

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

**IN RE: AMINAH AND RAYHAN, LLC
 D/B/A LUDLOW SHELL
 129 MAIN STREET
 LUDLOW, VERMONT**

DOCKET NO. 2019-007

BOARD DECISION AND ORDER

The Board of Liquor and Lottery (“Board”) held proceedings on April 10, 2019 in Montpelier to consider sanctions against Aminah and Rayhan, LLC’s (“Licensee”) tobacco license for an alleged violation of Education Regulation No. 3(b) said to have occurred on or about December 12, 2018. Jacob A. Humbert, Esq., Assistant Attorney General, represented the Department of Liquor and Lottery (“DLL”). Investigator Ladd Wilbur testified on behalf of DLL. Atta Ullah, Licensee’s 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:
 - State’s Exhibit 1 (copy of 7 V.S.A. § 213(c)(1)-(2) and 7 V.S.A. § 1002a(b)(2));
 - State’s Exhibit 2 (December 21, 2018 DLL Notice of Violation);
 - State’s Exhibit 3 (Licensee/Employee Mandatory Training (Tobacco) form); and
 - State’s Exhibit 4 (DLL record of Patricia Wing’s Second-Class training).
3. DLL asserts that Licensee violated Education Regulation No. 3(b) on or about December 12, 2018. The Regulation reads as follows:

Each licensee shall ensure that every employee who is involved in the preparation, sale, service or solicitation of alcoholic beverages or the sale of tobacco products, or enforcing of alcohol and/or tobacco laws and regulations must complete a training program offered or approved by the Department of [Liquor and Lottery] before the employee begins working in that capacity and at least once every two years thereafter. Each licensee shall maintain written documentation, signed by each employee trained of each training program conducted. A licensee may comply

with this requirement by conducting its own training program on its premises, using all information and materials furnished by the Department of Liquor [and Lottery], or from a program approved by the department. A licensee who fails to comply with the requirements of this subsection shall be subject to a suspension of no less than one day of the license issued under this title.

4. This rule has its roots in statute; specifically, 7 V.S.A. §213(c) reads:

(1) Each licensee, permittee, or common carrier certificate holder shall ensure that every employee who is involved in the delivery, sale, or serving of alcoholic beverages completes a training program approved by the Division of Liquor Control before the employee begins delivering, serving, or selling alcoholic beverages and at least once every 24 months thereafter. Each licensee shall maintain written documentation, signed by each employee trained, of each training program conducted.

(2) A licensee may comply with this requirement by conducting its own training program on its premises, using information and materials furnished or approved by the Division of Liquor Control. A licensee who fails to comply with the requirements of this subsection shall be subject to a suspension of the license issued under this title for not less than one day.

5. DLL Investigator Ladd Wilbur testified. On December 12, 2018, he performed a tobacco compliance check.
6. Licensee successfully passed the tobacco compliance test. Its employee, Suzanne Strong, refused to sell a tobacco product to a minor under the age of 18.
7. The DLL investigator entered the Licensee's establishment to report that it has passed the compliance check and to verify that Ms. Strong completed a training program approved by the DLL/Division of Liquor Control.
8. Licensee provided documentation to Investigator Wilbur that Ms. Strong received in-house training from a person identified as Patricia Wing on June 5, 2018.
9. DLL records confirmed that Ms. Wing had completed in-person training in Rutland on April 7, 2015. Ms. Wing was required to re-train no later than April 7, 2017.
10. Having not re-trained on or before April 7, 2017, Ms. Wing was not qualified to provide in-house training to Ms. Strong on June 5, 2018.
11. Licensee received notice of the alleged violation on or shortly after December 21, 2018. Ms. Wing completed a Second-Class online seminar on December 29, 2018. This timeline strongly suggests Licensee's acknowledgement that Ms. Wing had not received timely training.

12. Mr. Ullah asserted that he had provided in-house training to Ms. Wing prior to April 7, 2017, which does not explain why Ms. Wing would have sought re-training in December 2018. Mr. Ullah did not offer proof of Ms. Wing's in-house training into evidence.
13. DLL seeks to suspend Licensee's tobacco license for one day consistent with Education Regulation No. 3(b).

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 liquor/tobacco statute or regulation, the Board sits as a tribunal with a judicial function to perform and has statutory authority under Title 7 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 Education Regulation No. 3(b), set forth above.
5. Licensee violated Education Regulation No. 3(b) because Ms. Wing was not qualified to provide training to Ms. Strong on June 5, 2018.
6. We are required by statute and rule to impose a one-day suspension. 7 V.S.A. §1002a(b)(2), 7 V.S.A. §213(c)(1)-(2) and Education Regulation No. 3(b) are regulations of strict liability. The Board is, therefore, constrained to impose the mandatory sanction of a one-day suspension. There is no legal basis for this Board to reduce, alter or eliminate the sanction. The Board will exercise its discretion to allow the Licensee to work with DLL to choose a mutually agreeable date before the end of 2019 to serve the suspension.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Board hereby **ORDERS** that Licensee's tobacco license be **SUSPENDED** for one (1) business day, with the date to be determined collaboratively between Licensee and DLL for its violation of Education Regulation No. 3(b). Such suspension shall be served no later than December 31, 2019. Such date of suspension shall be selected within 60 days 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. *See* 3 V.S.A. § 815(a); V.R.A.P. 4 and 13(a).