

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: July 22, 2013)

THE RACK, INC. d/b/a SMOKE :
 :
 V. :
 :
 PROVIDENCE BOARD OF :
 LICENSES, ANDREW ANNALDO, :
 ARYS BATISTA, EVERETT BIANCO, :
 JEFFREY WILLIAMS, and EVELYN :
 MAYNARD, in their capacities as :
 members of the Providence Board of :
 Licenses; and the DEPARTMENT OF :
 BUSINESS REGULATION, LIQUOR :
 CONTROL ADMINISTRATOR, and :
 PAUL MCGREEVY, in his capacity as :
 the Liquor Control Administrator and :
 the Director of the Department of :
 Business Regulation :

C.A. No. PC 2011-5909

DECISION

STERN, J. Before the Court is Plaintiff The Rack, Inc. d/b/a Smoke’s (Plaintiff or The Rack) request for declaratory judgment. The Rack’s request for declaratory judgment arises in the context of its administrative appeal from a decision of Defendant Providence Board of Licenses (PBL), which imposed a \$2000 administrative fine on The Rack for certain violations of its liquor license. In its request for declaratory judgment, The Rack seeks a determination from this Court as to where proper jurisdiction lies for the appeal of a decision from a local licensing board that imposes an administrative penalty on a liquor licensee.

I

Facts and Travel

On July 11, 2011, police responded to reports of an unruly crowd outside premises operated by The Rack, in Providence. (PBL Decision at 1.) At the time of the disturbance, The Rack held “Class BV/BX Liquor, Food Dispenser, Holiday and Entertainment Licenses” issued by the PBL. (Aug. 4, 2011 Letter from PBL.) On July 14, 2011, the City of Providence requested that the PBL issue a show cause notice to The Rack so that The Rack could demonstrate why its licenses “should not be suspended, revoked, or a fine be issued” as a result of three alleged violations stemming from the July 11, 2011 disturbance.¹ (July 14, 2011 Letter to PBL.)

On September 22, 2011, a show cause hearing (the Hearing) was held on the matter before the PBL. (Tr., Sept. 22, 2011.) Following the Hearing, the PBL found sufficient evidence to conclude that The Rack committed the three alleged violations. On October 6, 2011, the PBL’s decision was read into the record. (Tr., Oct. 6, 2011.) Subsequently, on October 19, 2011, the PBL informed The Rack of its decision by letter. (Oct. 19, 2011 Letter from PBL.) The PBL imposed an aggregate penalty for the three violations totaling \$2000. Id. The PBL’s October 19, 2011 letter stated:

“If you are aggrieved by this decision, you have ten (10) days from the date of this letter to take an appeal to the Department of Business Regulation, State Liquor Control Administration.” Id.

¹ The alleged violations were:

- “1. That Licensee had operated the premises in contravention of the public interest;
2. That the Licensee had been unable to maintain efficient and affirmative supervision of patrons to the extent necessary to maintain order; and
3. That Licensee violated the conditions of the license.”

On or about October 7, 2011, The Rack filed a notice of appeal with the Liquor Control Administrator at the Department of Business Regulation (the DBR). (DBR Order at 1, Nov. 17, 2011.) The parties agree that before the DBR issued a formal written order of dismissal, The Rack attempted to withdraw its appeal from the DBR. The Rack's attempted withdrawal was apparently predicated on its belief that there was a unanimous understanding between all parties that, as a jurisdictional matter, the DBR does not review fines imposed by local licensing boards. In tandem with its attempted withdrawal of appeal from the DBR, on October 14, 2011, The Rack also filed an administrative appeal of the PBL's decision in this Court, pursuant to G.L. 1956 § 42-35-15.

