided to abutters.⁵

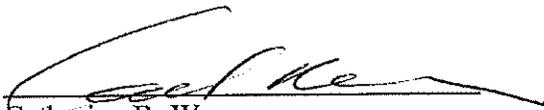
⁴ The Board may still consider further testimony by any participants at the first hearing.

⁵ The Appellant also argued that Karma failed to comply with the statutory requirement of posting a notice on its premises regarding the upcoming hearing. Karma indicated at hearing that it did not control the property at the time. Indeed, it was not Karma’s license but Club Elements’ license at the time of the Board hearing so the subject license was Club Elements. The remand hearing will still be about Club Elements’ license being transferred to Karma. If the transfer is approved and the appeal goes forward then at that time the Department hearing would be on Karma’s licenses and Karma would need to comply with said statute.

2. The Appellant's motion to stay the granting of the License is granted pending the completion of the Board hearing. If the Board grants the License, the stay is lifted.⁶

3. The motion to dismiss is held in abeyance pending the further filing by Appellant of the relevant operating documents and any further appeals that might arise out of the Board's decision after further hearing.

Dated: 7/8/10

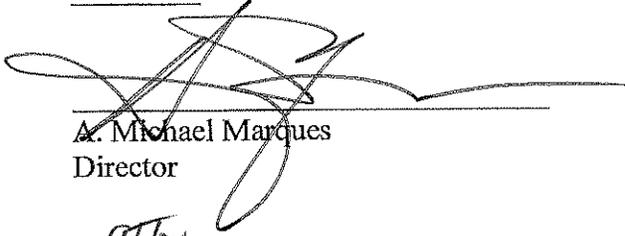

Catherine R. Warren
Hearing Officer

INTERIM ORDER

I have read the Hearing Officer's Order and Recommendation in this matter, and I hereby take the following action with regard to the Order and Recommendation:

ADOPT
 REJECT
 MODIFY

Dated: 07-08-2010


A. Michael Marques
Director

Entered as Administrative Order No. 10- 101 on this 8th day of July, 2010.

NOTICE OF APPELLATE RIGHTS

THIS ORDER IS REVIEWABLE BY THE SUPERIOR COURT PURSUANT TO R.I. GEN. LAWS § 42-35-15(a) 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 A PETITION DOES NOT STAY ENFORCEMENT OF THIS ORDER.

In addition, the Appellant argued that the Board failed to comply with Rule 3 of CLR8. Oral argument was not made on this issue at hearing. However, with the remand of the matter for a further hearing, it is expected that along with the required notice to the abutters which the Board failed to do for the first hearing, any other notice requirements would be followed.

⁶ Nothing would preclude the Appellant at that time from filing another motion to stay.

CERTIFICATION

I hereby certify on this 8th day of July, 2010 that a copy of the within Order was delivered by facsimile and by first class mail, postage prepaid to -

Kevin McHugh, Esquire
City of Providence Law Department
275 Westminster Street
Providence, RI 02903
Fax. 401-351-7596

Peter Petrarca, Esquire
Petrarca & Petrarca Law Offices
330 Silver Spring Street
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Rachelle Green, Esquire
Duffy & Sweeney
One Financial Plaza, Suite 1800
Providence, RI 02903
Fax. 401-455-0701

and by hand-delivery to Maria D'Alessandro, Associate Director, Department of Business Regulation, 233 Richmond Street, Providence, RI 02903.

A. B. Ellison