

**STATE OF VERMONT
LIQUOR CONTROL BOARD**

IN RE: BACKSTAGE, LLC DOCKET NO. 2018-013
D/B/A BACKSTAGE PUB & RESTAURANT
60 PEARL STREET
ESSEX JUNCTION, VERMONT

BOARD DECISION AND ORDER

The Department of Liquor Control (“DLC”)¹ cited Backstage, LLC d/b/a Backstage Pub & Restaurant (“Licensee”) to appear for a May 16, 2018 contested case hearing for the Liquor Control Board (“Board”) to consider (1) potential sanctions against the Licensee’s First & Third Class Liquor Licenses for an alleged General Regulation No. 17² and (2) the Licensee’s 2018-2019 First and Third-Class Liquor License Renewal Application. Jacob A. Humbert, Esq., Assistant Attorney General, represented the Department of Liquor Control (“DLC”). Norman Blais, Esq. and Vincent Dober, the Licensee’s owner, appeared on behalf of Licensee. The Board rules as follows:

FINDINGS OF FACT

1. At all relevant times, Licensee held First and Third Class Liquor Licenses covering the premises at 60 Pearl Street in Essex Junction, Vermont.

2. At an April 11, 2018 contested case hearing before this Board, Licensee admitted a violation of General Regulation No. 16 and No. 17, paying a fine for the former and serving a three-day suspension for the latter. Licensee’s violation of General Regulation No. 16 involved Licensee’s owner, Vincent Dober. Mr. Dober performed duties at his licensed establishment directly related to the sale and service of alcohol while displaying significant outward and recognizable signs of intoxication, which were confirmed by a breathalyzer reading. Licensee’s violation of General Regulation No. 17 involved a patron displaying signs of intoxication who was allowed to remain at the licensed establishment.

¹ Subsequent to the hearing in this matter, the Department and, by extension this Board were renamed to reflect a merger between DLC and the Vermont Lottery Commission.

² A separate alleged violation of an April 11, 2018 Board Order imposing conditions on this Licensee’s liquor licenses was dismissed on the record.

3. The Board takes judicial notice of (1) Licensee's enforcement history, specifically the February 28, 2018 DLC Notice of Hearing charging these violations and (2) the April 11, 2018 Settlement Agreement wherein:

LICENSEE SHALL ADMIT ONE (1) VIOLATION OF GENERAL REGULATION NO. 16 AND PAY A FINE TO DLC WITHIN 30 DAYS OF APPROVAL IN THE AMOUNT OF \$350. LICENSEE SHALL ALSO ADMIT ONE (1) VIOLATION OF GENERAL REGULATION NO. 17 FOR WHICH LICENSEE SHALL SERVE A THREE-DAY SUSPENSION FROM THE BEGINNING OF BUSINESS ON FRIDAY, MAY 4, 2018 TO THE CLOSE OF BUSINESS ON SUNDAY, MAY 6, 2018. BOTH VIOLATIONS ADMITTED OCCURRED ON OR ABOUT FEBRUARY 16, 2018.

4. Following the Settlement Agreement, DLC cited Licensee to return for *another* hearing before this Board. Licensee appeared for the hearing before us on May 16, 2018 (our next scheduled meeting following the April 11, 2018 Settlement Agreement) with new, alleged violations, one of which was disposed of on the record.
5. We, therefore, are left to consider two issues: whether Licensee violated General Regulation No. 17 on April 28, 2018 and whether the Board should grant Licensee's renewal application for First and Third-Class Liquor Licenses for the 2018-2019 license period.

ALLEGED VIOLATION OF GENERAL REGULATION NO. 17

6. Licensee is alleged to have violated General Regulation No 17, which is as follows:

No licensee shall sell or furnish alcoholic beverages to any individual displaying signs of intoxication from alcoholic beverages or other drugs / substances. No licensee shall allow alcoholic beverages to be consumed on the licensed premises by any individual displaying such signs of intoxication. No licensee shall allow any individual displaying such signs of intoxication to stay on the licensed premises, except under direct personal supervision by a licensee or licensee employee in a segregated nonpublic area when the patron's immediate departure could be expected to pose a risk of bodily injury to the patron or any other individual.

