

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

Finnegan's Draft House, Inc., Appellant,	:	
	:	
v.	:	DBR No.: 15LQ005
	:	
City of Providence, Board of Licenses, Appellee.	:	
	:	

**RECOMMENDATION AND INTERIM ORDER GRANTING MOTION
FOR STAY WITH CONDITIONS AND NOTICE FOR *DE NOVO* HEARING**

I. INTRODUCTION

Finnegan's Draft House, Inc. ("Appellant") seeks a stay of the City of Providence, Board of Licenses' ("Board") decision taken on April 15, 2015 to suspend its Class BV liquor license ("License") for 14 days beginning on April 17, 2015 and to impose an administrative penalty of \$14,250. The Board objected to the Appellant's motion. This matter came before the undersigned on April 17, 2015 in her capacity as Hearing Officer as the designee of the Director of the Department of Business Regulation ("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. STANDARD FOR ISSUANCE OF A STAY

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.

IV. ADMINISTRATIVE PENALTIES

The Appellant raised the issue of the administrative penalties imposed by the Board. Pursuant to R.I. Gen. Laws § 3-7-21, the Department does not have authority to hear appeals of fines. However, the Superior Court found that the Department has implied jurisdiction to review administrative fines imposed by local boards pursuant to R.I. Gen. Laws § 3-5-21. See *The Rack, Inc. d/b/a Smoke v. Providence Board of Licenses*, et al. CA No. PC 2011-5909 (7/22/13). The Court found that the Department did not have to apply a *de novo* standard of review to appeals of administrative fines but that the Department must review the record and articulate and document a substantial, non-arbitrary rationale for invoking its discretion to dismiss appeals of fines imposed by local licensing boards and that the exercise of such discretion must be reasonable. The Court further found that if the monetary fine imposed on a licensee by a local liquor licensing board is within statewide limits set by statute then such a finding by the Department may be sufficient basis for the Department to dismiss a licensee’s appeal. *Id.* at pp. 14-17.

R.I. Gen. Laws § 3-5-21 establishes minimum fines for violations. R.I. Gen. Laws § 3-5-21(b) provides that a first offense by a liquor licensee shall be fined \$500 with the fine for each subsequent offense not to exceed \$1,000. In other words, the first offense of the liquor statute cannot be fined more than \$500 with each subsequent offense of the liquor licensing law not being fined more than \$1,000 but if the licensee has no offenses for three (3) years, the clock is re-set and any violation would be considered a first offense.

V. DISCUSSION AND ARGUMENT

The only information before the undersigned is what the parties agreed to and represented at hearing. The parties agreed that the Board made its decision on stipulated facts. The Appellant agreed that there had been 19 underage violations. The parties agreed that the Appellant hired new management in the summer of 2014 which stipulated to the underage violations from Summer/Fall of 2104 but because of those violations, it realized that its business plan was not working so in December, 2014 instituted a 25 years and over policy for entry. The Board did not dispute this representation and agreed that there had been no problems at the Appellant's since December, 2014 but indicated that the licenseholder was still the same. The parties agreed that the Appellant had agreed to a Consent Order on February 12, 2014 with the Department in which the Appellant agreed to a three (3) day suspension and \$11,000 administrative penalty for 15 underage violations.

The Board argued that the 2014 penalty represented \$750 per violation which was the same amount imposed by the Board in this matter and that the Board had imposed progressive discipline from the three (3) day suspension. The Appellant argued that the administrative penalty was excessive and that the penalty amounted to a *de facto* revocation as it had been ordered to pay the \$5,000 within 10 days and the remainder within 60 days or face further

closure. The Appellant argued that it had taken steps to avoid underage violations and that there would be irreparable harm by closing. The Board argued that monetary harm is not irreparable harm and that it is in the public interest to prevent underage drinking.

VI. CONCLUSION

Applying the stay criteria, 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. There is no dispute that there were underage violations. The issue on appeal will be to determine the appropriate sanction for the violations. Additionally, 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 public protection interest to prevent future violations, but there has been no showing of imminent threat to the public.

It cannot be determined without an appellate review/full hearing what the appropriate sanction should be for the stipulated violations. The Board did not close the Appellant during the Board hearing. Any concerns regarding public safety can be met by the imposition of conditions.

The Appellant apparently was fined \$750 per violation which would fall within statutory minimum penalty. However, the Appellant has raised issues that it plans to address on appeal regarding the payment schedule.

VII. RECOMMENDATION

Based on the forgoing, the undersigned recommends that the Appellant's motion for a stay of the suspension of License and administrative penalty be granted on the basis of the following conditions.

1. The Appellant maintains its 25 years old and over policy for entry.

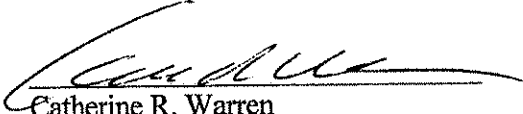
2. The Appellant requires the showing of two (2) identifications by patrons on entry.
3. The Appellant uses an UV light to verify identifications on entry.

The Board and Appellant may agree to modify the conditions of the stay if they choose.

Nothing in this order precludes the undersigned to revisit this order because of a change in circumstances. E.g. the violation of any of the conditions could warrant a review of the stay order.

A DE NOVO HEARING WILL BE HELD ON MAY 6, 2015 at 9:00 a.m. AT THE DEPARTMENT OF BUSINESS REGULATION, PASTORE COMPLEX, 1511 PONTIAC AVENUE, CRANSTON, RI.¹

Dated: 4/17/15



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: 4/17/15


Macky McCleary
Director

Entered this day as Administrative Order Number 15-11 on 17th of April, 2015.

¹ The Appellant is advised that pursuant to R.I. Gen. Laws § 3-7-21, it is the Appellant's responsibility to provide a stenographer at hearing.

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 17th day April, 2015 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 and 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