On or about November 7, 2011, the PBL then moved to dismiss The Rack's administrative appeal in Superior Court. The PBL's motion to dismiss was, in part, based on the premise that in attempting to withdraw its appeal from the DBR and appealing directly in Superior Court, The Rack had ignored the mandatory appeal procedure for review of local liquor licensing decisions, as set forth in G.L. 1956 § 3-7-21.² The Rack states that prior to the PBL's motion to dismiss, it had not been notified of the PBL's disagreement with the view that the DBR does not review licensing board fines for jurisdictional reasons. As a result, The Rack states that it requested the DBR to void its attempted withdrawal, seeking either a hearing or dismissal by the DBR of its appeal.

² The PBL rested its motion to dismiss on the following three grounds:

- “(1) that the [PBL] is not an ‘agency’ as defined under R.I. Gen. Laws § 42-35-1 and therefore not subject to the Rhode Island Administrative Procedures Act pursuant to R.I. Gen. Laws § 42-35-1.1;
- (2) that [The Rack] had ignored the mandatory appeal procedures under R.I.G.L. § 3-7-21, and therefore the Superior Court lacks subject matter jurisdiction pursuant to the exhaustion doctrine; and
- (3) that [The Rack] had failed to name an indispensable party to the action, namely [the DBR].”

Subsequently, on November 17, 2011, the DBR issued a formal written Order of Dismissal (the DBR Order), finding that it lacked jurisdiction to hear The Rack's appeal. The DBR Order discussed the procedural posture of The Rack's appeal with the DBR and stated the DBR's position that, pursuant to § 3-7-21, "appeals of local liquor licensing authorities are limited to suspension or revocation of a liquor license." The DBR Order also restated the DBR's position that the DBR does "not have jurisdiction over appeals of administrative penalties," citing its 2009 Administrative Order, Friendship, Inc. d/b/a Club Ultra v. City of Providence Licensing Bd., DBR No. 08-L-0289 (Jan. 8, 2009) (hereinafter, the Friendship Order). In addition, the DBR Order stated that the DBR may review other licensing matters on appeal, but only "when the matter rises to a level that impacts its broad authority over statewide licensing."

On November 18, 2011, The Rack filed a Petition for Issuance of a Writ of Certiorari (the Certiorari Petition), seeking review of the PBL's administrative fine by the Rhode Island Supreme Court because, it contended, "the relief sought . . . is not available in any other court and cannot be determined through any other appellate process." (the Certiorari Petition.) Pending review of the Certiorari Petition, The Rack and the PBL stipulated to stay any further action on The Rack's administrative appeal in this Court. (Plaintiff-PBL Stipulation.)

The Supreme Court subsequently denied The Rack's Certiorari Petition and The Rack's instant action in this Court recommenced. On May 21, 2012, The Rack then filed an Amended Complaint, adding a count for declaratory judgment and naming the DBR as a co-defendant. In its count for declaratory judgment, The Rack seeks a ruling from this Court as to whether the DBR is the appropriate body to hear appeals of fines imposed by local liquor licensing authorities.

On October 2, 2012, The Rack submitted a memorandum in support of its request for declaratory judgment. The PBL submitted a memorandum in opposition to The Rack's request on January 28, 2013. Because the circumstances of this case make it one of first impression, the PBL has agreed to not request dismissal of The Rack's petition for declaratory judgment, notwithstanding its position that The Rack's underlying administrative appeal in Superior Court should be dismissed. In its Answer to The Rack's Amended Complaint, the DBR requested that "this appeal as it relates to any Decision of the Department of Business Regulation in this matter be denied and dismissed." The DBR has also submitted a "Memorandum of Law in Response to the Plaintiff's Administrative Appeal," which maintains that the DBR's "power to review fines and sanctions . . . is discretionary" and that its exercise of discretion in this case was appropriate.

II

Standard of Review

It is well settled that this Court has discretion to grant or deny declaratory relief under the Uniform Declaratory Judgments Act, G.L. 1956 § 9-30-1, et seq. (the UDJA). Town of Barrington v. Williams, 972 A.2d 603, 608 (R.I. 2009). Section 9-30-1 defines the scope of the UDJA, including the scope of this Court's jurisdiction:

"The superior or family court upon petition, following such procedure as the court by general or special rules may prescribe, shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree."

