

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION**

**El Chapin Restaurant
Appellant,**

v.

**City of Central Falls Liquor Board,
Appellee.**

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DBR No.: 08-L-0274

**RECOMMENDATION AND INTERIM ORDER DENYING MOTION
FOR STAY AND NOTICE FOR DE NOVO HEARING**

I. INTRODUCTION

El Chapin Restaurant (“Appellant”) seeks a stay of the City of Central Falls Liquor Board (“Board”) Decision and Order of November 10, 2008 revoking Appellant’s Class B (limited) liquor license (“License”). The Board objected to the Appellant’s motion. This matter came before the undersigned on November 18, 2008 in her capacity as Hearing Officer as the designee of the Director of the Department of Business Regulation (“Department”).

The facts stated herein are based on the representations made by counsel for Appellant and the Board. Counsel for the parties did agree on certain facts regarding these proceedings. The undersigned has not received any records and/or documents confirming these facts.

The parties agreed that at approximately 1:15 a.m. on early Sunday morning, October 26, 2008, there was a stabbing of two (2) individuals outside the Appellant’s.

The Board represented that police reports indicated that both the victims and the suspect had been inside the Appellant’s prior to the stabbing. The Appellant argued that there were issues relating to whether the victims and suspect had been inside Appellant’s and where the stabbing occurred. The Board alleged that the Appellant failed to cooperate with the police in

that it failed to call the police upon hearing of the stabbing and attempted to prevent the police from investigating. The Appellant disputed this but did admit that the Appellant did not quite understand the need to cooperate with the police. Evidently there was some concern by the Appellant over the police taking photographs. The parties disputed whether the Appellant was aware of who was the manager on duty the night in question.

It was undisputed that the Appellant's License had been suspended for one (1) week in Spring, 2008 for disorderly conduct and sale to a minor. At the time of the suspension, the Board also imposed a \$500 administrative penalty which was not promptly paid causing the Board to send letters to Appellant and schedule show cause hearings and eventually revoke the License for nonpayment. The administrative penalty was paid in September, 2008.

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.”

The Board argued that it had a likelihood of success on the merits. The Appellant requested that a stay be granted conditional on a police detail being present. The Appellant represented that the local police chief testified at the local hearing that when the Appellant had a

police detail, it was able to maintain order when patrons were exiting. The undersigned inquired whether the parties would be amenable to requiring a police detail to allow the Appellant to stay open. The Board would not agree to such a requirement.

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.

There is no dispute that there have been a prior disorderly incident at Appellant's and that the Appellant has had its License suspended once. The current basis for revocation is for disorderly conditions involving a stabbing outside the Appellant's. The Department has a long line of Department cases regarding progressive discipline and upholding the same. *Pakse Market Corp. v. McConaghy*, 2003 WL 1880122 (R.I. Super.). In addition, liquor licensees are responsible for conduct that arises within their premises and for conduct that occurs off premises but can be reasonably inferred from the evidence had their origins inside. *The Edge-January, Inc. v. Pastore*, 430 A.2d 1063 (1981); *Manuel J. Furtado, Inc. v. Sarkas*, 373 A.2d 169 (R.I. 1977). Finally, a serious egregious incident can be a basis for a revocation of a liquor license. See *Stagebands, Inc. d/b/a Giza v. Providence Board of Licenses*, DBR No.: 06-L-0147 (12/4/06) (disturbances and a shooting on one night justified revocation).

Applying the criteria from *Harsch*, 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. In the present case, the parties have not had an opportunity to support their respective positions because of time constraints. Nonetheless, the parties agree that progressive discipline has been imposed and agree that there was a stabbing outside the premises.

A. Substantial Likelihood of Success on the Merits

There is no dispute that there was a prior disorderly incident at Appellant's and that the Appellant has had its License suspended once before. It is the undersigned's understanding that this prior discipline arose out of allegations regarding R.I. Gen. Laws § 5-5-23. The parties do not dispute that in October, 2008, there was a stabbing outside Appellant's shortly after closing time. This incident relates to possible violation by Appellant of R.I. Gen. Laws § 5-5-23.

While the full facts regarding the stabbing have not been litigated, the fact remains that within the space of seven (7) months, there has been a one (1) week suspension and now allegations of a stabbing occurring shortly after closing time and outside of Appellant's.

Therefore, based on the long line of Department cases regarding progressive discipline, it is hard on these facts to find that Appellant has a substantial likelihood of success on the merits.

B. Irreparable Harm to the Appellant; Substantial Harm to Other Interested Parties; Public Interest

The Appellant argued in its filing that it will suffer irreparable harm if it is forced to close. However, 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 strong public protection interest. Not only does the public have an interest in ensuring that public spaces are safe, granting a stay raises issues of public safety and public protection.

Therefore, pursuant to *Harsch*, the Appellant has not made the strong showing necessary for the issuance of a stay.

The parties did discuss whether a conditional stay should be granted. While the Board opposed the granting of a stay, the parties may eventually reach an agreement regarding conditions (e.g. mandatory police detail; earlier closing time) for a stay. While the undersigned has found on the basis of *Harsh*, a stay should not be granted, this does not preclude the parties from entering into any such agreement.

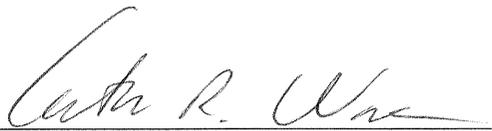
V. RECOMMENDATION

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

Nothing in this order precludes the Appellant from petitioning the undersigned to revisit this order because of a change in circumstances.

If neither party appeals the proposed denial of the stay, the undersigned further recommends that a *de novo* hearing be scheduled for December 8, 2008 at 9:30 a.m. at the Department of Administration, One Capitol Hill, Providence, RI 02908 in conference room B on the second floor. This date may be rescheduled – to either an earlier or later date – at the request of the parties.

Dated: November 19, 2008


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

If neither party appeals the denial of the stay of the Board's Decision, a *de novo* hearing shall be held on December 8, 2008 at 9:30 a.m. as set forth above.

Dated: 11-19-2008


A. Michael Marques
Director

Entered this day as Administrative Order Number 08- 214 on 19th of November, 2008.

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 19th day of November, 2008 that a copy of the within Order was sent by facsimile and first class mail, postage prepaid, to the following:

Michael W. Favicchio, Esquire
Law Offices of Michael W. Favicchio
117 Metro Center Blvd., Suite 2001
Warwick, RI 02886
Fax. 401-383-0572

John T. Gannon, Assistant City Solicitor
Central Falls Law Department
580 Broad Street
Central Falls, RI 02863
Fax. 401-724-6502

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