

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

334 South Water LLC d/b/a Mile & A Quarter,
Appellant,

v.

City of Providence, Board of Licenses,
Appellee.

DBR No.: 16LQ007

RECOMMENDATION AND ORDER DENYING MOTION FOR STAY

I. INTRODUCTION

On or about Sunday, April 24, 2016, the Providence Board of Licenses (“Board”) held an emergency suspension hearing on 334 South Water LLC d/b/a Mile & A Quarter’s (“Appellant”) licenses including its Class BVX liquor license (“License”). Said emergency hearing was held pursuant to Providence Charter section 1102.¹ The Board ordered the Appellant’s License be suspended for 72 hours and scheduled a full hearing for Wednesday, April 27, 2016. On April 25, 2016, the Appellant requested that the Board modify the suspension. The Board declined. The Appellant seeks a stay of the emergency suspension of its License. This matter came before the undersigned on April 26, 2016 in her capacity as Hearing Officer as the designee of the Director of the Department.

¹ Providence Charter section 1102(3) provides as follows:

Unless otherwise provided by state law, suspend, annul, rescind, cancel or revoke any license issued by the board of licenses for any reason which the board may deem to be in the public interest; provided, however, that no license shall be suspended for more than seventy-two (72) hours or annulled, rescinded, cancelled or revoked unless the licensee shall have been given at least three (3) days' written notice of the action proposed to be taken and of the grounds therefor and the time and place of the hearing. The said licensee shall also be notified of the right to be represented at said hearing by legal counsel.

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. MOTION TO STAY

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.” *Narragansett Electric Company v. William W. Harsch et al.*, 367 A.2d 195, 197 (1976). 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). While appeals before the Department do not fall under R.I. Gen. Laws § 42-35-15(c), 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.

IV. ARGUMENTS

The Appellant argued that the Board’s emergency suspension was a deprivation of its due process rights as no notice of hearing was provided. The Appellant further argued that the Board’s suspension of all licenses was disproportionate to the public safety issues which relate to the late night facility upstairs from the downstairs restaurant and which usually only operates at the weekend.

The City argued that there was no due process issue as the Board took an emergency action in order to protect the public safety. The City argued that the Respondent has one (1) license that

covers the restaurant and the upstairs as well so that it cannot be separated. The City argued that the Appellant has not suffered irreparable harm.

The Board argued that in an emergency session the Board heard testimony regarding a public safety issue and issued the emergency suspension. The Board argued that the upstairs facility is newer (last summer) than the restaurant but is part of the restaurant as it falls under the restaurant's license as well.

V. DISCUSSION OF EMERGENCY SUSPENSION

Section 1102 allows emergency suspension of licenses for up to 72 hours without notice. The Respondent argued that its due process rights were violated by the issuance of the emergency suspension. However, in certain situations, a post-deprivation hearing satisfies due process requirements. *L.A. Ray Realty v. Town Council of Town of Cumberland*, 698 A.2d 202, 210-11 (R.I. 1997). In this matter, there was a determination that there was public safety issue so that a short emergency suspension was issued pending a full hearing.² The scenario in this matter is different from the case raised at hearing by the Appellant, *Burton v. Lefebvre*, 53 A.2d 456 (R.I. 1947). That case found that the state liquor licensing law in effect at that time provided that a hearing on a suspension of a license must be held. In contrast to *Burton*, no final decision has been

² The City's Section 1102 is not unusual in terms of allowing emergency suspensions of licenses. The ability to suspend a license on an emergency basis due to health and safety reason is provided for in the State Administrative Procedures Act. R.I. Gen. Laws § 42-35-14(c) states as follows:

No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency sent notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

Indeed, some state licensing statutes also provide specifically for emergency suspensions of license because of health and safety reasons. E.g. *El Gabri v. Rhode Island Bd. of Med. Licensure & Discipline*, 1998 WL 961165 (R.I. Super.) found that the Department of Health's nine (9) month "delay" in resolving a post-deprivation hearing of an emergency suspension of a license to practice medicine was not a *per se* due process violation.

made on the Appellant's license. Instead, a full hearing (on all licenses) is scheduled for tomorrow, April 27, 2016.

The parties did not dispute that there was a disturbance in the early morning of April 24, 2016 at the Appellant's. The parties disputed the nature and extent of the disturbance.³ The Board's hearing tomorrow will be to establish the facts of the disturbance and to determine what sanction, if any should be imposed. E.g. no further suspension of all or some licenses; further suspension of all or some licenses; an administrative penalty; imposition of conditions, etc.

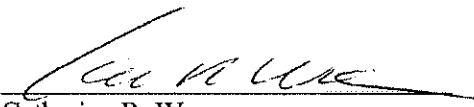
The Appellant's argument regarding proportionality of the sanction of the emergency suspension of all licenses is best directed at the full hearing. The City has the power to issue emergency suspension of licenses in case of public safety issues.

There has been no showing now by the Appellant that it would have a substantial likelihood of success on the merits to overturn the emergency suspension as a hearing has been noticed within three (3) days and it is undisputed that there was some kind of disturbance at the Appellant to which many police officers responded.

VI. RECOMMENDATION

Based on the forgoing, the undersigned recommends that the Appellant's motion for a stay of the emergency suspension of License be denied.

Dated: April 24, 2016


Catherine R. Warren
Hearing Officer


³ Under R.I. Gen. Laws § 3-5-23, a liquor licensee is responsible for disorderly conduct inside its premises and disorderly conduct outside its premises that can be directly or indirectly linked to activities inside the premises. See *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964). A liquor licensee has the "responsibility to control the conduct of its patrons both within and without the premises in a manner so that the laws and regulations to which the license is subject will not be violated." *Schillers, Inc. v. Pastore*, 419 A. 2d 859, 859 (R.I. 1980). Furthermore, a liquor licensee is accountable for violations of law that occur on its premises and outside. *Vitali v. Smith*, 254 A.2d 766 (R.I. 1969). It is not a defense that a licensee is not aware of the violations or provided supervision to try to prevent violation. While such a responsibility may be onerous, a licensee is subject to such a burden by the legislature and accepted such conditions by becoming licensed. *Therault v. O'Dowd*, 223 A.2d 841, 842-3 (R.I. 1966). See also *Scialo v. Smith*, 99 R.I. 738 (R.I. 1965).

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: 4/27/16



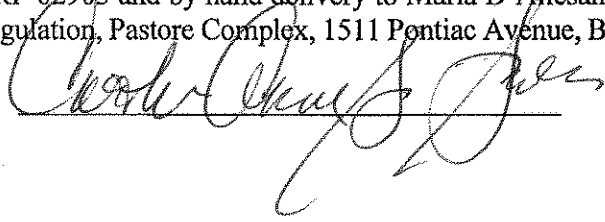
Macky McCleary
Director

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 27th day of April, 2016 that a copy of the within Decision was sent by first class mail, postage prepaid and by electronic mail to Gregory P. Piccirilli, Esquire, Sciacca & Piccirilli, 121 Phenix Avenue, Cranston, RI 02920, Louis A. DeSimone, Jr., Esquire, 703 West Shore Road, Warwick, RI 02889, and Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, RI 02903 and by hand delivery to Maria D'Allesandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Bldg. 68-69, Cranston, RI 02920.



Charles Christopher Jones