

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

Eagle Social Club d/b/a Ava's Wrath,	:	
Appellant,	:	
	:	
v.	:	DBR No.: 14LQ026
	:	
City of Providence, Board of Licenses,	:	
Appellee.	:	

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

I. INTRODUCTION

Eagle Social Club d/b/a Ava's Wrath ("Appellant") seeks a stay of the City of Providence, Board of Licenses' ("Board") decision dated May 13, 2014 to revoke its liquor license ("License") and to pay an administrative penalty of \$7,000. The Board objected to the Appellant's motion. This matter came before the undersigned on May 30, 2014 in her capacity as Hearing Officer delegated by the Director of the Department of Business Regulation ("Department"). The Appellant appealed the Board's decision under R.I. Gen. Laws § 3-7-21 and R.I. Gen. Laws § 3-5-21.

The facts stated herein are based on the representations made by counsel for Appellant and the Board.

The Appellant offered to close as a condition of a stay pending a decision. The Appellant also requested that the closed days be counted for any suspension that may be imposed after hearing. The Board objected to a stay as well as using closed days for any suspension that could be imposed.

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.” 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.

The Appellant has offered to remain closed during the hearing so any public safety issues have been met. The issue before the undersigned is whether the Board’s revocation is justified based on the facts at issue. This cannot be determined without a review of the record and/or further hearing. Any administrative penalty that could be reduced on appeal may easily be refunded to the Appellant.


V. **RECOMMENDATION**

Based on the forgoing, the undersigned recommends as follows:

1. The Appellant's motion for a stay of the administrative penalty be denied.
2. The Appellant's motion for a stay of the revocation of License is granted provided that the Appellant remains closed pending the appeal and decision.¹
3. This order vacates the motion for stay that was partially granted on May 8, 2014 in another matter related to the Appellant, DBR14LQ021.²

A *de novo* hearing will be held on June 4, 2014 at 9:30 a.m. at the Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston.³

Dated: 6/3/14

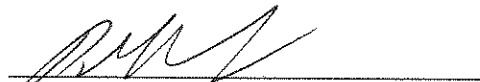

Catherine R. Warren
Hearing Officer

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 June 2014


Paul McGreevy
Director

Entered this day as Administrative Order Number 14- 31 on 4th of June, 2014.

¹ It has been a matter of course that any suspension of license imposed after a hearing be offset by any closures by a liquor licensee prior to hearing.

² This appeal has been consolidated with the Appellant's appeal in Case No. DBR14LQ021.

³ It is the responsibility of the Appellant to provide a stenographer for this hearing and after the appeal hearing to provide a copy of the transcript to the undersigned pursuant to R.I. Gen. Laws § 3-7-21.

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 4th day of June, 2014 that a copy of the within Order was sent by email and first class mail, postage prepaid, to the following:

Sergio Spaziano, Esquire
City of Providence Law Department
444 Westminster Street, Suite 220
Providence, RI 02903

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