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

Wines and More, Inc. **Appellant,**	:	
v.	:	
City of Cranston, Board of Licenses, **Appellee,**	:	**DBR No.: 19LQ009**
and Lancran, Inc. **Intervenor.**	:	

DECISION

I. INTRODUCTION

On or about March 4, 2019, the City of Cranston, City Council Safety Services Committee ("Board") transferred a Class A liquor license from Phred's Drug, Inc. ("Phred's") to Lancran, Inc. ("Lancran"). Pursuant to R.I. Gen. Laws § 3-7-21, Wines and More, Inc. ("Appellant") appealed the Board's decision to the Director of the Department of Business Regulation ("Department"). The undersigned was designated by the Director of the Department to hear the appeal. The Appellant filed a motion to stay to which none of the parties objected. The stay was granted on March 21, 2019. Lancran was allowed to intervene in this matter.[1] The appeal hearing was held on May 20, 2019 at which time testimony was taken and parties made oral argument. The record was left open for submission of further exhibits[2] with the Appellant filing a closing brief. The record closed on June 26, 2019.

[1] Phred's did not intervene.
[2] The City submitted transcripts of the Board's hearings in this matter as part of its certified record for this appeal to the Department. They are considered to be City's Exhibit Seven (7)

II. JURISDICTION

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

III. ISSUES

Whether the transfer of the Class A liquor license from Phred's to Lancran is permissible under the applicable statutes.

IV. MATERIAL FACTS AND TESTIMONY

One of the exhibits contained copies of the City of Cranston's ("City") old liquor licensing index cards. On one card on the left, "Fernwood Drug" is crossed out and above, it says, "Phred's Drugs" and then to the right it says, "Class A," and below, it says, "See Michael J. Rossi, Jr." and below, "Transfer granted 2-5-79." Another card has "Rossi, Michael J. Jr." and "Fernwood Drug" crossed out and above that was typed in "Phred's Drug" and it then says, "Class A" and below that in different font, "Class E." The card also states, "Transfered (sic) granted 2-5-79" and "Transfer granted to corp. 3/2/81" and "Class E License granted: April 6, 1987." See City's Exhibit One (1). The minutes from the Board's February 5, 1979 meeting note that a "TRANSFER OF CLASS A (sic) (Retailer's) Alcoholic Beverage License" from Michael J. Rossi, Jr. d/b/a Fernwood Drugs to Michael J. Rossi, Jr. d/b/a Phred's Drugs was granted. See City's Exhibit Two (2). It was agreed by all parties that Phred's ceased operations on November 29, 2018.

At the Department hearing, Maria Wall ("Wall") testified on behalf of the Board. She testified that she has been the City Clerk since 1999 and in December, 2018, Phred's initially filed an application to go from an Class A/E license to a Class A license but then withdrew that application. She testified that Phred's relinquished its Class E license in December, 2018. She testified the hearing on March 4, 2019 was to transfer Phred's Class A license to Lancran which

was granted by the Board. She testified that she had found the index cards regarding this license but does not know if she found all the cards for the licensing index card system as it was in place before she became the City Clerk, and she never used that system. She testified that Phred's filed an application on October 15, 2018 to renews its license and to transfer its license. See City's Exhibit Three (3).[3] She testified that in 1999, there were 22 Class A licenses and now there are 19 and by statute, the City is capped at 13 so there are grandfathered Class A licenses.[4]

On cross-examination, Wall testified that when the renewal license for Phred's was issued on October 18, 2018, it was for a Class A/E license. See City's Exhibit Four (4) (copy of Phred's 2018-2019 license stating, "Class A/E license"). She testified that the 2018-2019 license says number 19 on it because it is the 19th Class A license. She testified that the Class E license is "O3" and that a clerk combined the licenses at one point but they were historically filed and are two (2) separate licenses. She testified that the 2017-2018 license for Phred's states that it is a "Class A/E license." See City's Exhibit Five (5). She testified that it is not specific licenses that are grandfathered but rather the number of licenses allowed so that if the Appellant gave up its Class A license, the City would drop down to being allowed to issue 18 Class A licenses.

