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

Eagle Park Independent Club, Appellant,	:	
v.	:	**DBR No.: 14LQ033**
City of Providence, Board of Licenses, Appellee.	:	

RECOMMENDATION AND INTERIM ORDER DENYING MOTION FOR STAY

I. INTRODUCTION

Eagle Park Independent Club ("Appellant") seeks a stay of the City of Providence, Board of Licenses' ("Board") June 5, 2014 decision to impose a $2,000 administrative penalty on its Class D liquor license for two (2) violations of R.I. Gen. Laws § 3-5-23. The Board objected to the Appellant's motion. This matter came before the undersigned on June 23, 2014 in her capacity as Hearing Officer delegated by the Director of the Department of Business Regulation ("Department").

Pursuant to R.I. Gen. Laws § 3-7-21, the Department does not have authority to hear appeals of fines. However, the Superior Court found that the Department has implied jurisdiction to review administrative fines imposed by local boards pursuant to R.I. Gen. Laws § 3-5-21. See *The Rack, Inc. d/b/a Smoke v. Providence Board of Licenses*, et al. CA No. PC 2011-5909 (7/22/13). The Court found that the Department did not have to apply a *de novo* standard of review to appeals of administrative fines but that the Department 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 and that the exercise of such discretion must be reasonable. The Court further found that if the monetary fine imposed on a licensee by a local liquor licensing board is within statewide limits set by statute then such a finding by the Department may be sufficient basis for the Department to dismiss a licensee's appeal. *Id.* at pp. 14-17.

R.I. Gen. Laws § 3-5-21(b)[1] provides that a first offense by a liquor licensee shall be fined $500 with the fine for each subsequent offence not to exceed $1,000. R.I. Gen. Laws § 3-5-21 establishes minimum fines for violations. Thus, the first offense is for any offense of the liquor licensing law and the subsequent offense is for any subsequent offense of the liquor licensing laws rather than pinpointing whether the violation is the first or subsequent offence of a specific statutory or regulatory violation. This interpretation is supported by the fact that the statute provides for a clean slate for all offenses if the licensee has not had any offenses for three (3) years. In other words, the first offense of the liquor statute cannot be fined more than $500 with each subsequent offense of the liquor licensing law not being fined more than $1,000 but if the licensee has no offenses for three (3) years, the clock is re-set and any violation would be considered a first offense.

At the hearing before the undersigned, the Board represented that the Appellant has had 18 violations of this kind (underage drinking) since 2004 and that there has never been a three (3) year gap to re-set the offenses. The Appellant represented that its client became a principal of this social club six (6) months ago. However, it has been the same club as the licensee since 2004. The Board

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[1] R.I. Gen. Laws § 3-5-21 states in part as follows:

> Revocation or suspension of licenses -- Fines for violating conditions of license. – (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.
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> (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. For the purposes of this section, any offense committed by a licensee three (3) years after a previous offense shall be considered a first offense.
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represented that the Appellant's new principal was involved in the Appellant's most recent violation in February, 2014 (though it did not specify whether that was a warning, administrative penalty, or suspension). The Board argued that the Appellant stipulated to the facts at the hearing before the Board. The Board and Appellant disputed whether the Appellant was represented by counsel in its hearing before the Board.

The Board argued that the Appellant had not made a showing under *Narragansett Electric Company v. William W. Harsch et al.*, 367 A.2d 195 (1976) that it had a strong to prevail on the merits. The Appellant argued it would suffer irreparable harm if forced to pay the administrative penalty and there was no safety issue. The Board argued that economic harm has not been found to be irreparable harm so that if it was determined that the administrative penalty should be reduced, the penalty could be returned to the Appellant. The Appellant argued that without a stay, there was no reason to allow for an appeal.

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. Harsch*, 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 quo* pending review of an agency decision on its 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 agreed that the facts were already stipulated to at the Board hearing; though, there is a dispute over the Appellant's representation at hearing. The Superior Court has already found that if an administrative penalty is within state statutory limits that may be sufficient to dismiss an appeal.

Based on the parties' representations, the facts were stipulated to at hearing. The penalties are apparently within the statutory limits. Thus, in terms of granting a stay, the Appellant did not make a strong showing that it would prevail on the merits. In terms of harm to the Appellant, if the administrative penalty is vacated or reduced on appeal, it may be refunded to the Appellant.

V. RECOMMENDATION

Based on the forgoing, the undersigned recommends as follows:

1. The Appellant's motion for a stay of the administrative penalty be denied.
2. In keeping with the *The Rack, Inc. d/b/a Smoke*, the certified record below shall be submitted to the undersigned in order to determine the Appellant's licensing history prior to the scheduling of a hearing (if a hearing is found to be necessary).

Dated: June 24, 2014

Catherine 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: 24 June 2014

Paul McGreevy
Director

Entered this day as Administrative Order Number 14-36 on 24th of June, 2014.

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 24th day of June, 2014 that a copy of the within Order was sent by email 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

John F. DeSimone, Esquire
DeSimone Law Offices
735 Smith Street
Providence, RI 02908

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.