

The Appellant argued that the Appellant was using a scanner, magnifying glass, and ID book to verify identification cards and that such a use is similar to the provision of R.I. Gen. Laws § 3-8-6 that the use of a minor book is *prima facie* evidence that the licensee acted in good faith. The Appellant argued that the sanctions were excessive and while the Appellant acknowledged past underage violations, the issue is what should be done in future to prevent underage drinking.

The Board argued that a stay should not be granted because the Appellant did not have a strong likelihood of success on the merits as there was no evidence that the Appellant used the ID scanner on the night in question. The Board argued that the fake IDs were visually flawed. 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 prompt adjudication of violations.

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.

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. However, there is no dispute that there was underage service.

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. The Appellant objects to the length of the sanction.

The issue before the undersigned is whether the Board's sanctions are 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.

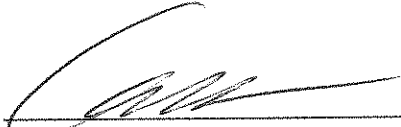
V. RECOMMENDATION

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 eight (8) day suspension be stayed provided that the Appellant uses its scanner, magnifying glass, ID book, and visual checks for all ID's of patrons as represented at the stay hearing.

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.²

Dated: MAY 7, 2014



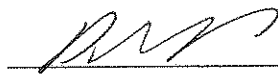
Catherine R. Warren
Hearing Officer

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: 8 May 2014



Paul McGreevy
Director

Entered this day as Administrative Order Number 14- 24 on 8th of May, 2014.

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.

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

