THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:		
HRH Services, LLC, t/a The Alibi	Case No.: License No.: Order No.:	2016-CMP-00600 ABRA-097969 2016-688
Holder of a Retailer's Class CR License		
at premises 237 2nd St., N.W. Washington, D.C. 20001		

Brendan Klaproth, Klaproth Law PLLC, Counsel for the Respondent

Zachary Shapiro, Assistant Attorney General, Office of the Attorney General for the District of Columbia

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
James Short, Member
Mafara Hobson, Member
Jake Perry, Member

ORDER DENYING MOTION TO STAY

HRH Services, LLC, t/a The Alibi (Respondent) applied for a Retailer's CR License on or about January 29, 2015. *ABRA Licensing File, ABRA Application.* After being protested, the Alcohol Beverage Control Board (Board) issued a Board Order approving the Application setting certain conditions on the License. *In the Matter of HRH Services, LLC, t/a The Alibi*, Case No. 15-PRO-00096, Board Order No. 20616-280 (D.C.A.B.C.B. May 18, 2016). Among other things, the Board ordered the Respondent to maintain a barring notice against Martin Scahill[1] prohibiting him from entering or

[1] Martin Scahill is the former owner of Arias, Inc. t/a My Brother's Place, holder of a CR License. On August 14, 2013, the Board issued Board Order No. 2013-373, cancelling the license. Subsequently, Mr. Scahill applied for a new license at the present location of The Alibi. In 2015, Mr. Scahill withdrew his application and Rachel Traverso, a former employee at My Brother's Place, submitted a license application for the The Alibi.

accessing the establishment for five years and to contact the Metropolitan Police Department (MPD) whenever there is reason to believe that Mr. Scahill is present on the premises. *Id.* at 36.

On or about May 31, 2016, Respondent filed a Motion for Reconsideration, which the Board denied. *In the Matter of HRH Services, LLC, t/a The Alibi*, Case No. 15-PRO-00096, Board Order No. 2016-418 (D.C.A.B.C.B. June 29, 2016). Subsequently, Respondent and Mr. Scahill filed separate appeals with the D.C. Court of Appeals (Court of Appeals) challenging the Board's Order. The Court of Appeals dismissed the Respondent's appeal due to lack of standing as an aggrieved party. *HRH Services, LLC, d/b/a The Alibi v. Dist. of Columbia Alcoholic Beverage Control Bd.*, No. 16-AA-758, 2015-PRO-00096 (D.C., filed October 13, 2016). Mr. Scahill's appeal is still pending before the Court of Appeals. *See Schall v. Dist. of Columbia Alcoholic Beverage Control Bd.*, No. 16-AA-755, 2015-PRO-00096 (D.C., filed July 27, 2016).

Additionally, on or about October 18, 2016, Mr. Scahill filed a federal lawsuit against the District of Columbia (District) and the Board, challenging the constitutionality of the conditions imposed on the License by Board Order 2016-280. *See Scahill v. Dist. of Columbia*, 16-cv-2076-JDB (D.D.C., filed October 18, 2016). This lawsuit is still pending before the U.S. District Court for the District of Columbia (U.S. District Court).

On October 3, 2016, the Board issued a Notice of Status and Show Cause (Notice) against the Respondent for failure to comply with Board Order No. 2016-280, in accordance with D.C. Official Code § 25-823(a)(6), by allowing Mr. Scahill to enter or access the licensed premises on or about June 10, 2016. *Enforcement File, Notice of Status of Show Cause Hearings*, dated October 3, 2016.

On November 14, 2016, Respondent filed a Motion to Stay (Motion) the proceedings pending the resolution of Mr. Scahill's cases before the Court of Appeals and the U.S. District Court. The District filed a timely opposition to Respondent's Motion on November 21, 2016.

After considering the arguments presented by both sides, and for the reasons explained below, the Board denies Respondent's Motion to Stay.

The Court of Appeals has made it clear, "in order to be successful on a motion to stay, the moving party must show that he or she is likely to succeed on the merits, that irreparable injury will result if the stay is denied, that opposing parties will not be harmed by a stay, and that the public interest favors the granting of a stay." *Thorton v. Northwest Bank of Minnesota*, 860 A.2d 838, 842 (D.C. 2004)(*citing In re Antioch University*, 418 A.2d 105, 109 (D.C. 1980)). The Respondent has failed to meet its burden of proof.

First, the Respondent does not present any evidence to support that it would succeed on the merits of the Show Cause proceeding. In fact, the Respondent ignores this requirement entirely in its Motion. Notwithstanding, given the ample evidence in

support of the Notice, the Respondent cannot in good faith argue that it would succeed on the merits.

