

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

**IN RE: NORTH BRANCH VINEYARDS, LLC
 D/B/A NORTH BRANCH VINEYARDS
 8 TRILLIUM HILL
 MONTPELIER, VERMONT**

DOCKET NO. 2019-017

BOARD DECISION AND ORDER

The Board of Liquor and Lottery (“Board”) held proceedings on October 9, 2019 to consider proposed sanctions against the Manufacturer’s License granted to North Branch Vineyards, LLC d/b/a North Branch Vineyards’ (“Licensee”) for an alleged violation of General Regulation No. 16. Licensee appeared and was represented by its co-owner, John McCann. The Department of Liquor and Lottery (“DLL”) appeared and was represented by Jacob A. Humbert, Esq., Assistant Attorney General. The Board finds and rules as follows:

FINDINGS OF FACT

1. DLL alleges that the Licensee violated the following regulation on or about August 24, 2019:

General Regulation No. 16: No licensee or licensee employee, or any individual involved in the sale, preparation or furnishing of alcoholic beverages, or sale of tobacco products and/or the enforcement on the premises of the laws, rules and regulations of this State pertaining to the sale or furnishing of alcoholic beverages, or sale of tobacco products, shall consume or display the effects of alcohol or any illegal substance while in the performance of their duties.

The Board admitted the Administrative Ticket reflecting this alleged violation (and Licensee’s denial of same and request for hearing) as State’s Exhibit 1.

2. Investigator Mathew Gonyo testified on behalf of DLL. His qualifications and experience are well known to the Board.

3. The alleged violation occurred during an event known as “Drink Vermont,” held at the Burlington Waterfront on August 24, 2019. The event, licensed under a “Festival Permit,” consisted of two public serving sessions, each four hours in duration (12 p.m. – 4 p.m. and 6 p.m.- 10 p.m.) wherein patrons could exchange tickets for alcoholic drinks. Licensee participated in “Drink Vermont” under the Festival Permit and, additionally, obtained its own Special Events Permit, issued as Permit # 9261-001-SPEV-036:

for the purpose of attending an event open to the public, which has been approved by the local licensing authority, to sell by the glass or unopened bottle the malt, spirituous or vinous beverage manufactured by the license holder [...] **offering tastings and selling unopened containers 12pm - 10pm.**

(Emphasis added). The Board hereby takes official notice of this permit consistent with its Administrative Organization and Procedures, and Agency Rules of Practice. Holding this additional permit allowed Licensee to sell full bottles of wine for off-premises consumption in addition to providing samples.

4. Inv. Gonyo testified that the first session ended at 4:00 p.m. as scheduled. He also testified that, at approximately 4:03 p.m., he observed Licensee’s co-owner and winemaker, John McCann walk over to a neighboring (beer) vendor’s service area and overheard him state that now he could drink because he is no longer on duty. The neighboring vendor poured him a sample-sized beer, which Mr. McCann consumed. Mr. McCann then walked back to his service area. A female server from the neighboring beer vendor followed Mr. McCann back to Licensee’s serving area where Mr. McCann poured the female server a sample of red wine.

5. Mr. McCann testified consistently with the facts, generally, as set forth by Inv. Gonyo. He felt, in good faith, that he was not on duty at the time of the consumption and service of alcohol because it was outside of the Drink Vermont service hours. Also, he testified, and DLL did not contest, that there have been no prior enforcement actions or sanctions regarding his license since it was issued in 2007. Additionally, Mr. McCann questioned why he was not told of the violation immediately, but rather several hours later, during the second session.

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 of whether the 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. §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 holds a Manufacturer's License as defined by 7 V.S.A. §2(26) and held a Special Event Permit as defined by 7 V.S.A. §2(36) and is, therefore, subject to this Board's jurisdiction.
4. Licensee was properly notified of its alleged violations and of its right to appear at a hearing to respond to these alleged violations consistent with 3 V.S.A. §809(a)-(c). The Board held a Hearing and the evidence closed on October 9, 2019.
5. DLL must prove all alleged violations by a preponderance of the evidence. If any violations are found, then the Board has concluded that DLL has met its burden.
6. Consistent with the above *Findings of Fact*, the Board concludes that Licensee violated General Regulation No. 16 by drinking on duty. We defer to the Investigator's analysis of the events of August 24, 2019. Licensee's Special Event Permit was in effect from 12 p.m. to 10 p.m. Within this time period, though outside of public consumption hours for the festival, Licensee consumed an alcoholic beverage and then immediately poured and served a glass of wine to another person, a patron unassociated with Licensee. At that point, consistent with the permit that DLL issued to Licensee and the credible facts presented, when Mr. McCann poured and served the wine, he was on duty. He was on his licensed premises during a time he was authorized to serve alcoholic beverages and served an alcoholic beverage to a patron just after consuming an alcoholic beverage himself. The Regulation does not specify any minimum threshold of alcohol consumption by an on-duty Licensee or Licensee-employee before a violation can be found.

7. Such a violation carries a \$510.00 monetary penalty. We, however, have authority to deviate from the schedule of fines (which could involve fines up to \$2,500.00 per violation) and to craft a proper sanction for any given violation. Though 7 V.S.A. §210(b)(1) does not specifically cover actions involving a Manufacturer's License, we read our authority under Title 7 (generally and reading 7 V.S.A. §210, in particular, as a whole), as extending to all licenses we grant.

8. The Board concludes that the appropriate sanction here is a written warning (not a fine, suspension or revocation), given the nature of the offense and lack of any prior enforcement actions and/or sanctions against Licensee since its license was obtained in 2007. Additionally, we recognize the confusion that might have resulted from permits existing within, and overlapping with, other permits (a Special Event Permit within a Festival Permit with limited service hours).

ORDER

Based on the foregoing *Findings of Fact* and *Conclusions of Law*, Licensee has violated General Regulations No. 16. The Board of Liquor and Lottery hereby issues a written **WARNING**.

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

VERMONT BOARD OF LIQUOR AND LOTTERY



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. *See* 3 V.S.A. § 815(a); V.R.A.P. 4 and 13(a).