

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
PASTORE COMPLEX
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND**

**D&L Enterprises, Inc. d/b/a East Bay Tavern,
Appellant,**

v.

**City of Providence, Board of Licenses,
Appellee.**

**DBR No.: 15LQ012
DBR No.: 15LQ014**

ORDER ON MODIFICATION

I. INTRODUCTION

On or about July 28, 2015, the East Providence City Council (“City”) notified D&L Enterprises, Inc. d/b/a East Bay Tavern (“Appellant”) that its Class BV liquor license (“License”) had been revoked by the Board. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed this decision to the Director (“Director”) of the Department of Business Regulation (“Department”) and a stay of the revocation was issued by the Department on August 7, 2015. On or about August 11, 2015, the Board notified the Appellant that its License had been revoked. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed this decision to the Department. A conditional stay of this second revocation was issued by the Department on August 27, 2015. The undersigned was appointed hearing officer by the Director for both appeals. Pursuant to section of 23 of *Central Management Regulation 2 Rules of Procedure for Administrative Hearings* (“CMR2”), those two (2) appeals were consolidated. Pursuant to R.I. Gen. Laws § 3-7-21(c), the parties agreed to base the appeal on the record before the Board. The parties timely submitted briefs by September 25, 2015. Both parties were represented by counsel.

The undersigned signed the decision in this matter on October 20, 2015 and forwarded it to the Director. The Director modified the undersigned's findings and decision and signed the final decision on October 23, 2015. That decision is incorporated by reference. On or about November 2, 2015, the Appellant filed a motion for reconsideration and/or clarification of said decision¹ and requested a stay pending the motion for reconsideration. The 14 day suspension of License imposed by the Director was scheduled to begin on November 2, 2015. As the original hearing officer on these matters, the undersigned offered to hear argument by telephone, but the parties did not accept the offer. Pursuant to Section 11 of CMR2, a hearing officer need not hold a hearing on a motion and may issue an order once the parties have responded to the motion which they both did by email on November 2, 2015.

II. JURISDICTION

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.*

III. MOTION FOR RECONSIDERATION AND/OR CLARIFICATION OF DECISION

The Appellant argued that it should not serve the 14 day suspension because it already had its License "revoked" between July 28, 2015 and August 7, 2015 (when the first revocation was stayed) and between August 11, 2015 and August 27, 2015 (when second revocation was conditionally

¹ Section 19 of CMR2 which provides as follows:

At any time after the issuance of a final order of the Director any Party may, for good cause shown, by motion petition the Director to reconsider the final order. The petitioner shall file his/her motion within twenty (20) days of the issuance of the final order and shall set forth the grounds upon which he/she relies. The Director may grant the motion for reconsideration within his/her discretion and shall order such relief as he/she deems appropriate under the circumstances.

The Department shall not entertain a motion for reconsideration filed more than twenty (20) days after entry of the final decision, unless the Hearing Officer finds good cause to entertain such motion.

stayed). The City objected to the Appellant's request that the 14 day suspension be considered to be "time served." The City's position is that the penalty needs to be paid within a reasonable period with a set deadline. The City took the opportunity to ask that a reconsideration be granted and a new hearing be held. The Appellant objected to another hearing being held.

IV. DISCUSSION

The Appellant has already been closed over 20 days between its two (2) revocations which were the basis for the appeal and the subsequent decision to impose the suspension. There is no reason to make it serve an additional 14 day suspension. Therefore, the imposition by the Director of the 14 day suspension will be considered to have already been served. As the decision will be modified, there is no reason to stay the decision's imposition of the suspension.

The \$500 administrative penalty shall be due by November 23, 2015 which is approximately 30 days after the signing of the decision² and is a weekday (rather than a Sunday).

The Appellant raised issues of the Director's modification that are best suited to be addressed in an appeal to Superior Court, if it so chooses. Such issues do not fall under the "good cause" for reconsideration as the Director has already addressed the undersigned's findings and decision in his modification. The City raised the issue of the Department re-hearing the case, but a motion for reconsideration must be supported by "good cause" and it is not good cause that the City does not like the outcome of an appeal and now feels it should have presented its case differently.³

V. RECOMMENDATION

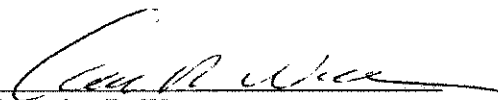
Based on the forgoing, the undersigned recommends as follows:

² The decision stated that the penalty would be due the 31st day after the signing of the decision which was on October 23, 2015 by the director.

³ The Appellant requested clarification of the applicability of the conditions of the second stay that was granted. Once a decision is issued, an interim stay issued by the Department of the local authority's decision becomes moot as the stay is pending the outcome of the appeal hearing. Therefore, any conditions imposed in a stay are no longer required. Of course, a local authority may decide to impose conditions if it finds them so necessary.

1. The October 23, 2015 decision is modified so that the 14 day suspension has already been served during the time the Appellant's License was revoked in July and August, 2015
2. The \$500 administrative penalty is due by November 23, 2015.
3. Any motion by either party to reconsider the decision is dismissed as not being supported by good cause.
4. The motion to stay is denied as moot.

Dated: 11/3/15

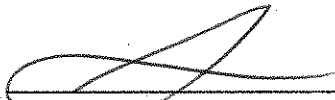

 Catherine R. Warren
 Hearing Officer

ORDER

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

ADOPT
 REJECT
 MODIFY

Dated: 11/3/15


 Macky McCleary
 Director

Entered this day as Administrative Order Number 15-53 on 3rd of November, 2015.

NOTICE OF APPELLATE RIGHTS

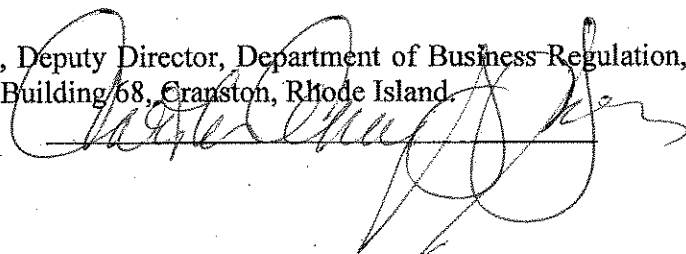
THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS 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 3rd day of November, 2015, that a copy of the within Order was sent by first class mail, postage prepaid to William Maaia, Esquire, Law Offices of William C. Maaia & Associates, 349 Warren Avenue, East Providence, RI 02914
wcm@maaiialaw.com and

Robert E. Craven, Esquire, City of East Providence, Assistant Solicitor, 7405 Post Road, North Kingston, RI 02852
bob@robertcraven.com and

by hand-delivery to Maria D'Alessandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 68, Cranston, Rhode Island.

A handwritten signature in black ink, appearing to read "Maria D'Alessandro", is written over a horizontal line. The signature is cursive and somewhat stylized.