At the Department hearing, Charles Rossi testified on behalf of Lancran. He testified that initially his father, Michael J. Rossi, Jr., operated as Fernwood Drug and then Phred's. He testified that his father bought a Class A license for $10,000 in 1979. He testified that Phred's came about

[3] One document is entitled "Application for Transfer of Beverage License" and "A" and "E" are both circled and Phred's is listed but no name is given for whom the license is to be transferred to and it is signed October 5, 2018. There is also a document that is an application for license by corporation that only has "A" circled and Phred's name and signature dated October 5, 2018.

[4] R.I. Gen. Laws § 3-5-16 provides for a statutory cap for Class A licenses based on the population of the town or city and provides for grandfathering of Class A licenses that existed prior to April 28, 1969. Any Class A license issued to or held by a Class E licensee pursuant to the provisions of R.I. Gen. Laws § 3-7-5 is included in and subject to the limit of Class A licenses. The transfer of any existing license from the holder of this license to another person shall not be considered as the issuance of a new license under this section.

in April, 1979 and it was news to him that the index cards said the Class E was granted in 1986[5] and he did not know how they operated without it but he did not dispute the card said the Class E was granted in 1987. On cross-examination by the Appellant, he testified that his father operated Fernwood Drug as a pharmacy and that Fernwood Drug purchased the original Class A license. He testified that he did not know whether Fernwood Drug had a Class E license.

At the Department hearing, Justin Grissen testified on behalf of Lancran. He testified that he is Lancran's vice president and it filed an application for the Class A license and does not own any and is not a subsidiary of any other liquor stores.

The parties appeared twice before the Board, before the transfer of said license was granted on March 4, 2019. At the December 3, 2018 Board meeting, Phred's represented it sold its pharmacy to CVS and intended to relinquish the Class E license but to retain the Class A license. On December 17, 2018, the Board reviewed the licensing index cards. Phred's indicated it would withdraw its application for transfer from Class A/E to a Class E and its new application for a Class A license. At the March 4, 2019 Board hearing, Lancran represented that Phred's closed in November 2018, sold the property, and in February, 2019 informed the Board that the Class E would be relinquished, and the intent was to transfer the Class A. Various Class A licenseholders spoke before the Board against the transfer arguing that a Class A/E license cannot be split.

V. DISCUSSION

A. Appeal Before the Department

The hearing before the undersigned is a *de novo* hearing so that the parties start afresh during the appeal. *A.J.C. Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984); and *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964) (Department's jurisdiction is *de novo* and the Department independently

[5] In his testimony, he testified 1986; though, the card said 1987.

exercises the licensing function). It is a matter of law that local licensing boards have broad discretion in deciding whether or not to grant a liquor license application. R.I. Gen. Laws § 3-5-19 governs the transfer or relocation of a liquor license. The transfer of a liquor license pursuant to R.I. Gen. Laws § 5-3-19 is treated the same as a new application. *Ramsay v. Sarkas*, 110 R.I. 590 (1972). See also *Island Beverages v. Town of Jamestown*, DBR No. 03-L-0007 (3/13/03). The Department has the same broad discretion as the local authority in the granting or denying of liquor licenses. *Bd. of Police Comm'rs v. Reynolds*, 86 R.I. 172, 177 (1975). Usually the Department will not substitute its opinion for that of the local but rather will look for relevant material evidence rationally related to the decision at the local level.[6]

However, this appeal is not related to the reasons for or against a transfer of license but whether the Board complied with the statutory requirements of a transfer of Class A liquor license in relation to a Class A/E license. The Department cannot uphold the granting or transfer of a liquor license that is statutorily invalid. The Courts have consistently recognized that the Department has broad and comprehensive state control over the traffic in intoxicating liquors. *Baginski v. Alcoholic Beverage Comm'n.*, 4 A.2d 265 (R.I. 1939). *Baginski* found that consistent with the Department's wide powers of regulation and supervision, it is, in effect, a "state superlicensing board." *Id.* at 268. See also *Tedford v. Reynolds*, 141 A.2d 264 (R.I. 1958).

B. Legislative Intent

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, "the

[6] See *101 North Main Street Condominium Association, Pamelee and Raymond F. Murphy, Jr. v. City of Providence, Board of Licenses*, DBR No.: 16LQ003 (8/9/16); and *Donald Kinniburgh d/b/a Skip's Place v. Cumberland Bd. of License Commiss'rs*, LCA–CU-98-02 (8/26/98).

Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. DEM,* 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

C. Relevant Statutes

Section 1.4.2 of the Department's regulation, 230-RICR-30-10-1 *Liquor Control Administration* ("LCA Regulation"), states in part as follows.

> Class A Issued to Class E License – Retail
>
> A. A Class A alcoholic beverage license issued to the holder of a Class E alcoholic beverage license pursuant to R.I. Gen. Laws § 3-7-5 is not transferable except to another holder of a Class E license.

R.I. Gen. Laws § 3-7-3 addresses Class A licenses and provides in part as follows:

> Class A license – Towns and cities of 10,000 or more. (a) In cities and towns having a population of ten thousand (10,000) or more inhabitants, a retailer's Class A license authorizes the holder to keep for sale and to sell, at the place described, beverages at retail and to deliver the beverages in a sealed package or container, which package or container shall not be opened nor its contents consumed on the premises where sold. The holder of a Class A license, if other than a person entitled to retail, compound, and dispense medicines and poisons, shall not on the licensed premises engage in any other business, keep for sale or sell any goods, wares, merchandise or any other article or thing except the beverages authorized under this license and nonalcoholic beverages. ***
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> ****
>
> (c) Any licenses issued under the provisions of this section prior to May 8, 1964 remains in full force and effect.

R.I. Gen. Laws § 3-7-13 provides for Class E licenses as follows:

> Class E license. A retailer's Class E license authorizes a person entitled to retail, compound, and dispense medicines and poisons to keep for sale and to sell at the place described in the license, beverages not to exceed one quart each for medicinal purposes and only upon the prescription of a licensed practicing physician. The license shall not authorize the doing of any act in violation of any law of the United States. The annual fee for the license is ten dollars ($10.00) to two hundred dollars ($200).

R.I. Gen. Laws § 3-7-5 provides as follows:

> Class A license issued to Class E licensee. It is permissible for the holder of a retailer's Class E license to hold a retailer's Class A license. No Class A license shall be granted to a holder of a Class E license unless the holder of a Class E license maintains, operates, manages, or conducts a drugstore. The drugstore shall be operated as a self-contained and independent establishment and shall not be located in, or be operated as, a part of any market, department store, or hardware store. For a Class A license as described, the holder of a Class E license shall pay the regular annual license fee and have the full privilege of a Class A license. Provided, however, the licensing authority for the city of Providence may relieve the holder of a Class E license from the requirement to maintain, operate, manage, or conduct a drugstore as a condition of the continued holding of a Class A license, issued to or renewed by said licensee.

D. Arguments

The Appellant argued that under regulatory and statutory provisions, Phred's Class A of its Class A/E license cannot be transferred to Lancran. The Appellant further argued that said Class A license was statutorily abandoned and that there are no grace provisions within the abandonment statute. The Appellant argued that the transfer should be found void and that the so-called Class A license should be found to be void.

Lancran argued that within the 90 day abandonment time limit, it filed an application for the transfer on February 15, 2019 so that the Board was aware of the transfer application so that there was no abandonment. Lancran argued that Court cases finding that a Class A of a Class A/E license could not be transferred separately can be distinguished because Phred's separately purchased a Class A license and had not been granted one by virtue of having a Class E license so it is not a "limited license" as referred to by the Courts.

E. Whether License Should have been Transferred

Based on the relevant statutes, regulation, and case law, a Class A license issued to a Class E holder cannot be transferred except to the holder of another Class E license. There is no distinction between a Class E licenseholder that obtained a Class A license by virtue of being a Class E licenseholder or a Class E licenseholder that obtained a Class A license by transfer after purchase of a Class A license.

Pursuant to R.I. Gen. Laws § 3-7-13, a Class E license is issued to a pharmacy. Pursuant to R.I. Gen. Laws § 3-7-5, a Class A liquor license may be issued to a Class E licenseholder. A Class A license issued to a Class E licenseholder is not transferable except to another holder of a Class E liquor license. See § 1.4.2 of the LCA Regulation. The Rhode Island Supreme Court found that to allow a Class A/E license to be split and the Class A liquor license be transferred independently would contravene the statutory scheme of fixed quotas for Class A liquor licenses. *Romano v. Daneker*, 78 R.I. 79 (1951). In 1985, the Liquor Control Administrator concluded that *Romano v. Daneker* was still the rule of law and found that an A/E license could not be split by the Class A license being transferred to an entity that did not hold a Class E license. See *E.P. Anthony, Inc. and Myra Braverman v. Providence Board of Licenses*, LCA-PR85-30 (12/20/85).