7. DLC specifically alleges that, on April 28, 2018, Mr. Dober was allowed to remain in public areas of the licensed premises while displaying obvious signs of intoxication.
8. On April 28, 2018, Mr. Dober arrived at Backstage at approximately 5:45 p.m. He stayed at the licensed establishment for approximately five hours, until approximately 10:45 p.m.
9. During the course of that evening, DLC Investigator Jay Clark received text messages indicating that Mr. Dober was intoxicated while on the licensed premises.
10. The parties agree that, at approximately 10:20 p.m., Inv. Clark arrived at the licensed premises. He observed a doorman at the front entrance and another individual nearby who he recognized as Mr. Dober. Mr. Dober confirmed that he was in the parking lot awaiting a ride to take him home.
11. There is insufficient evidence before us that Mr. Dober was acting in the capacity of an on-duty employee that evening. Mr. Dober asserts that, over the course of the five hours that he was in the licensed establishment, he consumed three or four Bud Lite draft beers as well as ginger ale as a patron. He testified that he paid cash for each beer.
12. According to Inv. Clark, Mr. Dober was slouching and appeared to have difficulty standing. Inv. Clark noted that when Mr. Dober walked, he was unsteady on his feet. Inv. Clark told Mr. Dober that there had been multiple complaints about him being intoxicated on the licensed premises. Mr. Dober's speech was heavily slurred as he spoke with Inv. Clark. Mr. Dober stated he did not understand what the problem was because he wasn't working. Inv. Clark testified that Mr. Dober was certainly not sober. We find Inv. Clark's testimony credible in all respects.
13. Mr. Dober testified that his condition was misinterpreted as intoxication when in fact he had a respiratory illness. Mr. Dober noted that approximately two days after his encounter with Inv. Clark he sought medical care and was diagnosed with bronchitis.

14. Inv. Clark spoke with the bartender on duty, Kelly Clifford. Ms. Clifford said she was the only bartender on duty and that she arrived at approximately 6:30 p.m. for her shift. She said she did not serve Mr. Dober, but did observe him drink at least four Bud Light drafts that evening.
15. During Inv. Clark's conversation with Ms. Clifford, Mr. Dober re-entered the bar area and went to the bathroom. Inv. Clark pointed out Mr. Dober, and told Ms. Clifford that Mr. Dober was intoxicated and could not be served or allowed to loiter. Inv. Clark instructed Ms. Clifford that she should ensure that Mr. Dober was provided a safe ride home.
16. Inv. Clark then spoke with the Licensee's doorman, who informed Inv. Clark that a cab had been called for Mr. Dober. At that point, Mr. Dober came back outside. He was leaning against a parked van for support. Mr. Dober attempted to tell Inv. Clark that he did not understand what he did wrong. However, Inv. Clark had to request Mr. Dober repeat himself, as his speech remained significantly slurred. Inv. Clark again responded that the concern was Mr. Dober was intoxicated. Mr. Dober argued that he was not intoxicated.
17. The Licensee's doorman started his shift around 9:00 p.m. and observed that Mr. Dober had been drunk since that time. Inv. Clark asked what the doorman would have done if Mr. Dober were any other patron. He confirmed that he would have removed Mr. Dober, but that he did not because he feared losing his job.
18. Inv. Clark returned to speak with Ms. Clifford. He asked whether Ms. Clifford thought Mr. Dober was intoxicated. She answered affirmatively.

2018-2019 LICENSE RENEWAL APPLICATION

19. Vermont Liquor Licenses are generally granted for a period of one year. This period typically runs from May 1 to April 30.
20. The Board generally requires a Licensee to appear before the Board if it is disclosed or it comes to DLC's attention that a Licensee's principal has been charged with or convicted of a

criminal offense, primarily including those that involve consumption of or being under the influence of alcohol.

21. In his renewal application on behalf of Licensee, Mr. Dober disclosed that he had been convicted or pleaded guilty to a criminal or motor vehicle offense. He wrote “Vincent Dober Oct 2017.”

Has any person been convicted or pleaded guilty to any criminal or motor vehicle offense in any court of law (including traffic tickets by mail) during the last year? Yes No
If yes, please attach the following information: Individual's name, court/traffic bureau, offense and date
VINCENT DOBER ... OCT 2017...

Mr. Dober provided no more detail than what is copied in the preceding paragraph. He omitted responses to additional information sought such as “court/traffic bureau” and “offense.” Nevertheless, Mr. Dober provided sufficient information to lead DLC to learn that he was convicted of an alcohol-related offense in New York State.

22. DLC did not allege that Licensee provided false information in connection with its renewal application.

CONCLUSIONS OF LAW

1. The Board is established as the paramount authority in the administration of Vermont’s liquor statutes and regulations. *See Verrill, Jr. v. Daley, Jr.*, 126 Vt. 444, 446 (1967).
2. When passing upon the question whether a license shall be revoked or suspended for the violation of a liquor statute or regulation, the Board sits as a tribunal with a judicial function to perform and has statutory authority under 7 V.S.A. §§104, 108 and 210 to suspend or revoke any license for violating the provisions of Title 7 or any regulation. *See In Re: Wakefield*, 107 Vt. 180, 190 (1935).
3. Licensee held First and Third Class Liquor Licenses at all relevant times to this matter and is, therefore, subject to this Board’s jurisdiction.

