

the same day as the condition was imposed (May 29). The Appellant represents that the police detail condition will result in a *de facto* suspension on both Friday and Saturday (May 30 and 31) because the officers are not available for the police detail for those nights. The Board's understanding was that a police detail is available for Friday but not Saturday. Either way, it is undisputed that unless this stay is granted, the Appellant will be required to close down at least one night due to the unavailability of police detail officers.

The Appellant represented that since the alleged incident occurred, the Appellant has increased its licensed security staff from three (3) to (7) individuals. It further represented that it has closed off the parking lot where the incident is alleged to have occurred from patron access, leaving access only by employees.

The Board argued that the Department does not have jurisdiction because the Board has not reached its final decision on the merits. It also argued that the police detail condition on the liquor license is not appealable because it is not a liquor control matter.

II. JURISDICTION

The Department has jurisdiction to hear appeals of the Board's liquor licensing decisions, subject to relevant provisions of the Rhode Island Administrative Procedures Act, § 42-35-1 *et seq.* Under R.I. Gen. Laws § 3-7-21(a), "the director has the right to review the decision of any local board" "upon the application of any petitioner for a license, or of any person authorized to protest against the granting of a license...or upon the application of any licensee whose license has been revoked or suspended by any local board or authority." Moreover, as the state's "superlicensing authority,"¹ the Department has the power of "general supervision of the conduct of the business of...selling beverages." R.I. Gen. Laws § 3-2-2(a). The Department's "powers to take independent action...is also found in G.L.1956 §§ 3-2-2 and 3-5-20, which grant the

¹ *Messier v. Daneker*, 81 R.I. 243, 246 (R.I. 1954).

[Department] *general jurisdiction* to supervise and enact rules for local boards.” *City of Providence Bd. of Licenses v. State of Rhode Island Dept.*, 2006 WL 1073419 (R.I. Super., 2006) (emphasis supplied).² Accordingly, the Department has jurisdiction to review the Board’s liquor licensing decision to impose a police detail condition on the liquor license. The Board’s imposition of a financial impairment on an existing liquor license is appealable to the Department. This is especially true when the condition will create a *de facto* suspension of the liquor license.

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.

² See also § 3-5-21 (“a licensee is subject to [discipline]...by the department...on its own motion, for breach by the holder of the license of the conditions on which it was issued or for violation by the holder of the license of any rule or regulation applicable, or for breach of any provisions of this section.”)

In the present case, the parties have not had an opportunity to fully support their respective positions 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 this does not factor into this decision.

However, the interests of the licensee in avoiding the *de facto* suspension during the pendency of its *de novo* appeal outweigh the interests of the Board and the public in seeing the Appellant serve the *de facto* suspension. While the alleged incidences occurred on May 10, 2014, the Board did not impose the conditions until May 29, 2014. This delay can be reasonably construed as evidencing that a police detail is not necessary to protect the public interest. The interest of the Appellant in avoiding the *de facto* 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 pending the outcome of the June 5, 2014 hearing. 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 required to maintain those security measures it represented it has implemented since the alleged incident.

V. RECOMMENDATION

Based on the forgoing, the undersigned recommends that the Appellant's motion for a stay be granted; provided, however, that on Friday and Saturday (May 30 and 31) the Appellant must

have a licensed security staff of (7) individuals and leave the parking lot closed off from patron access.

Dated: 5/30/14



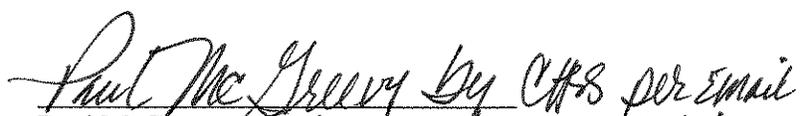
Jenna Algee
Hearing Officer

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
*By CFFS per email
adopting recommendation
(attached)*

Entered this day as Administrative Order Number 14- 29 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.

**CaroleAnne Sanchas - Re: In the Matter of Olden Enterprises, LLC v. City of Providence
Board of Licenses, DBR No. 14LQ030**

From: Paul McGreevy
To: CaroleAnne Sanchas
Date: 5/30/2014 5:14 PM
Subject: Re: In the Matter of Olden Enterprises, LLC v. City of Providence Board of Licenses, DBR No. 14LQ030
CC: Catherine Warren; Jenna Algee; Maria D'Alessandro; Neena Savage

This Interim Order is adopted as this date, 30 May 2014.

Paul McGreevy
Director
Department of Business Regulation
401-462-9553
>>> CaroleAnne Sanchas 5/30/2014 5:08 PM >>>
Dear Paul,

Please confirm whether you adopt, reject or want to modify the attached Recommendation and Interim Order Granting Motion for Stay in the above-captioned matter. Thank you.

Carole-Anne

Carole-Anne S. Sanchas
Systems Analyst
Rhode Island Department of Business Regulation
Office of the Director/Division of Regulatory Standards, Compliance and Enforcement
1511 Pontiac Avenue, Bldg. 68-1
Cranston, RI 02920

*Please note my new email address:

Phone: (401) 462-9556
Fax: (401) 462-9536
E-mail: CaroleAnne.Sanchas@dbr.ri.gov

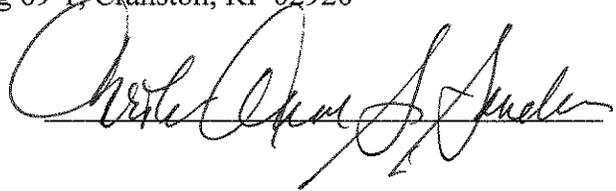
CERTIFICATION

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:

J.A. Dixon-Acosta
215 Broadway
Providence, RI 02903
JADAesq@gmail.com

Sergio Spaziano
City of Providence Law Department
444 Westminster Street, Suite 220
Providence, RI 02903
sspaziano@providenceri.com

and by e-mail to Maria D'Alessandro, Deputy Director, Department of Business Regulation,
Pastore Complex, 1511 Pontiac Avenue, Building 69-1, Cranston, RI 02920

A handwritten signature in black ink, appearing to read "Charles A. Spadaro", written over a horizontal line.