

The Board argued that a stay should not be granted because the Appellant did not have a strong likelihood of success on the merits. The Board argued that the disturbance at Appellant's is on the record and there no irreparable harm to the Appellant since this is an economic penalty.

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 quo* pending review of an agency decision on its merits.

The Appellant did not make an argument under *Harsch* that a stay should issue. Rather it argued that it would be fairer to delay the payment of a penalty so that it would not have to pay the penalty during the ongoing renewal process in case the penalty was to be refunded later after

the appeal. However, while no one would dispute that everyone would like a prompt repayment of funds when repayment is required, that is not a basis to issue a stay.

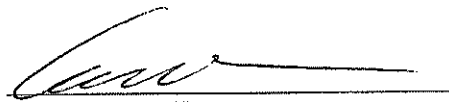
IV. RECOMMENDATION

Based on the forgoing, the undersigned recommends as follows:

1. The Appellant's motion for the stay of the administrative penalty be denied.

The parties will schedule a *de novo* hearing to be held on this matter.¹

Dated: 11/13/14

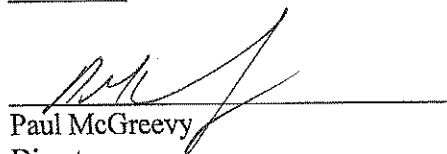

Catherine R. Warren
Hearing Officer

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: 13 Nov 2014


Paul McGreevy
Director

Entered this day as Administrative Order Number 14-60 on 13th of November, 2014.

¹ 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 13th day of November, 2014 that a copy of the within Order was sent by facsimile and first class mail, postage prepaid, to the following:

Mario Martone, Esquire
City of Providence Law Department
444 Westminster Street, Suite 220
Providence, RI 02903

Peter Petrarca, Esquire
330 Silver Spring Street
Providence, RI 02904

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

