SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2006-000144-001 DT 03/06/2006

HON. MARGARET H. DOWNIE

CLERK OF THE COURT
L. Rasmussen
Deputy

FILED: 03/08/2006

AETNA MAINTENANCE SYSTEMS INC

MICHAEL E HENSLEY

v.

MICHELE FLORI (001)
ARIZONA STATE REGISTRAR OF CONTRACTORS (001)

MICHELE FLORI
5536 E ANGELA DR
SCOTTSDALE AZ 85254
MONTGOMERY LEE

AZ REGISTRAR OF CONTRACTORS
FINANCIAL SERVICES-CCC
OFFICE OF ADMINISTRATIVE HEARINGS

MINUTE ENTRY

10:00 a.m. This is the time set for telephonic oral argument on plaintiff's Motion for Stay. Plaintiff is represented by counsel Michael E. Hensley. Defendant Michele Flori is not present but has filed a written response in lieu of oral argument to plaintiff's motion for stay. Montgomery Lee, representing Arizona Registrar of Contractors, is present but taking no position.

Court reporter is not present.

Discussion is held.

IT IS ORDERED taking this matter under advisement.

10:15 a.m. Hearing concludes.

LATER:

A.R.S. § 12-911(A)(1) permits this court to stay implementation of an agency decision based on a showing of "good cause." *See also* Rule 3(a), Rules of Procedure for Judicial Review

of Administrative Decisions ("A motion for stay of an administrative decision shall not be granted without good cause, and without reasonable notice to all parties.").

The "good cause" analysis involves two primary considerations: (1) whether the petitioner has a "colorable claim;" and (2) whether the balancing of harm favors the petitioner. *See Mehta v. Jones*, 211 Ariz. 505, 123 P.3d 1142 (App. 2005). A "colorable claim" is defined as an assertion that "'is seemingly valid, genuine, or plausible, under the circumstances of the case.'" *Id., quoting Bergerson v. Salem-Keizer School Dist.*, 60 P.3d 1126, 1132 (Ore. App. 2003).

Without deciding the substantive merits of the appeal, the court finds that plaintiff meets the relatively low threshold of advancing a "colorable claim." The more difficult analysis relates to the balancing of harm. Obviously, the loss of its contracting license will harm plaintiff financially. On the other hand, the real party in interest (Michele Flori) has articulated valid concerns about a stay.[1] The *Mehta* court advised trial courts to consider creative solutions to mitigate the harm inherent in granting a stay:

> The court should not overlook the tools at its disposal to mitigate potential harm to the agency's interest or that of another party. Rule 3(b) permits the court to set appropriate conditions upon a stay request and, if monetary or performance considerations are involved, require a security or performance bond of the petitioner. Employing these mitigating tools may allay the harm to others sufficiently to permit the court to find that the balance of harm favors a petitioner.

Id.

Similarly, Rule 3(b), Rules of Procedure for Judicial Review of Administrative Decisions, states:

> **Bond on Appeal.** A stay of an administrative decision may be conditioned upon the filing of a bond in superior court by the moving party or upon such other conditions as the court directs. A stay, if granted, shall be effective upon compliance with all conditions imposed by the court.

Having considered the matters presented, the court finds it appropriate to require plaintiff to post a security bond as a prerequisite to obtaining stay relief.

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[1] Plaintiff's counsel's February 13, 2006 letter to Ms. Flori bolsters some of these concerns. It states, *inter alia*:

> [T]his is also to let you know that Aetna Maintenance's insurance carrier has denied coverage for these claims. You should be aware, however, that if in fact ultimately at the end of the day someone concludes that a replacement of the entire tile floor is necessary, Aetna Maintenance does not have the assets to pay for such a repair. What assets are available, if they cannot be used to settle this matter before the notice of appeal is required, will go into the appeal and not settlement.

IT IS ORDERED granting a stay of the Registrar of Contractors' license suspension, to become effective only upon the posting of a bond by plaintiff with the Clerk of the Superior Court in the sum of $15,000. Unless and until such a bond is posted, no stay will be in effect.