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

Eagle Social Club d/b/a Ava's Wrath, Appellant,	:
	:
	:
V.	:
	:
City of Providence, Board of Licenses,	:
Appellee.	:
887 T	•

DBR No.: 14LQ021

RECOMMENDATION AND INTERIM ORDER GRANTING AND DENYING MOTION FOR STAY AND NOTICE FOR DE NOVO HEARING

I. <u>INTRODUCTION</u>

Eagle Social Club d/b/a Ava's Wrath ("Appellant") seeks a stay of the City of Providence, Board of Licenses' ("Board") decision to suspend its liquor license¹ for the period of eight (8) days to be served May 9, 10, 16, 17, 23, 24, 30, and 31, 2014 and to pay an administrative penalty of \$7,000. The Board objected to the Appellant's motion. This matter came before the undersigned on May 7, 2014 in her capacity as Hearing Officer delegated by the Director of the Department of Business Regulation ("Department"). The Appellant appealed the Board's decision under R.I. Gen. Laws § 3-7-21 and R.I. Gen. Laws § 3-5-21.

The facts stated herein are based on the representations made by counsel for Appellant and the Board. There was no dispute regarding the fact that Appellant served under aged patrons. Counsel disagreed as to the appropriate sanctions and to some of the facts surrounding the underage violations.

¹ After the stay hearing, the Board's attorney forwarded its May 1, 2014 decision on this matter to the undersigned. Said decision references that it is a suspension of all licenses. However, the appeal to the Department only relates to any liquor licenses held by the Appellant.

The Appellant argued that the Appellant was using a scanner, magnifying glass, and ID book to verify identification cards and that such a use is similar to the provision of R.I. Gen. Laws § 3-8-6 that the use of a minor book is *prima facie* evidence that the licensee acted in good faith. The Appellant argued that the sanctions were excessive and while the Appellant acknowledged past underage violations, the issue is what should be done in future to prevent underage drinking.

The Board argued that a stay should not be granted because the Appellant did not have a strong likelihood of success on the merits as there was no evidence that the Appellant used the ID scanner on the night in question. The Board argued that the fake IDs were visually flawed. The Board argued that a suspension and penalty would not irreparably harm the Appellant as that would be economic harm but that Board would be irreparably harmed since it has an interest in protecting the public safety and prompt adjudication of violations.

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. DISCUSSION

Under *Narragansett Electric Company v. William W. Harsch et al.*, 367 A.2d 195, 197 (1976), a stay will not be issued unless the party seeking the stay makes a "strong showing" that "(1) it will prevail on the merits of its appeal; (2) it will suffer irreparable harm if the stay is not granted; (3) no substantial harm will come to other interested parties; and (4) a stay will not harm the public interest."

Despite the ruling in *Harsch*, the Supreme Court in *Department of Corrections v. Rhode Island State Labor Relations Board*, 658 A.2d 509 (R.I. 1995) found that *Harsch* was not necessarily applicable in all agency actions and the Court could maintain the *status quo* in its discretion when reviewing an administrative decision pursuant to R.I. Gen. Laws § 42-35-15(c). The issue before the undersigned is a motion to stay a Decision which is subject to a *de novo* appeal and does not fall under R.I. Gen. Laws § 42-35-15(c). Nonetheless, it is instructive to note that the *Department of Corrections* found it a matter of discretion to hold matters in *status auo* pending review of an agency decision on its merits.

A. Substantial Likelihood of Success on the Merits

Applying the criteria from *Harsch*, a stay will not be issued if the party seeking the stay cannot make a strong showing that it will prevail on the merits of its appeal. In the present case, the parties have not had an opportunity to support their respective positions because of time constraints. However, there is no dispute that there was underage service.

B. Irreparable Harm to the Appellant; Substantial Harm to Other Interested Parties; Public Interest

The Board (an interested party) has an interest in ensuring that liquor licensees – where the public gather - are compliant with their statutory obligations. In addition, there is a strong public protection interest. The Appellant objects to the length of the sanction.

The issue before the undersigned is whether the Board's sanctions are justified based on the facts at issue. This cannot be determined without a review of the record and/or further hearing. Any administrative penalty that could be reduced on appeal may easily be refunded to the Appellant.

V. <u>RECOMMENDATION</u>

Based on the forgoing, the undersigned recommends as follows:

- 1. The Appellant's motion for a stay of the administrative penalty be denied.
- 2. The Appellant's motion for a stay of the eight (8) day suspension be stayed provided that the Appellant uses its scanner, magnifying glass, ID book, and visual checks for all

ID's of patrons as represented at the stay hearing.

A *de novo* hearing will be held on <u>June 4, 2014 at 9:30 a.m.</u> at the Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston.²

Dated: MAY 7 2014

Eatherine R. Warren Hearing Officer

INTERIM 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: SMay 2011

Paul McGreevy Director

Entered this day as Administrative Order Number 14-24 on f^{\pm} of May, 2014.

 $^{^{2}}$ It is the responsibility of the Appellant to provide a stenographer for this hearing and after the appeal hearing to provide a copy of the transcript to the undersigned pursuant to R.I. Gen. Laws § 3-7-21.

NOTICE OF APPELLATE RIGHTS

THIS ORDER IS REVIEWABLE BY THE SUPERIOR COURT PURSUANT TO R.I. GEN. LAWS § 42-35-15(a) 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 A PETITION DOES NOT STAY ENFORCEMENT OF THIS ORDER.

CERTIFICATION

I hereby certify on this tay of May, 2014 that a copy of the within Order was sent by facsimile and first class mail, postage prepaid, to the following:

Sergio Spaziano, Esquire City of Providence Law Department 444 Westminster Street, Suite 220 Providence, RI 02903 FAX 401-680-5520

Peter Petrarca, Esquire 330 Silver Spring Street Providence, RI 02904 FAX 401-273-1111

and by hand-delivery to Maria D'Alessandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 69-1, Cranston, RI 02920