The Superior Court's power in granting or denying discretionary relief "is broadly construed, to allow the trial justice to 'facilitate the termination of controversies.'" Bradford Assocs. v. Rhode

Island Div. of Purchases, 772 A.2d 485, 489 (R.I. 2001) (quoting Capital Props., Inc. v. State, 749 A.2d 1069, 1080 (R.I. 1999)). Factors that may be considered in determining whether declaratory relief will be granted include “the existence of another remedy, the availability of other relief, the fact that a question may readily be presented in an actual trial, and the fact that there is pending, at the time of the commencement of the declaratory action, another action or proceeding which involves the same parties and in which may be adjudicated the same identical issues that are involved in the declaratory action.” Berberian v. Travisono, 14 R.I. 269, 273, 332 A.2d 121, 123-24 (1975). A court’s decision to grant a remedy under the UDJA is “purely discretionary.” Woonsocket Teachers’ Guild Local Union 951, AFT v. Woonsocket School Comm., 694 A.2d 727, 729 (R.I. 1997). When the Superior Court exercises its discretion, its decision “should not be disturbed unless it clearly appears that such discretion has been improperly exercised or that there has been an abuse thereof.” Id.

III

Analysis

As a preliminary matter, it is clear from the memoranda submitted by the parties, along with the attached exhibits, that genuine confusion exists concerning the DBR’s jurisdiction to review decisions of local licensing boards that impose administrative fines on liquor licensees. Although the Plaintiff’s instant request for declaratory judgment arises in tandem with an administrative appeal of a decision of the PBL, there is no dispute that the DBR has also issued a formal written order of dismissal on the matter, in which the DBR disclaimed jurisdiction to review the PBL’s decision. Moreover, it is clear from the memoranda and supporting materials that the DBR’s position is that the DBR does not, in general, have jurisdiction to review administrative fines of this nature. While the Plaintiff agrees with the DBR’s position

concerning jurisdiction, the PBL plainly does not. The PBL's disagreement is evident not only in the PBL's memorandum and supporting exhibits, but also in the statement of appellate rights that appeared in its letter of October 19, 2011, which notified the Plaintiff in writing of the PBL's decision to impose an administrative fine.

By ruling on the Plaintiff's request for declaratory judgment at this time, the Court seeks to "facilitate the termination of controversies" not only in this case, but also with a view toward clarifying questions of the DBR's appellate jurisdiction that may again arise in the future. Bradford Assocs., 772 A.2d at 489. The question presented is also not one that may be definitively resolved in another forum, given our Supreme Court's denial of the Plaintiff's Certiorari Petition. See Berberian, 14 R.I. at 273, 332 A.2d at 123-24. Additionally, the Plaintiff's request for declaratory judgment involves a pure question of law, presenting no questions for adjudication in an "actual trial." Id.; see also Rossi v. Emps.' Ret. Sys. of Rhode Island, 895 A.2d 106, 110 (R.I. 2006) (finding questions of law to be appropriately determined by the Court). For these reasons, the Court is satisfied that ruling on the Plaintiff's request for declaratory judgment at this juncture is appropriate. See Bradford Assocs., 772 A.2d at 489 (stating that the Superior Court's power to issue a declaratory judgment ruling is "broadly construed").