The Superior Court revisited the *Romano v. Daneker* holding in 1992 and found,

> An equally careful survey of every version of every beverage control act in this State since Repeal to the present demonstrates an intention on the part of the legislature that no class A license issued to the holder of a class E license may be transferred to anyone other than another holder of a class E license . . . [R.I. Gen. Laws] § 3-7-5.
>
> The hearing officer was clearly wrong as a matter of law when he concluded: 'The fact that King Drug Company has also held a class E license does not diminish the rights and powers that go with a full-privilege (sic) class A license.' Based on the legislative history of the act and the long-continued requirement of the operation of an independent and self-contained drugstore by the holder of such a license this Court finds that a class A license issued to the holder of a class E license is not transferable except to another holder of a class E license. The fact that the holders of the class A license in issue in this case have continuously and simultaneously since 1936 held a

> class E license demonstrates conclusively that the class A license was issued pursuant to the class E license and that the conditions pertaining to its issuance attach to any subsequent holder as a matter of law.
>
> The hearing officer erred when he incorporated the plaintiff's rationale that, 'The fact that the license is held in tandem with a class E license has no relevance . . .' Indeed, it is that very 'tandem' holding for fifty-five years which demonstrates that the class A license has been specially issued and renewed under the provisions of the law pertinent to class E licenses, and not according to the provisions of the law pertaining generally to class A license. *Barrington Liquors, Inc. v. City of East Providence Board of License Commission*, 1992 R.I. Super. LEXIS 36, 6-8 (3/20/92).

The Superior Court again addressed this issue in 1997 in *Pawtucket v. Department of Business Regulation*, 1997 Super. LEXIS 25 (9/27/97) that upheld a decision by the Liquor Control Administrator which disallowed the splitting of a Class A license from a Class E license and denied the transfer of said Class A liquor license. The Liquor Control Administrator had stated,

> The common theme in these cases is that after a traditional license is split, it is the nature of the existing or recently extinguished business operation seeking to sell the license that determines the status of the license, not how the license was acquired or the intention of the parties at the time of the split. *Beverage Hill Liquors v. Board of Licenses Commissioners City of Pawtucket*, LCA-PA95-17 (4/24/96) upheld by *Pawtucket*.

Pawtucket clearly rejected Lancran's argument regarding that a "special Class A license" issued to an already existing Class E license is treated differently from a Class A license "independently" acquired by an entity who then obtains a Class E license. In *Pawtucket*, a Class A license was transferred to an entity, Rhode Island Prescription Center ("RIPC"), on the same day that RIPC obtained a Class E license. The Court found that RIPC then renewed its "Class A&E license for over twenty years." The local authority granted the transfer of only the Class A license from RIPC. The Department overturned that transfer and the Court upheld the Department.

The appellants in *Pawtucket* argued that since RIPC had not obtained its Class A license in accordance with R.I. Gen. Laws § 3-7-5, the Class A license was fully transferrable. This is the same argument that Lancran is making about Phred's acquisition of its Class A license. The Court

reviewed the requirements of R.I. Gen. Laws § 3-7-3 which govern the operations of liquor stores, e.g. Class A licenseholders. The Department's decision found that the RIPC did not operate its store as Class A license within the confines of R.I. Gen. Laws § 3-7-3 but rather operated its store as a Class A/E license. In other words, because RIPC had a Class E pharmacy, it was able to sell liquor quite differently that those that only hold a Class A license. The Court found that there is a distinction between a holder of R.I. Gen. Laws § 3-7-5 Class A/E license and a holder of Class A license issued pursuant to R.I. Gen. Laws § 3-7-3.

