

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

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|---|---|-------------------------|
| Moe's Place, Inc. d/b/a D'Noche, | : | |
| Appellant, | : | |
| | : | |
| v. | : | DBR No.: 14LQ022 |
| | : | |
| City of Providence, Board of Licenses, | : | |
| Appellee. | : | |

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

I. INTRODUCTION

Moe's Place, Inc. d/b/a D'Noche ("Appellant") seeks a stay of the City of Providence, Board of Licenses' ("Board") decision to suspend its liquor license¹ for the period of six (6) days to be served May 9, 10, 16, 17, 23, and 24, 2014 and to pay an administrative penalty of \$4,000 and have a mandatory police detail on Friday and Saturday nights. The Board objected to the Appellant's motion. This matter came before the undersigned on May 7, 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 parties dispute the facts surrounding the two (2) incidents that led to a finding by the Board of disorderly conduct. The Board found that on two (2) occasions disputes

¹ After the stay hearing, the Board's attorney forwarded its May 1, 2014 decision on this matter to the undersigned. Said decision references that it is a suspension of all licenses. However, the appeal to the Department only relates to any liquor licenses held by the Appellant.

arose inside the Appellant's that carried on outside. The Appellant denies that any disputes occurred inside that spilled outside and represented that any (if any) disorderly conduct occurred, it was outside the Appellant's.

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

The Appellant argued that the bouncer credibly testified at the Board hearing about both incidences. The Appellant argued that the bouncer credibly testified that for the first incident, there was never a fight inside the Appellant's and he never told the police that. The Appellant argued for the second incidence, the bouncer credibly testified that two (2) intoxicated men came inside the Appellant's and the bouncer escorted them outside where they engaged in a disturbance. The Appellant argued that it was not responsible for either incidence. The Appellant represented that it was not asking for a stay of the two (2) officer police detail for Friday and Saturday nights.

The Board argued that a stay should not be granted because the Appellant did not have a strong likelihood of success on the merits. The Board argued that the Board did not find the bouncer credible. The Board argued that a suspension and penalty would not irreparably harm the Appellant as that would be economic harm but that Board would be irreparably harmed since it has an interest in protecting the public safety and in the prompt adjudication of violations.

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.

A. Substantial Likelihood of Success on the Merits

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. The parties dispute the facts surrounding the conduct for each incident.

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

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 could raise an issue of public safety and public protection.

The parties dispute certain facts and how the events unfolded each night and whether there was disorderly conduct (and if so, whether it relates to the Appellant).

Based on the representations before the undersigned, it cannot be concluded whether or not the Appellant has a strong likelihood of success on the merits. The issue before the undersigned is whether there was disorderly conduct and if so, whether the Board's sanctions are justified. 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.

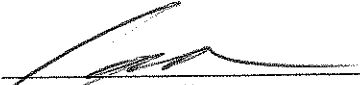
V. **RECOMMENDATION**

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 six (6) day suspension be stayed provided that the Appellant maintains the Board's mandatory police detail for Friday and Saturday nights (as ordered by the Board in its decision).

A *de novo* hearing will be held on May 22, 2014 at 9:30 a.m. at the Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston.²

Dated: May 7, 2014


Catherine R. Warren
Hearing Officer

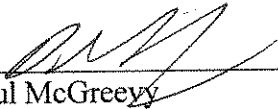
² It is the responsibility of the Appellant to provide a stenographer for this hearing and after the appeal hearing to provide a copy of the transcript to the undersigned pursuant to R.I. Gen. Laws § 3-7-21.

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: 8 May 2014


Paul McGreevy
Director

Entered this day as Administrative Order Number 14-23 on 8th 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.

CERTIFICATION

I hereby certify on this 8th day of May, 2014 that a copy of the within Order was sent by facsimile 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
FAX 401-680-5520

Peter Petrarca, Esquire
330 Silver Spring Street
Providence, RI 02904
FAX 401-273-1111

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