A

DBR's Jurisdiction Under § 3-7-21

The DBR is in agreement with the Plaintiff that § 3-7-21 does not expressly grant the DBR jurisdiction to review monetary fines imposed by local liquor licensing boards such as the PBL. In contrast, the PBL argues that § 3-7-21, when read in the full context of the statutory scheme and its underlying legislative intent, "implicitly authorizes review of fines issued by [a]

local licensing board.” The declared purpose of Title 3 of the Rhode Island General Laws is “the promotion of temperance and . . . the reasonable control of the traffic in alcoholic beverages” in this State. Sec. 3-1-5. Section 3-7-21 therein titled, “Appeals from the local boards to director,” states in relevant part:

“(a) Upon the application of any petitioner for a license, or of any person authorized to protest against the granting of a license . . . or upon the application of any licensee whose license has been revoked or suspended by any local board or authority, the director has the right to review the decision of any local board, and after hearing, to confirm or reverse the decision of the local board in whole or in part, and to make any decision or order he or she considers proper, but the application shall be made within ten (10) days after the making of the decision or order sought to be reviewed.”

When this Court engages in statutory interpretation, the “ultimate goal is to give effect to the purpose of the act as intended by the Legislature.” Labor Ready Northeast, Inc. v. McConaghy, 849 A.2d 340, 344 (R.I. 2004) (quoting Mottola v. Cirello, 789 A.2d 421, 423 (R.I. 2002)). “Nevertheless, when an administrative agency interprets a regulatory statute that the General Assembly empowered the agency to enforce, a court reviewing the agency’s interpretation of the statute . . . must accord that interpretation ‘weight and deference.’” Id. at 344-45 (quoting In re Lallo, 768 A.2d 921, 926 (R.I. 2001)). Moreover, when the provisions of a statute are “unclear or subject to more than one reasonable interpretation, the construction given by the agency charged with its enforcement is entitled to weight and deference as long as that construction is not clearly erroneous or unauthorized.” In re Lallo, 768 A.2d at 926. In the federal administrative law context, the United States Supreme Court has recently held that an agency’s interpretation of the scope of its own jurisdiction or statutory authority is no less entitled to deference based on the same principles. See City of Arlington v. FCC, 133 S. Ct. 1863, 1871-73 (2013).

Here, the DBR's interpretation of § 3-7-21 is presumptively entitled to deference because the DBR is charged with enforcement of the statute. Specifically, § 3-1-1 defines "director" as it appears in § 3-7-21 to mean "director of the department of business regulation." Section 3-7-21 is, therefore, clearly a regulatory statute that the DBR is empowered to enforce, and the DBR's interpretation of § 3-7-21 is entitled to weight and deference as long as the DBR's construction is not clearly "erroneous or unauthorized." In re Lallo, 768 A.2d at 926.

The DBR maintains that § 3-7-21 expressly grants the DBR jurisdiction to review the decisions of local licensing authorities in only three specific situations: (1) when an application for a license is denied by a local licensing board; (2) when a licensee has had a license revoked or suspended; and (3) when a license is granted despite the protestations of those qualified to do so. The DBR's position is that because § 3-7-21 grants the DBR jurisdiction to review local licensing board decisions only in these three situations, § 3-7-21 does not grant the DBR jurisdiction to review administrative fines or penalties imposed by local liquor licensing authorities.

The Court finds that the DBR's interpretation of § 3-7-21 is both entirely reasonable and well supported by Rhode Island Supreme Court precedent. Our Supreme Court has agreed that § 3-7-21 "sets out the right of appeal from the local licensing board to the [DBR] to only three groups of individuals." See Earle v. Pastore, 511 A.2d 989, 990 (R.I. 1986) (identifying the three groups as: "(1) applicants who have been denied a license, (2) licensees who have had their licenses revoked or suspended, [and] (3) any person . . . authorized to protest against the granting of a license"). Given that our Supreme Court has expressly affirmed the scope of the DBR's jurisdiction to review the decisions of local licensing authorities under § 3-7-21, the PBL entirely fails to show how the DBR's interpretation of § 3-7-21 is "clearly erroneous or unauthorized."

