

**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>Karma Club, Inc.</b>	:	
<b>Appellant,</b>	:	
	:	
<b>v.</b>	:	<b>DBR No.: 13LQ030</b>
	:	
<b>The City of Providence Board of Licenses,</b>	:	
<b>Appellee.</b>	:	

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**DECLARATORY RULING ORDER**

**I. INTRODUCTION**

This Declaratory Ruling Order responds to a “Request for Advisory Opinion” (the “Request”) from Karma Club, Inc., a Class N liquor licensee (the “Filer”). Said Request was filed with the Department of Business Regulation (“Department”) by electronic mail on March 27, 2013 and received by the Department by regular mail on April 1, 2013. Though the Filer titled its Request as one for an “advisory opinion,” it can clearly be inferred from the content of the request and the discussions with counsel that the Filer is requesting a “Declaratory Ruling” under R.I. Gen. Laws § 42-35-8.

**II. FACTS AND TRAVEL**

On March 15, 2013, the Filer submitted a Notice of Appeal (the “Appeal”) to the Department seeking review of the decision of the City of Providence Board of Licenses (“Board”) issued on March 11, 2013 (the “Decision”). A pre-hearing teleconference was held on March 22 between the undersigned and the attorneys for the Board and the Filer.

At that time, the parties agreed to stay the Appeal pending resolution of certain underlying legal issues by means of this Request for a Departmental Declaratory Ruling.

The Decision underlying this Request imposed penalties with regard to “VIP bottle service” allegedly occurring at the Appellant’s premises on January 11, 2013.<sup>1</sup> “VIP bottle service” is not defined by statute or regulation, but is characterized in the nightclub industry as the practice of providing seating at a VIP table in a special section of the club to patrons who purchase a multiple serving bottle of distilled liquor. The distilled liquor is served with complementary mixers such as juices and soda and VIP patrons typically enjoy the service of a waitress assigned specifically to the VIP section.

In the Decision, it was alleged that two agents of the Providence Police Department were seated in the Filer’s establishment at a VIP table, and that the requirement for being seated at the table was that they purchase a bottle of alcohol. Accordingly, the agents purchased a bottle of Hennessy for \$240.00 which was poured into a plastic container and served with cranberry juice and a bucket of ice. After the waitress served the first drink, the agents were allegedly permitted to pour their own drinks. As a result of this “VIP bottle service,” the Board imposed the following penalties:

1. For violation of the prohibition against the sale of alcoholic beverages by the bottle, Rhode Island General Laws Section 3-8-14 - \$1,000.00
  2. For the sale of alcohol to underage persons in violation of Rhode Island General Laws Section 3-8-14 - \$500.00 per count (2) = \$1,000.00
  3. For violation of the Rhode Island Department of Business Regulation, Commercial Licensing Regulation 8, Rule 11, prohibition against allowing patrons to serve alcoholic beverages, \$250.00 per count (2) = \$ 500.00
- Total fine = \$ 2,500.00; payable within ten (10) days of the date of this letter.

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<sup>1</sup> The Board’s decision also discussed an alleged incident on January 1, but found that “the City, in this instance, failed to establish a clear nexus between the activity within the licensed premises and the subsequent disturbance outside its premises” and explaining that “[t]he mere fact that the disturbance involved two of its patrons is not sufficient to find against the Licensee in this case.”

### III. JURISDICTION

The Rhode Island Administrative Procedures Act, § 42-35-8, gives the Department authority to issue declaratory rulings. In accordance with R.I. Gen. Laws § 42-35-8, the Department has “provide[d] by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency” by its adoption of Central Management Regulation 3: Declaratory Rulings and Petitions (“CMR 3”). “Rulings disposing of petitions have the same status as agency orders in contested cases.” § 42-35-8; *Greenwich Bay Yacht Basin Associates v. Brown*, 537 A.2d 988, 993 (R.I., 1988).

