

**STATE OF VERMONT  
LIQUOR CONTROL BOARD**

**In Re: R&F Damon Realty Inc.  
d/b/a The Dam Store  
Post Office Box 126  
Milton, Vermont 05468**

**DECISION**

The Liquor Control Board ("LCB") held proceedings in Montpelier, Vermont on May 8, 2013 to consider the *2013 Liquor License Renewal Application* of the licensee, R&F Damon Realty Inc. d/b/a The Dam Store ("Licensee"), which holds a Second-Class Liquor License and seeks to continue that license for the license year beginning May 1, 2013 and ending April 30, 2014. Licensee was present and appeared through Richard Damon, a co-owner. The Department of Liquor Control ("DLC") was present and represented by Jacob A. Humbert, Esq., Assistant Attorney General.

On April 15, 2013, Licensee was informed that it was necessary to appear at a LCB meeting before its *Application* could be considered. Licensee was provided with the contact information to ask any questions of the DLC's Director about the need to appear.

**FINDINGS OF FACT**

1. Licensee is R & F Damon Realty Inc. d/b/a The Dam Store, located at 89 U.S Route 7 North, Milton, Vermont. Licensee holds a Second-Class Liquor License by which it is permitted to sell alcoholic liquor for off-premises consumption. Licensee's most recent License expired on April 30, 2013, but remains valid while this matter is pending.
2. Licensee submitted a timely *2013 Liquor License Renewal Application* ("*Application*") regarding its Second-Class Liquor License to sell malt and vinous beverages for the license year beginning May 1, 2013 and ending April 30, 2014.
3. DLC received the *Application* on April 5, 2013 after being considered and approved by the Milton, Vermont Board of Control Commissioners.
4. On the *Application*, Licensee was asked the following question:

**Has any director or stockholder been convicted or pleaded guilty to any criminal or motor vehicle offense in any court of law during the last year.**

5. Licensee responded in the affirmative and noted in ink directly under the inquiry the following: "Richard Damon" "Felony Cultivation" "3/20/2012."
6. Sgt. Martin Prevost testified for the Vermont Department of Liquor Control that, through his investigation, he found that Mr. Damon had been arrested and charged with cultivation and possession of marijuana in the fall of 2011 after police helicopters spotted marijuana plants growing on and at Mr. Damon's personal residence. Mr. Damon's personal residence is separate and apart from the licensed premises, approximately seven (7) miles away.
7. Mr. Damon was adjudicated guilty of a felony related to that fall 2011 incident on March 20, 2012. He is currently on probation as part of the 18-month deferred sentence imposed by the Vermont Superior Court, Criminal Division.
8. Mr. Damon testified that he does not deny committing a felony involving the cultivation and possession of marijuana. He took no steps to cover up this conviction to the LCB either in his application or testimony at the Hearing.
9. Licensee's prior *Application*, for 2012-2013, was submitted in February 2012, prior to Mr. Damon's conviction.
10. Upon questioning by the LCB, Mr. Damon denied growing marijuana on the licensed premises and asserted that he began growing marijuana for his and his spouse's personal use, namely for health reasons including depression and anxiety.
11. Mr. Damon testified that his spouse is a co-owner of Licensee. The *2013 Liquor License Renewal Application* reflects only one other director or stockholder, Florence Damon. Ms. Damon was unable to attend the Hearing.
12. Mr. Damon testified that, initially, he and his spouse had eight (8) marijuana plants but had increased the amount of plants they maintained to twenty-five (25) plants by the time of their arrest. Mr. Damon testified that the initial eight (8) plants did not provide a sufficient quantity of the medicinal component of marijuana that would meet their year-round needs.

13. He expressed great remorse for his crime, that it was the “poorest decision he ever made” and pledged that he had learned from this experience.
14. There is no evidence that marijuana was grown on the licensed premises and there is no evidence that Mr. Damon or any other owner or employee of Licensee sold marijuana on the licensed premises.
15. Mr. Damon testified that his personal physician declined to prescribe prescription marijuana for his use.
16. Mr. Damon testified that he remains on probation following this conviction but may be eligible for early release.

### CONCLUSIONS OF LAW

1. The LCB is established as the paramount authority in the administration of Vermont’s liquor statutes. *See In Re: Wakefield*, 107 Vt. 180, 190 (1935); *Verrill, Jr. v. Daley, Jr.*, 126 Vt. 444, 446 (1967).
2. Licensee holds and seek renewal of his Second-Class Liquor License as defined by 7 V.S.A. §2(19) and is, therefore, subject to the LCB’s jurisdiction.
3. The LCB’s authority to grant Second-Class Liquor Licenses is codified at 7 V.S.A. §222.
4. Granting or denying a liquor license application is a discretionary function entrusted to the LCB. *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).<sup>1</sup> At the forefront of the LCB’s duties, we are charged with ensuring public safety. Determining whether a license can be issued and to whom a license may be granted is a matter entrusted to us and is not a matter to be taken lightly.
6. The LCB’s concern is that Mr. Damon’s felony conviction is very recent, that Mr. Damon remains on probation for this conviction, notwithstanding the prospect of an early discharge, and the underlying felony involved a very significant quantity of

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<sup>1</sup> It is significant to note that in *Carousel Grill v. Liquor Control Board*, 123 Vt. 93, 94 (1962), a license was withheld to an applicant where its president awaited trial on a gambling offense, prior to any conviction.

illegal drugs. Given the short period between the conviction and the present time, the LCB has insufficient evidence of Mr. Damon's rehabilitation to conclude that granting the Licensee's renewal application is in the best interest of public safety.

7. In our discretion and, again, with a focus on the best interests of the public safety, the LCB must deny Licensee's renewal application for a Second-Class Liquor License.

### **ORDER**

Based on the foregoing *Findings of Fact and Conclusions of Law*, the Board **DENIES** the Dam Store's 2013 *Liquor License Renewal Application*.

Under 3 V.S.A. § 814(b),

[w]hen a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

Accordingly, given Licensee's timely application for the renewal of the license, their 2012-2013 Second-Class Liquor License shall remain valid "until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court."

DATED at Montpelier, Vermont this 13<sup>th</sup> day of May, 2013.

### **VERMONT LIQUOR CONTROL BOARD**

By:   
Stephanie O'Brien, Chair