In re Lallo, 768 A.2d at 926. The PBL’s argument as to the proper interpretation of § 3-7-21 ignores the principle that an agency’s interpretation of a statute it administers is entitled to deference. Id. Moreover, even if the PBL’s interpretation of the rights of review granted by § 3-7-21 is reasonable, it would not be sufficient to overcome the deference due the DBR’s interpretation, since the DBR’s interpretation is also reasonable and since any role the PBL might arguably play in administering § 3-7-21 is clearly subordinate to the DBR. Id.; see also Baginski v. Alcoholic Beverage Comm’n, 62 R.I. 176, 4 A.2d 265, 268 (1939) (establishing the DBR’s predecessor agency “as, in effect, a state superlicensing board” with “the right in its sound discretion to hear cases de novo either in whole or in part”). For the foregoing reasons, the DBR’s interpretation of § 3-7-21, under which § 3-7-21 does not grant the DBR jurisdiction to review administrative fines imposed by local liquor licensing boards, is entitled to deference.

B

DBR’s Implied Authority Under § 3-5-21

The Plaintiff suggests that because the DBR lacks authority under § 3-7-21 to review administrative fines imposed by local liquor licensing boards, the DBR’s authority to review such fines should not be inferred under any circumstances. In contrast, the DBR argues that it is statutorily permitted to review local licensing board fines, but that its authority to do so is only “implied,” and does not derive completely from § 3-7-21.³ Notwithstanding this position, the DBR argues that it is not obligated to review administrative fines imposed by local licensing boards.

Substantive review by the DBR of local licensing board decisions that impose administrative fines on liquor licensees is not without precedent. See Town of New Shoreham v.

³ As discussed above, the PBL disagrees with the view that the DBR lacks authority to review fines imposed by local licensing boards under § 3-7-21.

Racine, Nos. WC-1991-0686, WC-1992-0099, 1992 WL 813547 (R.I. Super. Ct. Apr. 16, 1992) (affirming DBR’s reversal of a fine imposed on licensee by local licensing board). In Racine, the Superior Court found that the DBR had jurisdiction pursuant to § 3-5-21 to hear the appeal of a licensee subjected to an administrative fine of \$100 by a decision of the New Shoreham Board of Liquor License Commissioners. Id. at *3. Significantly, the Racine decision held that the Legislature’s specific grant of appellate jurisdiction over cases pursuant to § 3-7-21 did not prevent the DBR from exercising appellate jurisdiction, pursuant to § 3-5-21, over fines imposed by local licensing authorities.

Section 3-5-21, titled “Revocation or suspension of licenses--Fines for violating conditions of license,” in relevant part, provides as follows:

“(a) Every license is subject to revocation or suspension and a licensee is subject to fine by the board, body or official issuing the license, or by the department or by the division of taxation, on its own motion, for breach by the holder of the license of the conditions on which it was issued or for violation by the holder of the license of any rule or regulation applicable, or for breach of any provisions of this section.”⁴ (Emphasis added.)

In matters of statutory interpretation, this Court’s “ultimate goal” is to “give effect to the purpose of the act as intended by the Legislature.” Webster v. Perrotta, 774 A.2d 68, 75 (R.I. 2001). This Court finds that under § 3-5-21, it was the Legislature’s unambiguous intent to grant the DBR independent authority to impose a fine upon a licensee who has violated a condition of his or her license.

In addition, the DBR’s authority to supervise and control the alcoholic beverage industry in this State as a “superlicensing” body is long and well established. See Hallene v. Smith, 98 R.I. 360, 364, 201 A.2d 921, 924 (1964); Tedford v. Reynolds, 87 R.I. 335, 342, 141 A.2d 264,

⁴ Section 3-1-1 defines “department” as it appears in § 3-5-21 to mean “the department of business regulation.”