The Rhode Island Supreme Court has explained that R.I. Gen. Laws § 42-35-8 is “an administrative counterpart of the Declaratory Judgments Act,” (the “Act”). *Liguori v. Aetna Cas. & Sur. Co.*, 119 R.I. 875, 882-883 (R.I., 1978). Accordingly, the case law pertaining to the Act authorizing the Superior Court to grant declaratory relief applies to an agency’s analogous authority. The Act confers broad discretion upon the trial justice as to whether he or she should grant the declaratory relief.” *Cruz v. Wausau Ins.*, 866 A.2d 1237, 1240 (R.I., 2005). “[E]ven if the complaint contains a set of facts which bring it within the scope of [the Act], there is no duty imposed thereby on the court to grant such relief, but rather the court is free to decide in the exercise of its discretion whether or not to award the relief asked for.” *Employers' Fire Insurance Co. v. Beals*, 103 R.I. 623, 628, 240 A.2d 397, 401 (1968). *See also Lombardi v. Goodyear Loan Co.*, 549 A.2d 1025, 1027 (R.I., 1988); *Berberian v. Travisono*, 114 R.I. 269, 332 A.2d 121 (R.I., 1975).

The Department's authority under R.I. Gen. Laws § 42-35-8 is, like that of a court under the UDJA, discretionary rather than mandatory. Exercising this discretion, the Department has granted the Request in this case, but will limit its response to address the Filer's questions as applied only to "VIP bottle service," *i.e.* sale and service of multiple serving bottle of distilled liquor to a VIP patron table. So limiting a declaratory ruling to the specific circumstances underlying the dispute is consistent with the case law under the Act. In *Berberian, supra*, the Rhode Island Supreme Court upheld the Superior Court's refusal to entertain a request for declaratory relief that was based upon the lower court's determination that the petition did not provide any specific circumstances to analyze beyond hypothetical questions. *Id.* at 274. Accordingly, it is reasonable for the Department to limit its declaratory ruling to the specific circumstances of providing VIP bottle service at issue between the parties.

#### **IV. ISSUES**

Is the sale of a multiple serving bottle of distilled liquor to a VIP patron table ("VIP bottle service") illegal in Rhode Island? If not, what are the regulatory restrictions on the practice?

#### **V. DISCUSSION**

There is no Rhode Island statute that directly permits or prohibits "VIP bottle service." To the extent that R.I. Gen. Laws § 3-8-14 has been a source of confusion in addressing the VIP bottle service issues, brief discussion of its non-applicability to "VIP bottle service" is warranted. It must be clarified that § 3-8-14 is not self-executing; rather, § 3-8-14 adds to the Department's general rulemaking authority under § 3-5-20 by empowering the Department "adopt rules and regulations authorizing the holders of Class

B-V licenses issued pursuant to this title to sell aquardiente by the bottle, for consumption on the premises of the license holder because this beverage is generally purchased by the bottle by ethnic tradition.” However, the Department has not promulgated any regulations under § 3-8-14 pertaining specifically to aquardiente. Aquardiente (also aguardiente) is “a distilled liquor resembling brandy, especially as made in South America from sugar cane.” Oxford Dictionary of American English. § 3-8-14 does not apply to distilled liquors that are not identified as “aquardiente” on the original manufacturer’s label.

Although the Rhode Island General Laws do not *prohibit* “VIP bottle service,” the Department has promulgated regulations that *restrict* the practice. Commercial Licensing Regulation 8, Liquor Control Administration (“CMR 8”)<sup>2</sup>, Rule 11 provides that “all alcoholic beverages must be served, dispensed or sold by an employee or owner of a licensed retail liquor establishment;” “alcoholic beverages may not be served or dispensed by a patron.” Accordingly, a licensee may engage in the practice of “VIP bottle service” if and only if a qualified server, rather than the patrons themselves, dispense the distilled liquor into the patrons’ individual serving containers.

Rule 11 was promulgated pursuant to the authority vested in the Department under R.I. Gen. Laws § 3-5-20, which provides that “the department is authorized to establish rules and regulations...as in their discretion is in the public interest seem proper to be made.” Department regulations are made in the “public interest” when they effectuate the statutory purpose of Title III, “the promotion of temperance and for the

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<sup>2</sup> These are the regulations *formally* adopted by the Department under the Administrative Procedures Act rule-making procedures, R.I. Gen. Laws Chapter 42-35.

reasonable control of the traffic in alcoholic beverages.” R.I. Gen. Laws § 3-1-5.<sup>3</sup> Promulgation of Rule 11 was a valid exercise of the Department’s broad authority because it ensures that the licensee remains responsible for preventing minors or visibly intoxicated persons from being served. Allowing patrons to self-dispense would remove critical control over alcohol consumption from the employees of the establishment, potentially subjecting the public to the safety and/or medical consequences of over-consumption of alcohol.

