

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
1511 PONTIAC AVENUE, BUILDINGS 68 AND 69
CRANSTON, RHODE ISLAND 02920**

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| 56 Associates, 57 Associates, and | : | |
| 77 Dorrance, LLC, | : | |
| Appellants, | : | |
| | : | |
| v. | : | DBR No. 12-L-0018 |
| | : | |
| Middle Eddy, LLC | : | |
| Appellee. | : | |
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ORDER OF DISMISSAL

This matter arose out a filing by Appellants with the Department of Business Regulation (“Department”) purporting to appeal the decision by the Providence Board of Licenses (“Board”) issued on or about December 29, 2011, which approved a new liquor license application for the Appellee. Said appeal was filed with the Department on February 3, 2012. A pre-hearing conference was held on February 20, 2012, at which time the Appellee raised a motion to dismiss based on the Department’s lack of jurisdiction due to the alleged untimely appeal of the Appellants. The parties agreed to file simultaneous motions and memorandums for and against the motion to dismiss by the close of business on Friday, March 7, 2012, which the Department received. As of the date of this recommended order, no submission has been received by the Board.

Pursuant to R.I. Gen. Laws §3-7-21, appeals of local liquor licensing authorities are required to be filed “within ten (10) days after the making of the decision or order sought to

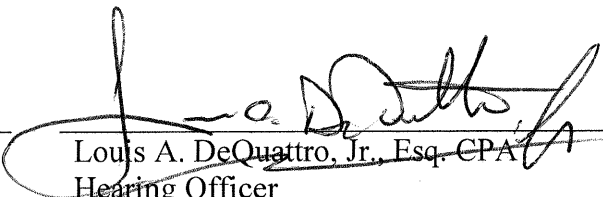
be reviewed.” The Appellants did not file within the ten (10) day window. Pursuant to R.I. Gen. Laws §43-3-13 the time period to file an appeal began on Friday, December 30, 2011, as this was the day after the Board made its decision. While under Rule 6, R.C.P, the last day of the period is to be included unless it is a Saturday, Sunday or legal holiday, it does not state that all Saturdays, Sundays, or holidays are to be excluded from the counted days. Therefore, where the tenth day falls on a Saturday, Sunday or legal holiday those days are to be included in the counted days. In this case, the appeal period ended on Sunday, January 8, 2012, and the final date for a valid appeal to have been filed is therefore, Monday, January 9, 2012. As noted above, the Department received the appeal on February 3, 2012 which is well outside of the filing period.

The Appellants argue that the appeal period set-forth under R.I. Gen. Laws §3-7-21 did not start to run on the date of the decision, December 30, 2012, as Appellants did not receive written notice of the actual decision from the Board. However, a close reading of the statute clearly provides that “notice of the decision or order shall be given by the local 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 order of the Director.” Therefore, Appellants have no statutory right to receive such notice under R.I. Gen. Laws §3-7-21.

The Superior Court has concluded that the Department lacks any subject matter jurisdiction to hold an appeal hearing if the appeal was not timely filed. *Di Ruzzo v. Corner Pizza, Inc.*, 1991 WL 789827 (R.I. Super. 1991). *Id* As noted above, the Appellants did not file a timely appeal, therefore, the Department has no jurisdiction to hear this appeal.

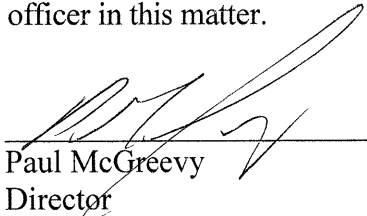
WHEREFORE, as a result of the foregoing and upon due consideration thereof, it is recommended that the above-captioned matter be dismissed for lack of jurisdiction with prejudice.

Dated: 3/12/2012



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

I have read the Hearing Officer's recommendation in this matter and I hereby ADOPT/REJECT the recommendation of the hearing officer in this matter.



Paul McGreevy
Director

Order No. 12-014

NOTICE OF APPELLATE RIGHTS

THIS ORDER 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 ITSELF DOES NOT STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

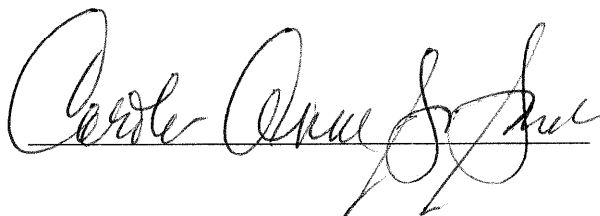
CERTIFICATION

I hereby certify that on this 13th day of March, 2012, a copy of this Order was sent by e-mail, fax and first class mail postage prepaid and certified mail to

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