268 (1958) (“It is now well established in this state that under existing law the liquor control administrator may on the applicant’s appeal hear the case de novo in whole or in part as a superlicensing board.”); Baginski, 62 R.I. 176, 4 A.2d at 267 (“Running through the entire act is the central idea that the traffic in intoxicating liquors is a problem that is statewide; and correspondingly, that state supervision and control . . . alone can adequately cope with it.”). The Court finds that if the DBR were denied the ability to review the decisions of local licensing boards that impose administrative fines on liquor licensees, it would effectively strip the DBR of its statutory authority under § 3-5-21 to make meaningful independent assessments as the State’s superlicensing body as to the appropriateness of any such fines. Accord Racine, 1992 WL 813547 at *3 (“The [DBR] cannot be denied authority to do what [it] could have done in the first instance pursuant to 3-5-21.”). In other words, denying the DBR jurisdiction to conduct a review of fines imposed by local liquor licensing authorities would defeat the underlying purpose of the legislation because the DBR has independent authority to impose such fines under § 3-5-21 and because local licensing boards clearly play a subordinate role to the DBR in the administration of this State’s regulation of the alcoholic beverage industry. Webster, 774 A.2d at 75; Baginski, 62 R.I. 176, 4 A.2d at 267. For the foregoing reasons, the Court finds that the DBR has jurisdiction to review administrative fines imposed by local liquor licensing boards pursuant to its implied authority under § 3-5-21.

C

DBR’s Discretion to Review Fines Imposed by Local Licensing Boards

The DBR argues that, although it has authority to review administrative fines imposed by local licensing boards, it has no duty to provide such review when sought by a licensee who is aggrieved by the decision of a local licensing board. The DBR's argument rests on its analogy to § 3-7-21, which states that the DBR has "the right to review the decision of any local board." (Emphasis added.) The DBR argues that in using this language, the Legislature "manifested its intent to create discretionary rather than mandatory review."

As a preliminary matter, the Court has found that the DBR's authority to review administrative fines imposed by local licensing boards does not stem from § 3-7-21, but rather from § 3-5-21. Moreover, it is the Court's understanding that the DBR does not argue that its jurisdiction to review such decisions stems from § 3-7-21. If this were the DBR's position, it would run contrary to our Supreme Court's decision in Earle v. Pastore, 511 A.2d at 990, and be "clearly erroneous or unauthorized," thus not entitled to the deference ordinarily due agency interpretations of regulations that the agency is charged with administering. In re Lallo, 768 A.2d at 926. Therefore, the Court is not persuaded by arguments interpreting § 3-7-21 when the issue at hand is the scope of the DBR's discretion to deny appeals for review made pursuant to § 3-5-21.

Moreover, it is not clear that under § 3-7-21, the DBR has unyielding discretion to haphazardly deny review to aggrieved parties who properly seek review under that statute. In Hallene, for example, our Supreme Court held that "[w]hen § 3-7-21 is read in its entirety, it discloses by necessary implication a legislative intent to provide licensees with a de novo hearing of the cause rather than an appellate review of the decision [of a local licensing board]."⁵ 98 R.I. at 364, 201 A.2d at 924. In addition, the Supreme Court has held that § 3-7-21 is "intended to

⁵ Although Hallene was decided almost fifty years ago, there has been no change in the relevant language of § 3-7-21. Compare Hallene, 98 R.I. at 363, 201 A.2d at 923 with § 3-7-21.

provide licensees whose licenses had been revoked or suspended with a full and complete hearing on the merits before a state licensing authority.” Id. (citing Baginski, 62 R.I. 176, 4 A.2d 265). Moreover, “§ 3-7-21 contemplates . . . a proceeding to transfer or remove a cause from the jurisdiction of a local board to that of a state tribunal that may be invoked whenever a local board acts adversely to the license under consideration.” Hallene, 98 R.I. at 365, 201 A.2d at 925. These pronouncements by our Supreme Court belie the DBR’s contention that § 3-7-21 “gives the [DBR] the power to review without giving an enforceable right to prospective appellants.”

