

ORDER ON EMERGENT APPLICATION
-----WATERFRONT COMMISSION
OF NEW YORK HARBOR,

Plaintiff-Respondent,

v.

LUIS SANTOS, JR.,

Defendant-Appellant.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-5918-11

MOTION NO. M-

BEFORE PART: R

JUDGE(S): SAPP-PETERSON
ST. JOHN

EMERGENT APPLICATION

FILED: AUGUST 6, 2012

BY: LUIS SANTOS, JR.

ANSWER(S) FILED: AUGUST 14, 2012

BY: WATERFRONT
COMMISSION OF NEW
YORK HARBORORDER
-----THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS
ON THIS 15th DAY OF AUGUST, 2012, HEREBY ORDERED AS FOLLOWS:EMERGENT APPLICATION
FOR

STAY PENDING APPEAL

GRANTED
()DENIED
(X)OTHER
()

SUPPLEMENTAL:

Appellant requests that we enter an order for a stay pending his appeal from the July 23, 2012 revocation of his registration to work as a maintenance man by the Waterfront Commission of New York Harbor (the Commission). Following an administrative trial in April and May 2012, an Administrative Law Judge (ALJ) determined that appellant "is a danger to the public peace or safety, within the meaning of the Waterfront Commission Act [(the Act), N.J.S.A. 32:23-1 to -225,] Part I, Article VIII, Sections 5(a) and 3(c)," such that he should be disqualified from inclusion in the longshoremen's register. The Commission adopted the decision of the ALJ on July 26, 2012, and appellant's registration to work at the New York Harbor and its terminals (the Waterfront) was revoked on August 6, 2012. He subsequently applied for emergent relief in the Appellate Division. We granted appellant's application to proceed on an emergent basis; however, we did not to enter a stay of the

revocation pending the interim briefing period. For the reasons that follow, we decline to enter a stay pending appeal, as appellant has not met his heavy burden under the well-established principles governing our review.

The most recent event underlying appellant's registration revocation stems from an alleged violent domestic altercation between appellant and the mother of his three children, which occurred on June 2, 2011. Following the incident, appellant was charged with simple assault, N.J.S.A. 2C:12-1, and harassment, N.J.S.A. 2C:33-4(a). Although the charges were dismissed by the Somerset County Prosecutor's Office, the Commission subsequently charged appellant with committing an offense constituting grounds for denial of his application for inclusion in the register of longshoremen, N.J.S.A. 32:23-29(c), as a result of the actions underlying the criminal charges initially filed against him. The Commission also alleged that appellant committed offenses in violation of the Act, requiring revocation of his registration under N.J.S.A. 32:23-31(b), stemming from two incidents in 2007 when appellant testified during a Commission interview that he had not used cocaine, but later tested positive for cocaine use. He later disclosed that he, in fact, used cocaine three times every month between October 2006 and October 2007.

The hearing before the ALJ included the testimony of appellant, the alleged victim and mother of appellant's children, as well as the police officer who interviewed the victim following the June 2, 2011 incident. The ALJ found that the testimony revealed appellant assaulted the victim in such a way that "was terrifying by any objective standard." Further, the ALJ's hearing report states that appellant himself testified he caused the victim "physical pain" and inflicted "bruises on her neck, wrist and stomach as depicted in [exhibits] in evidence." Further, notwithstanding appellant's efforts at confronting his substance and alcohol abuse as well as his anger management issues, which the ALJ concluded were "halfhearted, at best[,] the Commission adopted the recommendation of the ALJ's report concluding that appellant poses a danger to the public peace or safety of the Waterfront. The gravamen of the ALJ's decision was that simply because the altercation at issue occurred in a domestic setting, such "explosive anger and destruction of property[,] . . . even with provocation, will never be tolerated in the workplace."

Appellant submits that he and his family will suffer irreparable harm as a result of his registration being revoked because his inability to work on the Waterfront will prevent him from earning his well-accustomed annual income of \$167,000. In essence, appellant argues that his conduct, although admittedly reprehensible, does not constitute grounds for revocation of his

registration because it does not rise to the level of severity usually required for revocation under N.J.S.A. 32:23-29. At this juncture, we decline to decide the merits of appellant's contentions, and instead determine only whether emergent relief in the form of a stay is warranted.

At the outset, we note that a party who seeks emergent relief must demonstrate, "clearly and convincingly," Waste Mgmt. of N.J. v. Union County Util. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008), that (1) a relief is necessary to prevent irreparable harm; (2) the legal right underlying the claim is settled; (3) the applicant has a reasonable probability of success on the merits; and (4) a balancing of the equities and the hardships weighs in favor of granting relief, Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982). However, although it is generally understood that all the Crowe factors must weigh in favor of injunctive relief, a court may take a less rigid view than it would after a final hearing when the interlocutory injunction is merely designed to preserve the status quo. Waste Mgmt. of N.J., supra, 399 N.J. Super. at 520.

Appellant has not met his burden. Here, it is important to note that the purported irreparable harm is the loss of appellant's income because he is "the sole support of his children and another child." While we acknowledge the loss of income can prove devastating, we note that such a loss is but one factor in our analysis.

Considering that the standard governing appellate review of agency decisions involving the appropriateness of administrative sanctions is "limited," and that we will only disturb a final agency decision if we conclude the decision is arbitrary, capricious or unreasonable, Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980), we conclude appellant does not have a reasonable probability of success on the merits. The Commission had the authority to institute proceedings to revoke, cancel or suspend any license. N.J.S.A. 32:23-46. When the issue is the severity of a sanction, appellate courts must generally defer to the judgment of the agency, particularly when the agency is vested with authority to regulate the conduct of a discrete set of employees or professionals. In re Zahl, 186 N.J. 341, 353 (2006). Also, "appellate courts should consider whether the punishment is so disproportionate to the offense, in the light of all of the circumstances, as to be shocking to one's sense of fairness." In re Stallworth, 208 N.J. 182, 195 (2008) (quoting In re Carter, 191 N.J. 474, 484 (2007)).

Here, the ALJ heard testimony that appellant brutalized the mother of his children while threatening her life. Although the victim attempted "to minimize [appellant's] conduct, revealing her awareness of the potential dire consequences for her family

of his loss of livelihood," immediate Appellate Division intervention in the form of a stay pending appeal will not cure the alleged irreparable harm, rather it will burden the Commission with continuing appellant's employment pending an appeal that is not reasonably likely to be successful on the merits. Further, a balancing of the equities and hardships, do not favor appellant, but instead favor the Commission, which has the statutory authority to maintain "public peace" and safety on the Waterfront. N.J.S.A. 32:23-29(c). At this point in time, appellant has been determined by the Commission to be disruptive of such a state of order. Appellate review in the ordinary course will undoubtedly determine whether the Commission's decision was proper.

Having considered applicant's submission for emergent relief as well as the applicable legal standards, we conclude he cannot satisfy the heavy burden required for our intervention by way of ordering a stay of his registration revocation. Accordingly, the motion is denied.

FOR THE COURT:



JEROME M. ST. JOHN, J.S.C., (t/a)