In order to legally offer “VIP bottle service”, Class N licensees must take adequate measures to prohibit the patrons from self-dispensing. Control must remain in the hands of qualified servers, employees of the licensee who are above the age of eighteen (18) and have obtained an “Alcohol Server Training Program Certification.” R.I. Gen. Laws § 3-8-2; CMR 8, Rule 43; § 3-7-6.1.

Licensees implementing “VIP bottle service” are further advised that the bottle must be sold at a price proportionate to its size to avoid violation of R.I. Gen. Laws § 3-7-26(a), which prohibits volume-based discounts to retail patrons. Finally, licensees should be aware that compliance with Rule 11 does not necessarily shield the licensee from liability under R.I. Gen. Laws § 3-5-23(b) if the VIP service is implemented in a manner that “permits the house or place where he or she is licensed to sell beverages under the provisions of this title to become disorderly as to annoy and disturb the persons inhabiting or residing in the neighborhood.”

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<sup>3</sup> This broad regulatory authority has led the Rhode Island Supreme Court to consistently refer to the Department as the “state superlicensing board.” *Baginski v. Alcoholic Beverage Commission*, 4 A.2d 265, 268 (R.I., 1939). (“[T]he legislature desired to establish a uniformity of administration of the law for the purpose of promoting temperance throughout the state” and “likewise intended to vest in [the state liquor control authority] the broadest, rather than the narrowest, power over local bodies in order to insure a state-wide conformity to the law.”)

**VI. CONCLUSION**

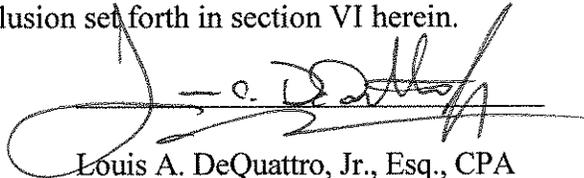
The sale of a multiple serving bottle of distilled liquor to a VIP patron table ("VIP bottle service") is permitted, provided that:

1. the licensee prohibits patrons from self-dispensing the liquor;
2. control over the dispensing of the liquor remains in the hands of server qualified under the requirements of R.I. Gen. Laws § 3-8-2; CMR 8, Rule 43; § 3-7-6.1; and
3. the pricing of the bottle complies with Gen. Laws § 3-7-26(a).

**VII. RECOMMENDATION**

Based on the forgoing, the undersigned recommends that the Department issue an a Declaratory Ruling Order adopting the Conclusion set forth in section VI herein.

Date: 5/3/2013



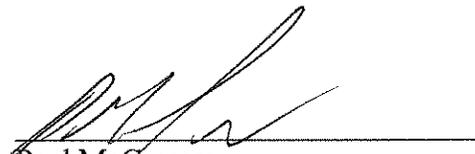
Louis A. DeQuattro, Jr., Esq., CPA  
Hearing Officer  
Deputy Director & Executive Counsel

**ORDER**

I have read the Hearing Officer's recommendation and take the following action:

- ADOPT
- REJECT
- MODIFY

Date: 3 May 2013



Paul McGreevy  
Director

Entered as an Administrative Order No.: 13-024 this 6<sup>th</sup> day of May, 2013.

**NOTICE OF APPELLATE RIGHTS**

**THIS ORDER IS REVIEWABLE BY THE SUPERIOR COURT PURSUANT TO R.I. GEN. LAWS § 42-35(a) WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECLARATORY RULING ORDER. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF A PETITION DOES NOT ITSELF STAY ENFORCEMENT OF THIS DECLARATORY RULING ORDER.**

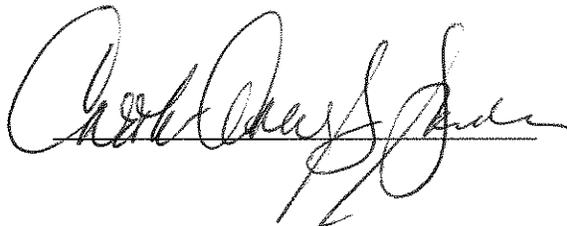
**CERTIFICATION**

I hereby certify on this <sup>6<sup>th</sup></sup> day of ~~April~~<sup>May</sup>, 2013 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.  
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Sergio Spaziano  
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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.