While the statute might not designate a Class A/E license, even if Phred's obtained a Class A license separately from its Class E license, it operated at least since 1987 as a Class A/E license. There is no evidence that Phred's was operating its Class A license separately from the Class E license as a R.I. Gen. Laws § 3-7-3 license. Indeed, the assumption behind the granting of this transfer by the Board is that somehow the Class A license maintains its individual characteristic even when being used with a Class E. That is not the case. The City's records indicated that Phred's obtained its Class E license after it obtained its Class A license. It was noted by Mr. Rossi that his father operated Phred's as a drugstore and before that operated Fernwood Drugs. It could be that Cranston's records are incomplete and that Phred's and/or Fernwood Drugs had been issued a Class E license earlier than 1987. Nonetheless, for purposes of this decision, Phred's has had a Class A license and a Class E license since at least 1987 and operated them together.

In *City of Cranston and A. Jeffrey Bucci d/b/a Plainfield Pike Liquors*, DBR No. 01-L-0050 (8/9/01), the Department found that a Class A license had been statutorily abandoned and that Cranston was over the statutory cap for Class A licenses so could not issue a new one. The decision also found that even if the license had not been abandoned, said Class A license could not

be transferred as it would be illegal since that Class A license could not have been separated or split or from the Class A/E license.

The Department addressed the splitting of Class A/E licenses in greater detail in its decision, *The Davinci Center for Community Progress, Inc., Complainant and Department of Business Regulation, Intervenor v. Board of Licenses, City of Providence and Green Point Liquors*, DBR No. 01-L-0096 (5/3/02). This decision found a Class A liquor license within the City of Providence to be null and void and declared the transfer of said license to be invalid. The bases for the Department's decision was that the Class A license had been statutorily abandoned and that there had been an illegal Class A/E split. The Court in *Green Point Liquors, Inc. v. McConaghy*, 2004 R.I. Super. LEXIS 148 upheld the Department's decision on the issue of statutory abandonment and since the license was abandoned did not address the Class A/E split.

The *DaVinci* case has the same fact pattern as this matter. In *DaVinci*, a Class A license was transferred in 1960 to a Class E licenseholder and the pharmacy held both a Class A and Class E license from 1960 to 1994. The decision found on that basis, the license became a Class A/E license. The decision found that even if the Class A license was an independent Class A liquor license prior to the 1960 transfer, that did not stop a Class A/E merger. As *Barrington* found, it is the tandem holding of licenses that is important and the renewal of them together that demonstrates they are being used together. A full privilege Class A liquor license merges into a Class E license upon its transfer and the holding of the license in tandem. *Barrington*. Indeed, *Beverage Hill*, *supra*, stated that in order to determine the status of a license, it is necessary to inquire into the nature of the existing or recently extinguished business operation at the time the license was split (rather than what could have been the intent when a license was acquired).

A review of the case law reveals that it makes no difference how a Class A liquor license is transferred to an existing Class E licenseholder. See *Romano* (Class E licenseholder acquired new Class A license when permitted by statute); *Barrington* (Class A issued to Class E licensee); and *Pawtucket* (Full Class A license transferred to entity on same day it obtained a Class E license).

Phred's operated as a Class A/E license. It was a pharmacy with a Class A license and operated as such. There is no evidence otherwise. It was represented to the Board that the Class E business was sold to CVS. As has been held by the Department and the Court, it makes no difference how a Class A license is acquired by the Class E licensee as once they operate together, they are a Class A/E license with different rights and responsibilities from a Class A license and as such cannot be split with the Class A being transferred to any entity other than a Class E.

F. Abandonment

The parties agreed that Phred's ceased operating on November 28, 2018. R.I. Gen. Laws § 3-5-16.1[7] provides that a Class A liquor license shall be cancelled by a city or town if a Class A liquor licensee has abandoned its license or ceased operations for over ninety (90) days or up to one (1) year due to illness, death, condemnation of business premises, fire or other casualty. The Appellant argued that if a Class A license was found to exist, it was abandoned as it was over 90 days from Phred's closing to the Board's grant of transfer. Lancran argued that the Board had notice of the intent to transfer the license prior to the end of the 90 day period. The statute provides for some exceptions, but none are applicable to this matter. The statute is not discretionary but

[7] R.I. Gen. Laws § 3-5-16.1 provides as follows:

> Revocation of abandoned Class A licenses. – Whenever it comes to the attention of any local licensing authority as defined in § 3-5-15 that the holder of a Class A license has abandoned the premises from which the licensee has been conducting his or her business or has ceased to operate under the license for a period of ninety (90) days or more then after hearing with due notice to the licensee the local licensing authority shall cancel the license; provided, that the authority may grant a reasonable period of time, not to exceed one year, to the licensee within which to reestablish the business where the abandonment or cessation of operating was due to illness, death, condemnation of business premises, fire or other casualty.

rather is mandatory. *Green Point* and *Marty's Liquors*, 1985 R.I. Super. LEXIS 134. When Phred's stopped operating, it no longer had a Class A license as it no longer operated as a Class E pharmacy. However, as the Class A license is null and void, it did not exist to be abandoned.

G. Equitable estoppel

During the Board's discussions, questions of equity were raised and it was argued that it would be unfair not to allow Phred's to sell the Class A license. However, equitable principles are not applicable to an administrative procedure.[8] See *Nickerson v. Reitsma*, 853 A.2d 1202 (R.I. 2004) (Supreme Court vacated a Superior Court order that had vacated an agency sanction on so-called "inherent equitable powers").

On rare occasions, the Rhode Island Supreme Court has found that the doctrine of *equitable estoppel* (as opposed to generic equitable considerations) may apply against public agencies. The Supreme Court has held as follows:

> in an appropriate factual context the doctrine of estoppel should be applied against public agencies to prevent injustice and fraud where the agency or officers thereof, *acting within their authority*, made representations to cause the party seeking to invoke the doctrine either to act or refrain from acting in a particular manner to his [, her, or its] detriment. *Romano v. Retirement Board of the Employees' Retirement System of the State of Rhode Island*, 767 A.2d 35, 39 (R.I. 2001) (citation omitted) (italics in original).

Therefore, for a party to obtain *equitable estoppel* against an agency, it must show that a "duly authorized" representative of the agency made affirmative representations within the scope of his/her authority, that such representations were made to induce the plaintiff's reliance thereon, and that the plaintiff actually and justifiably relied thereon to its detriment. *Casa DiMario, Inc. v. Richardson*, 763 A.2d 607, 612 (R.I. 2000). See also *El Marocco Club, Inc. v. Richardson*, 746 A.2d 1228, 1234

[8] Not everyone would agree with what is "fair." As one Class A licensee argued before the Board, it was unfair for an entity to benefit from holding a Class A/E license and be able to operate much differently from Class A licensees and then be able to convert the license into a separate Class A license in order to sell it.

(R.I. 2000) ("key element of an estoppel is intentionally induced prejudicial reliance.") (internal citation omitted).

However, a government entity and its representatives do not have "any implied or actual authority to modify, waive, or ignore applicable state law that conflicts with its actions or representations." See *Romano*, at 40. *Romano* found that the "doctrine of *equitable estoppel* should not be applied against a governmental entity like the board when, as here, the alleged representations or conduct relied upon were *ultra vires* or in conflict with applicable law." *Id.* at 38. See also *Technology Investors v. Town of Westerly*, 689 A.2d 1060 (R.I. 1997). Moreover, "any party dealing with a municipality 'is bound at his own peril to know the extent of its capacity.'" *Casa DiMario*, at 612 (internal citation omitted). See also *Tidewater Realty, LLC v. State, Providence Plantations*, 942 A.2d 986, 995 (R.I. 2008) (well-settled principle that a municipal employee cannot bind the city without possessing the actual authority to do so and apparent authority and reliance on the part of the plaintiff are not adequate). Furthermore, "'[a]s a general rule, courts are reluctant to invoke estoppel against the government on the basis of an action of one of its officers.'" *Casa DiMario,* at 612. (internal citation omitted).

In addition, the party must make a requisite showing that *equitable estoppel* should be applied to prevent fraud and injustice. See *Guilbeault v. R.J. Reynolds Tobacco Company*, 84 F.Supp.2d 263 (D.R.I. 2000) (to prove fraud, plaintiff needs to show that defendant made a false or misleading statement of material fact that defendant knew to be false and it was made in order to deceive and that plaintiff detrimentally relied on statement).