While Hallene suggests that licensee appeals properly made pursuant to § 3-7-21 require a de novo review before the DBR, the Court finds that the DBR’s implied jurisdiction to review administrative fines imposed by local boards pursuant to § 3-5-21 does not require the same level of fact-intensive reexamination of the issues. The Court finds it significant that § 3-5-21 expressly contemplates a shared power to adjudicate administrative fines between the DBR and the State’s various local licensing boards.⁶ As the basis of the DBR’s authority to review administrative fines imposed by local licensing boards, § 3-5-21 thus sets forth a comparatively co-equal framework in the context of administrative fines, notwithstanding the DBR’s longstanding history as a superlicensing body with authority to supervise and control the alcoholic beverages industry in this State. Tedford v. Reynolds, 87 R.I. at 342, 141 A.2d at 268; Baginski, 62 R.I. 176, 4 A.2d at 267. The Court therefore finds no reason to hold that in administering appeals from local licensing board decisions that impose administrative fines on liquor licensees, the DBR must apply a de novo standard of review.

⁶ Section 3-5-21(a) states: “[a] licensee is subject to fine by the board, body or official issuing the license, or by the department . . . for breach by the holder of the license of the conditions on which it was issued or for violation by the holder of the license of any rule or regulation applicable, or for breach of any provisions of this section.”

The DBR appears to recognize that when it exercises its implied jurisdiction to review administrative fines imposed by local licensing boards, it must enunciate a reasonable standard when granting or dismissing such appeals. The DBR argues that it “only exercises its implied powers of ‘general supervision’ when it determines that ‘the matter rises to a level that impacts its broad authority over statewide licensing.’” The DBR thus argues that it ordinarily dismisses monetary fine cases because, “[a]s a general matter, monetary fines do not rise to the level of state-wide interest requiring involvement of the ‘superlicensing’ authority.” The DBR argues that administrative fines imposed by local licensing agencies do not rise to the requisite level of statewide interest because such fines differ qualitatively from revocations, suspensions, transfers, and the grant or denial of licenses, all of which come under the auspices of § 3-7-21 for purposes of review by the DBR. The DBR seems to have maintained these positions since 2009, as the DBR cites its own Friendship Order of that year to support the contention that the DBR is entitled to dismiss appeals of administrative fines on jurisdictional grounds.

This Court finds that the DBR must review the record and articulate and document a substantial, non-arbitrary rationale for invoking its discretion to dismiss appeals of fines imposed by local licensing boards. Discretion “requires a sound judicial judgment made in the interests of justice and fair play, and may not be the subject of whim or caprice or fortuitous chance.” Fremming v. Tansey, 626 A.2d 219, 220-21 (R.I. 1993) (quoting Robalewski v. Superior Court, 97 R.I. 357, 360, 197 A.2d 751, 754 (1964)). Moreover, the DBR’s exercise of discretion in considering appeals from decisions of local licensing boards that impose administrative fines must be reasonable. See Thompson v. Town of E. Greenwich, 512 A.2d 837, 842 (R.I. 1986) (finding that when licensing boards impose conditions pursuant to § 3-5-21, they must act reasonably).

