

STATE OF VERMONT
DEPARTMENT OF LIQUOR AND LOTTERY
DIVISION OF LIQUOR CONTROL
BOARD OF LIQUOR AND LOTTERY

**In Re: WARREN & KATHY MILLER
D/B/A THE ELMORE STORE
1208 VERMONT ROUTE 12
LAKE ELMORE, VERMONT**

DOCKET NO. 2019-006

BOARD DECISION AND ORDER

Warren and Kathy Miller, d/b/a The Elmore Store (“Licensee”) appeared before the Board of Liquor and Lottery (“Board”) on April 10, 2019 in Montpelier for a contested case hearing. The Board considered whether to impose sanctions against Licensee’s Tobacco License for an alleged, December 6, 2018 violation of General Regulation No. 13. Jacob A. Humbert, Esq., Assistant Attorney General, represented the Department of Liquor and Lottery (“DLL”). Warren Miller, Licensee’s co-owner, appeared on behalf of Licensee and testified. The Board rules as follows:

FINDINGS OF FACT

1. At all relevant times, Licensee held a valid tobacco license.
2. The Board admitted the following exhibits:
 - State’s Exhibit 1: Board decision, *In re: Wellfleet, Inc.*, Docket 2017-012
 - State Exhibit 2: DLC Administrative ticket 10348
3. DLL asserts that Licensee violated the Following General Regulations on December 6, 2018:

General Regulation No. 13: For individuals of questionable age, all liquor and tobacco licensees and their employees shall demand that such individual exhibit a valid operator’s license, valid non-driver identification card, or enhanced driver’s license, which has been issued by this state or another state or foreign jurisdiction, a valid United States military identification card, a valid passport card or valid passport all of which bear the person’s photograph and signature, name, date of birth, and expiration date.

4. We relied on the testimony of four witnesses: Mr. Miller, DLL Investigators Weiland Patrick Ross and Jon Centabar, and a minor (born in 2002 and, therefore, under the age of eighteen at all relevant times) who assists with compliance checks.
5. The Board will forego a detailed recitation of the testimony considered because the Licensee admitted at hearing that, on December 6, 2018, during a tobacco compliance check, Mr. Miller sold a single cigar to a child under eighteen years of age without asking the minor for, nor checking, the minor's identification.
6. Licensee received an administrative ticket for \$260.00.
7. Licensee pursued its right to a hearing on this alleged violation and sought a reduced or eliminated fine based on his prior enforcement history and other extenuating circumstances.
8. The Board takes judicial notice of Licensee's enforcement history. Licensee has had no infractions for nearly twelve years.

CONCLUSIONS OF LAW

1. The Board is established as the paramount authority in the administration of Vermont's liquor and tobacco 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 tobacco statute or regulation, the Board sits as a tribunal with a judicial function to perform and has statutory authority under 7 V.S.A. §210(a)(1) 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 a tobacco license at all relevant times to this matter and is, therefore, subject to this Board's jurisdiction.

4. The sole issue for the Board's consideration is whether Licensee violated General Regulation No. 13, set forth above. Licensee admitted that it violated General Regulation No. 13 by selling a tobacco product to a child well under eighteen years of age. A sanction must be imposed.
5. Given the specific facts of this case, Licensee's candor to this Board, and in exercising our discretion under 7 V.S.A. §210(b)(1) to craft an appropriate sanction, we will reduce the administrative penalty by 50% to \$130.00.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Board fines Licensee \$130.00 for its violation General Regulation No. 13; the fine shall be payable within 90 days of the date of this decision.

DATED at Montpelier, Vermont this 11th day of April 2019.

VERMONT BOARD OF LIQUOR AND LOTTERY



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 and Lottery and paying the requisite filing fee or filing for a waiver of said fee with the Court. *See* 3 V.S.A. § 815(a); V.R.A.P. 4 and 13(a).