

**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.	:	DBR No.: 14LQ056
	:	
City of Providence, Board of Licenses,	:	
Appellee.	:	

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

I. INTRODUCTION

Eagle Social Club d/b/a Ava's Wrath ("Appellant") seeks a stay of the City of Providence, Board of Licenses' ("Board") decision to revoke its liquor license.¹ This matter came before the undersigned on November 12, 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.

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

The Appellant argued that it made a good faith reliance on a misrepresentations of age pursuant to R.I. Gen. Laws § 3-8-6 so that the licensee acted in good faith. The Appellant argued that the underage drinkers testified that they received their fake identifications ("ID") from a website, IDChief, that provides very sophisticated ID's. The Appellant argued that the City did

¹ The appeal to the Department only relates to any liquor licenses held by the Appellant.

not put the ID's in evidence before the Board which limits its defense to show that anyone would have let someone in using those ID's. The Appellant argued that the City did not put the ID's in evidence before the Board because presumably the ID's would have passed muster. The Appellant argued that on those facts it has a substantial likelihood of success on the merits.

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 three (3) underage women were served at the Appellant's and the testimony was that two (2) used fake ID's and one testified that she said it was her birthday. The Board argued that the Appellant's reliance argument comes from a use of a minor book and does not apply to the reliance on an ID and to interpret R.I. Gen. Laws § 3-8-6 to mean a good faith reliance on an ID would be absurd. The Board also brought up the issue that the Appellant is a Class D license and the under aged patrons were not social club members. The Board argued there is no irreparable harm as that would be economic harm but the Board would be irreparably harmed since it has an interest in protecting the public safety and enforcing statutory requirements.

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.

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. The Appellant did not dispute that underage patrons were served.

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 revocation.

Based on the representations by the Appellant’s counsel (underage service with explanation), there is not a substantial likelihood of success on the merits for the Appellant. The issue at hearing will turn on the appropriate sanction.

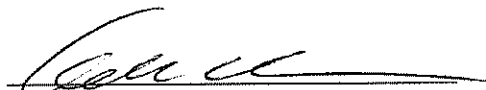
V. RECOMMENDATION

Based on the forgoing, the undersigned recommends as follows:

1. The Appellant's motion for the stay of revocation of license be denied.

The parties will schedule a *de novo* hearing to be held on this matter.²

Dated: 11/13/14

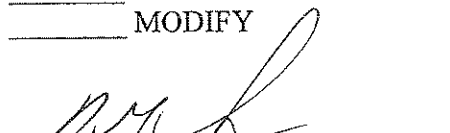

Catherine R. Warren
Hearing Officer

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 14-59 on 13th of November, 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.

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.

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

