

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

Ocean State Hospitality, Inc. d/b/a Fatt Squirrel,	:	
Appellant,	:	
	:	
v.	:	DBR No.: 16LQ002
	:	
City of Providence, Board of Licenses,	:	
Appellee.	:	

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, 2016 and February 12, 2016. The Department held hearings on February 16 and 17, 2016. After the close of evidence by both parties but prior to oral closings, on February 17, 2016, the Appellant 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, 2016. The Appellant argued that the evidence presented does not show a danger to the public and that the City has not shown a continuing danger to the public. 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

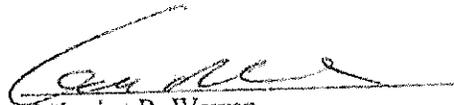
While there now has been a full hearing, oral argument has not been held and a decision has not been rendered. Under *Department of Corrections*, it is within the agency’s discretion to hold the matter in *status quo* pending the full hearing. There are understandable concerns regarding public safety after the incidents of January 30, 2016. As no final decision has been rendered and in the interest of maintaining public order, the stay can be modified with an alternative option.

V. RECOMMENDATION

Based on the forgoing, the undersigned recommends the following modified conditional stay:

1. Two (2) police officer detail on Friday and Saturday and State holiday nights.¹ In the alternative, the Appellant may choose to close at midnight on Friday and Saturday and State holiday nights rather than have a police detail. It must inform the Board and the police department attorney prior to 4 p.m. on Friday whether it will close at midnight or have a police detail.
2. The Appellant will provide written notice to the Board every Monday of the events that it is holding that week.²
3. The Appellant will no longer use the parking lot across the street on any day.
4. 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.³

Dated: 2/19/16


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: ~~2/19/16~~ 2/19/16


Macky McCleary
Director

¹ The detail is imposed for weekends as both incidents occurred at the weekend.

² Filing notice with the Board administrator and the Board attorney is recommended.

³ *Id.*

Entered this day as Administrative Order Number 16-12 on 19th of February, 2016.

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 February, 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.

