

report. According to the police report, the other incident involved several subjects fighting inside the establishment with one subject temporarily losing consciousness.

The Board moved to dismiss the appeal because it alleged that the Appellant stipulated to the violations. While there was no dispute regarding the facts alleged in the police reports for the incidents, the Appellant did dispute the appropriateness of the sanctions. The appeal of the appropriateness of the sanctions is properly before this Department.

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.

In the present case, the parties have not had an opportunity to fully support their respective positions as to the appropriateness of the sanctions because of time constraints. As such, it is not possible to make a fair determination of who will prevail on the merits of the appeal at this time and does not factor into this decision.

Any administrative penalty that could be reduced on appeal may easily be refunded to the Appellant, so the Appellant will not suffer irreparable harm by being required to pay the administrative penalty before the outcome of the *de novo* hearing. However, the interests of the licensee in avoiding the suspension during the pendency of its *de novo* appeal outweigh the interests of the Board and the public in seeing the Appellant serve the suspension before the *de novo* review. While the alleged incidences occurred on March 9 and March 29, 2014, the Board did not render its decision until May 23, 2014. This delay, coupled with the fact that the Board did not invoke its emergency powers, can be reasonably construed as evidencing that immediate closure is not necessary to protect the public interest. The interest of the Appellant in a *de novo* hearing prior to imposition of the suspension is significant because the economic harm that may otherwise result could be irreparable in light of the complex issue of governmental immunity and the difficult quantification of damages.

In this case, the *status quo* is that the Appellant be permitted to remain open as it was prior to the Board's decision suspending its license. Under *Department of Corrections*, an order sustaining the *status quo* is appropriate.

While the balance of the interests and *status quo* test do not support suspension, the imposition of additional security measures is supported by the Board's interest in public safety.

Therefore, the undersigned is recommending that the Appellant be permitted to open with the condition that it must hire at least three more security guards than the number of security guards that were staffed on the night of the incidents.

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. The Appellant's motion for a stay of the four (4) day suspension be stayed; provided, however, that the Appellant must hire at least three additional security guards on May 30, 31, June 6 and June 7.

Dated: 5/30/14



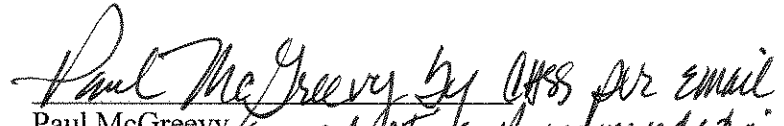
Jenna Algee
Hearing Officer

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: 30 May 2014


 Paul McGreevy
 Director
adopting recommendation (Attached)

Entered this day as Administrative Order Number 14-28 on 30th of May, 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 30th day of May, 2014 that a copy of the within Order was sent by e-mail and first class mail, postage prepaid, to the following:

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and by e-mail to Maria D'Alessandro, Deputy Director, Department of Business Regulation,
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