Given the current posture of this case, the Court is not convinced that the DBR's position concerning the scope of its discretion to dismiss appeals of locally-imposed administrative fines, on jurisdictional grounds, satisfies this standard. While the DBR may in principle be entitled to dismiss such appeals because they do not generally rise to a requisite level of statewide interest, the DBR must document a valid rationale to explain why fines imposed by local licensing boards do not amount to such a statewide interest. It is well settled that the DBR plays the preeminent role as a superlicensing body with authority to supervise and control the alcoholic beverage industry in this State. Tedford v. Reynolds, 87 R.I. at 342, 141 A.2d at 268; Baginski, 62 R.I. 176, 4 A.2d at 267. Moreover, § 3-5-21 is a statute duly enacted by the Legislature that imposes statewide limits on fines imposed by local licensing boards. See § 3-5-21(b) ("Any fine imposed pursuant to this section shall not exceed five hundred dollars (\$500) for the first offense and shall not exceed one thousand dollars (\$1,000) for each subsequent offense."). The Court presumes that the statutes in effect that set statewide limits on monetary fines are matters of statewide concern sufficient to invoke the DBR's appellate jurisdiction under § 3-5-21. If the monetary fine imposed on a licensee by a local liquor licensing board is within the statewide limits set by statute, then such a finding by the DBR may be a sufficient basis for the DBR to dismiss the licensee's appeal, in the DBR's reasonable discretion. In addition, in order to preserve a record suitable for review by this Court under the Administrative Procedures Act (the APA), the DBR must ensure that there is sufficient evidence in the record for this Court to conclude that any fine imposed does not violate the standard set forth in § 42-35-15(g). See Town of Burrillville v. Rhode Island State Labor Relations Bd., 921 A.2d 113, 118 (R.I. 2007) ("The Superior Court's review of an administrative decision is limited to a determination of whether or not legally competent evidence exists in the record to support the agency's decision."). The Court reiterates

its finding that when exercising implied authority pursuant to § 3-5-21 to review administrative fines imposed by local licensing boards, the DBR is under no obligation to hold a de novo hearing.

The PBL additionally requests a decision on its pending motion to dismiss, while the Plaintiff requests that this Court order the appropriate venue to adjudicate the Plaintiff's appeal of the PBL's decision. For its part, the DBR requests a dismissal of the Plaintiff's appeal, affirming the DBR Order. The Court's objective in issuing this declaratory judgment ruling is "to facilitate the termination of [this] controvers[y]." See Bradford Assocs., 772 A.2d at 489. From the record before the Court, it is not entirely clear what course of events led the Plaintiff to appeal a decision of the PBL in this Court prior to the formal dismissal of the Plaintiff's appeal by the DBR. Nor is it clear why the Plaintiff failed to appeal the DBR's formal order of dismissal in this Court pursuant to the APA. Due to the inadequacy of the record with regard to these procedural matters, the Court hereby orders the DBR to readjudicate the Plaintiff's appeal of the decision of the PBL, consistent with the requirements of this declaratory judgment ruling. Should the Plaintiff thereafter desire to appeal the decision of the DBR in this Court, the Plaintiff may do so pursuant to the APA.

D

Attorneys' Fees

The Plaintiff requests that this Court award attorneys' fees because, it argues, the PBL "failed to take any action to resolve the disputed jurisdiction with the [DBR] when it became aware of the same over two years prior to the filing of the instant action." While a Superior Court justice has authority to make an award of costs to a prevailing party, "such an award for costs should not include attorneys' fees unless such an award is authorized by a separate statute,

rule, or other law.” DiRaimo v. City of Providence, 714 A.2d 554, 557 (R.I. 1998). Here, it is not clear that the Plaintiff is or will be the prevailing party. Furthermore, the Plaintiff has not identified any statute, rule, or other law that would justify an award of attorneys’ fees in this case. Therefore, the Plaintiff’s request for attorneys’ fees is denied.

IV

Conclusion

The Court finds that proper jurisdiction for an appeal from a decision of a local licensing board that imposes an administrative fine on a liquor licensee lies with the DBR, pursuant to the DBR’s implied authority under § 3-5-21. The Court orders the DBR to readjudicate the Plaintiff’s appeal from the PBL’s decision, consistent with the requirements of this declaratory judgment ruling. The Plaintiff’s request for attorneys’ fees is denied. Counsel shall submit an appropriate judgment for entry.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: **The Rack, Inc. d/b/a Smoke v. Providence Board of Licenses, et al.**

CASE NO: **PC 2011-5909**

COURT: **Providence County Superior Court**

DATE DECISION FILED: **July 22, 2013**

JUSTICE/MAGISTRATE: **Stern, J.**

ATTORNEYS:

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