4. Granting or denying a liquor license renewal application is a discretionary function entrusted to the Board. *See In re DLC Corp.*, 167 Vt. 544, 548 (1998).
5. A liquor license is a privilege and not a right. *In re Judy Ann's Inc.*, 143 Vt. 228 (1983). Such privilege is subordinate to the public interest and police power of the state. *See Carousel Grill v. Liquor Control Board*, 123 Vt. 93, 94 (1962). At the forefront of the Board's duties, we are charged with ensuring public safety. Determining whether a license can be granted and to whom a license may be granted is a matter entrusted to this Board and is not a matter to be taken lightly.
6. With respect to the alleged violation of General Regulation No. 17, we believe that DLC Investigators, including Inv. Clark, are competent and qualified to distinguish the signs of an illness, such as a cold or respiratory infection, from the signs and symptoms of intoxication. For example, the Board finds it reasonable to conclude that Mr. Dober's slurred speech, difficulty walking and using a parked vehicle for support to stand up are not signs of bronchitis, but rather directly relate to his level of intoxication. We rely exclusively on Inv. Clark's observations of Mr. Dober during the evening of April 28, 2018 to conclude that Licensee had, in fact, violated General Regulation No. 17. Mr. Dober was an individual displaying signs of intoxication and was allowed to stay on the licensed premises and was not under direct personal supervision by a licensee or licensee employee in a segregated nonpublic area.
7. The Board concludes that, given the above and this Licensee's enforcement history, a suspension of Licensee's First and Third Class Liquor Licenses for a period of **seven days** to be served, consecutively, at the discretion of DLC is appropriate.
8. We now turn to the question of whether Licensee's renewal application should be granted. It is DLC practice to require a Licensee to appear before the Board whenever a principal of a liquor license holder is convicted of a criminal offense, especially alcohol-related convictions, before a renewal is considered. While Licensee's application could have been more forthcoming about the totality of events leading to his arrest and ultimate conviction, it does not rise to the level of misrepresentation in the course of applying for a license

application nor did DLC charge Licensee with such a violation. Mr. Dober's conviction will, however, be considered below in determining whether we should approve the renewal of Licensee's licenses and, if so, whether conditions should be imposed.

9. The Board is deeply concerned that, during the 2017-2018 license period, Mr. Dober:

- Admitted to drinking alcoholic beverages while on duty at his licensed establishment (and served a suspension in early May 2018 as a result);
- His consumption of alcoholic beverages at his licensed establishment resulted in another violation, addressed above; and
- He was convicted of an alcohol-related moving violation.

10. When the owner of a licensed establishment consumes alcoholic beverages at his or her licensed establishment, it creates difficulties, if not impossibilities, in liquor law enforcement. This matter serves as a stark example. The line between employee and patron is too easily blurred. We have now found that Mr. Dober's intoxication has led to violations stemming from his role as both employee and patron of his licensed establishment. These infractions cannot continue if Licensee wishes to remain licensed.

11. Accordingly, while the Board will grant the License Application Renewal, we will impose the absolute prohibition against Mr. Dober consuming or being under the influence of alcohol and/or any illegal substances at any time while he is on the licensed premises. While on the licensed premises, Mr. Dober shall submit to breath or blood testing at the request of any member of law enforcement (which includes, but is not limited to, DLC investigators) and he shall fully cooperate with any such request. Further violations will subject Licensee to revocation of all liquor licenses.

12. Licensee must return for a hearing before the Board before any further renewals will be considered.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Board hereby **ORDERS** that Licensee's First and Third Class Liquor License be **SUSPENDED** for seven days (suspension to be served in consecutive days at the DLC's discretion) for the violation of General Regulation No. 17.

The Board grants the Licensee's License Renewal Application consistent with the absolute restrictions above.

DATED at Montpelier, Vermont this 9th day of July 2018.

VERMONT LIQUOR CONTROL BOARD



Liquor Control Board Chair

RIGHT TO APPEAL

Within 30 days after copies of this Order have been mailed, either party may appeal to the Vermont Supreme Court by filing a Notice of Appeal with the Department of Liquor Control and paying the requisite filing fee. See 3 V.S.A. § 815(a); V.R.A.P. 4 and 13(a).