

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

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Ocean State Hospitality, Inc. d/b/a Fatt Squirrel,  
Appellant,

v.

City of Providence, Board of Licenses,  
Appellee.  
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DBR No.: 16LQ002

ORDER RECOMMENDING CONDITIONAL ORDER OF STAY

**I. INTRODUCTION**

This matter arose from a motion for stay filed by Ocean State Hospitality, Inc. d/b/a Fatt Squirrel (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 regarding an action taken by the City of Providence, Board of Licenses (“Board”) on the Appellant’s Class BVX liquor license (“License”). Pursuant to R.I. Gen. Laws § 3-2-2, the Department has taken jurisdiction of this matter. For a more extensive travel and discussion of this matter, see the orders issued on February 5, 12, and 19, 2016. The Department held hearings on February 16 and 17, 2016. After oral closings, on February 26, 2016, the Appellant again requested that the condition of a police detail for Friday and Saturday nights be removed from the conditional stay ordered in this matter on February 12 and 19, 2016. The City objected to the removal of the police detail.

## II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-2-2, 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. DISCUSSION

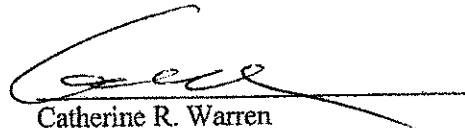
Under *Department of Corrections*, it is within the agency’s discretion to hold the matter in *status quo* pending the full hearing. There were understandable concerns regarding public safety after the incidents of January 30, 2016. However, the Appellant has so far been either closed or on reduced hours during the month of February. In light of passing of time and no further evidence of a threat to public safety, the stay can be further modified.

V. RECOMMENDATION

Based on the forgoing, the undersigned recommends the stay be further modified to remove the police detail (and its alternative) so that the modified conditional stay will be as follows:

1. The Appellant will provide written notice to the Board every Monday of the events that it is holding that week.<sup>1</sup>
2. The Appellant will no longer use the parking lot across the street on any day.
3. On the Monday of each week, the Appellant shall provide in writing to the Board its security plan for the week. E.g. staffing plans, security company (if any), etc.<sup>2</sup>

Dated: 3/2/16

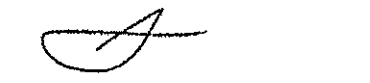
  
Catherine R. Warren  
Hearing Officer

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: 3/8/16

  
Macky McCleary  
Director

<sup>1</sup> Filing notice with the Board administrator and the Board attorney is recommended.

<sup>2</sup> *Id.*

CERTIFICATION

I hereby certify on this 8<sup>th</sup> day of March, 2016 that a copy of the within Order was sent by email 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  
Mmartone@providenceri.com

Stephen M. Litwin, Esquire  
One Ship Street  
Providence, RI 02903  
attysml@aol.com

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 as well as by electronic mail to Louis DeSimone, Esquire, attorney for the Board, and Stephen Ryan, Esquire, attorney for the Providence Police Department.