Secondly, the Respondent fails to meet its burden of showing that it would suffer irreparable injury if the Board denies its Motion. In its Motion, the Respondent posits that it "would suffer prejudice because the Board is seeking to fine HRH Services LLC and/or suspend or revoke HRH Services LLC's liquor license [and that] [t]his could cause irreparable harm to HRH Services particularly in light of the event that the conditions allegedly violated are deemed unconstitutional by the U.S. District Court of the District of Columbia." *Respondent's Motion to Stay*, at 3.

The present case is the Respondent's first show cause matter before the Board for a primary tier violation. To date, no other case involving the Respondent has been adjudicated. As such, the most the Respondent can be fined is between $1,000 and $2,000. *See* 23 DCMR § 801.1(a)(The Board may fine a licensee for a primary tier violation at a show cause hearing . . . as follows [f]or the first primary tier violation, the fine shall be $1,000-$2,000."). Payment of a fine does not constitute "irreparable harm" as envisioned by the Court of Appeals. *See Kuflom v. Dist. of Columbia Bureau of Motor Vehicle Services*, 543 A.2d 340, 244 (D.C. 1988)("The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough.")(*citing Va. Petroleum Jobbers Ass'n. v. Fed. Power Comm'n.*, 259 F.2d 921, 925 (1958))

The Respondent suggests that its License is at risk of suspension and/or revocation. Barring a more egregious offense, District law does not authorize the Board to suspend or revoke a licensee's license until it has acquired four or more primary tier violations. See 23 DCMR § 801. The Respondent can avoid this fate by complying with the Board's Order. It is disingenuous of the Respondent to state that the District Court has determined that the conditions imposed on the License are unconstitutional. The District Court has not issued any such ruling. Therefore, the Board's Order, and the conditions therein, are sound and enforceable.

Finally, the Respondent contends that "it is in the public interest to maintain the status quo while a federal court determines the constitutionality of the Board's actions [, specifically where] there Board had not claimed that the alleged violations pose any harm to the members of the public or have any impact on the members of the public." *Respondent's Motion to Stay*, at 4.

This Board agrees with the Respondent. It is in the public interest for it to maintain the status quo while the District Court determines the constitutionality of the Board's actions. The Board will not stay these proceedings; preferring to maintain the status quo of enforcing the Orders that it issues.

The Board is charged with, among other things, responding to complaints from the public of violations of Title 25 of the D.C. Official Code and Title 23 of the District of Columbia Municipal Regulations (collectively referred to as "the District's Alcohol

Licensing Laws"), conducting its investigations of violations of the District's Alcohol Licensing Laws, and suspending or revoking licenses and imposing civil fines as authorized by the District's Alcohol Licensing Laws. See D.C. Official Code § 25-201(5), (6), and (7). D.C. Official Code §23-823(a)(6) authorizes the Board to impose fines or suspend or revoke the Respondent's license if it fails to comply with a Board Order. See D.C. Official Code § 25-823(a)(6).

When the Board granted the Respondent's License, it did so with conditions. The Board did not arbitrarily and capriciously impose the conditions. The Board received ample evidence during the Protest Hearing of the Respondent's Application which led it to place conditions on the license. *See In the Matter of HRH Services, LLC, t/a The Alibi*, Case No. 15-PRO-00096, Board Order No. 20616-280 (D.C.A.B.C.B. May 18, 2016).

It is the Board's responsibility to ensure the health, safety, and welfare of the public when deciding whether a license will be issued. One way of doing this is by enforcing the District's Alcohol Laws, including not complying with a Board's Order. Failing to do so would leave the public without any source of protection which is inconsistent with the nature of the law. Therefore, it cannot be argued in good faith that, one, the opposing party (the Government) would not be harmed if the stay is granted, or two, that the public interest favors granting the stay.

For the aforementioned reasons, the Respondent's Motion to Stay is denied.

Accordingly, it is this 7th day of December 2016, **ORDERED** that:

1. The Respondent's Motion to Stay is **DENIED**.

2. The Show Cause Status Hearing in Case No. 16-CMP-00600 is scheduled for December 14, 2016, at 9:30 a.m.

3. Copies of this Order shall be sent to the Respondent and the Government.

District of Columbia
Alcoholic Beverage Control Board

Donovan Anderson, Chairperson

Nick Alberti, Member

Mike Silverstein, Member

James Short, Member

Mafara Hobson, Member

Jake Perry, Member

Pursuant to D.C. Official Code § 25-433(d)(1), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., Suite 400S, Washington, DC 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code §2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR §1719.1 (2008) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b) (2004).