The Department rejected *equitable estoppel* arguments in both the *DaVinci* and *City of Cranston and A. Jeffrey Bucci*. In upholding *DaVinci*, the Court in *Green Point* also found there

was no *equitable estoppel*.[9] In this matter, there was no evidence that the City/Board made any affirmative representations to Lancran to induce reliance on. Besides the fact that equitable powers are not applicable to administrative proceedings, it is rare that a party could show that a government entity made an affirmative representation that was relied on and additionally, a government official cannot waive law.[10]

H. Conclusion

As detailed above by statute, regulation, various Department decisions, and various Court decisions, a Class A license and a Class E license once operated as a Class A/E license cannot be split regardless of how the Class A license was initially acquired.[11] Thus, for reasons stated above, the so called Class A license should be revoked and be declared null and void and the transfer be declared null and void and the City ordered to cancel the license.

VI. FINDINGS OF FACT

1. On or about March 4, 2019, the Board transferred a Class A liquor license from Phred's Drug, Inc. to Lancran, Inc.

2. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed the Board's decision to the Director of the Department.

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[9] While Lancran did not raise the argument that it was a *bona fide* purchaser of this Class A license, it should be noted that the Court in *Pawtucket* and *Green Point* both rejected the *bona fide* purchaser argument. Not only is it an equitable argument, the issue before the Department is whether there is a license to be transferred. *Green Point* pointed out the purpose of liquor licensing statutes is not to create a private market for the transfer of liquor licenses outside of the Department's oversight. See *Marty's Liquors*, 1985 R.I. Super. LEXIS 134.

[10] At the Board and the Department hearing, reference was made to another Class A/E license in the City. What procedure was followed in that matter is not relevant to this matter as this is an issue of whether under the law the Class A license exists to be transferred. It should be noted that under a 2014 amendment to R.I. Gen. Laws § 3-7-5, only Providence has the right to relieve a Class A/E license of the requirement to run a pharmacy as a condition of holding a Class A license. P.L. 2014, ch. 17, § 1; P.L. 2014, ch. 18, § 1. Government officials do not have the power to waive the law. *Supra.*

[11] It is because of this law that R.I. Gen. Laws § 3-7-5 was amended so that in Providence, a Class A/E license can be treated differently.

3. A *de novo* hearing was held on May 20, 2019 before the undersigned sitting as a designee of the Director. The parties were represented by counsel who rested on the record.

4. The record was left open for submission of further exhibits with the Appellant filing a closing brief. The record closed on June 26, 2019.

5. Phred's obtained a Class A license in 1979. It apparently was operating as a drugstore at that time. However, the City's records indicate that Phred's obtained its Class E license in 1987. For the purpose of this decision, it was assumed that Phred's obtained a Class A license separately from its status as a Class E licenseholder and operated as a Class A/E license from 1987 onwards.

6. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

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 § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

2. A Class A/E license cannot be split or separated regardless of how the pharmacy acquired the Class A license. A Class A license that is part of a Class A/E only can be transferred to a Class E licenseholder.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the following:

For reasons stated above, the so-called Class A license should be revoked and found to be null and void and the transfer be declared null and void and the City ordered to cancel said license.

Dated: July 25, 2019

Catherine R. Warren
Hearing Officer

ORDER

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

_____ ADOPT
_____ REJECT
_____ MODIFY

Dated: 8/1/19

Elizabeth M. Tanner, Esquire
Director

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 2nd day of ~~July~~ August, 2019 that a copy of the within Order was sent by email and first class mail, postage prepaid, to the following: John M. Verdecchia, Esquire, Law Office of John M. Verdecchia, 400 Reservoir Ave., Ste 1C, Cranston, R.I. 02920 John.Verdecchia@verizon.net; Louis A. DeSimone, Jr., Esquire, 1554 Cranston Street, Cranston, R.I. 02889 ldatty@gmail.com, John S. DiBona, Esquire, 481 Atwood Avenue, Cranston, R.I. 02920 jdibona1@verizon.net; and by first class mail to Anthony W. Cofone, Esquire, Phred's Drug, Inc., 1140 Reservoir Avenue, Suite 8, Cranston, R.I. 02920[12] and by hand-delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 69-1, Cranston, RI 02920

[12] Notice is being provided Mr. Cofone as the registered agent for Phred's Drugs, Inc.