

**STATE OF VERMONT  
LIQUOR CONTROL BOARD**

**In Re:           EDGEWATER, INC.  
                  D/B/A TRAK INN STEAK HOUSE  
                  A/K/A FISHTAIL TAVERN  
                  2551 VERMONT STATE ROUTE 30 NORTH  
                  BOMOSEEN, VERMONT 05732**

**INTERIM BOARD DECISION AND ORDER**

Edgewater, Inc. d/b/a Trak Inn Steak House a/k/a Fishtail Tavern (“Licensee”) appeared before the Liquor Control Board (“Board”) on October 26, 2016 in Montpelier for a Contested Case Hearing to consider sanctions against First and Third Class Liquor Licenses for alleged violations of General Regulation Nos. 7, 17 (3 counts) and 17(a) (3 counts). Jacob A. Humbert, Esq., Assistant Attorney General, represented the Department of Liquor Control (“DLC”). Matthew Hart, Esq., appeared on behalf of Licensee. The Board addresses only the alleged violation of General Regulation 7 herein; all other alleged violations remain under advisement.

**FINDINGS OF FACT**

1. At all relevant times, Licensee held First-Class and Third-Class liquor licenses, permitting the sale of beer, wine, fortified wine and spirits to the public for on-premises consumption.
2. In its August 25, 2016 Notice of Hearing, DLC alleged that Licensee violated the following General Regulations duly adopted by the Board:
  - a. General Regulation No.7: Licensees and licensee employees shall allow at any time, a member of the Liquor Control Board, the Commissioner, and/or any of their assistants or Investigators to examine the licensed premises as well as all records, papers, stock, merchandise or equipment in reference to the operation of the license, and shall retain such items for inspection. All licensees shall keep on their licensed premises for a period of two years a complete record covering the operation of their license, including all invoices covering the purchase of alcoholic beverages and/or tobacco, and all financial records including but not limited to daily receipts for the sale of alcohol and/or tobacco. If any licensee has more than one licensed location, the licensee may keep all records in one

centralized business location in the State of Vermont and the Department shall be notified in writing, in advance, of the name, street address, and telephone number of such designated location. However, the licensee shall retain all training certificates and records, on the licensed premises where the individual in question works.

3. Rosemary Rogers, vice president of the corporate entity holding Licensee's liquor licenses (a co-owner of Licensee), admitted the following in her sworn testimony:
  - a. that DLC, through its investigator, Michael Davidson, made a request of certain records regarding Licensee's business;
  - b. that this request for records followed the events of March 18-19, 2016;<sup>1</sup>
  - c. that Licensee has not yet made these records available to DLC;
  - d. that Licensee did not keep on its licensed premises two years' worth of complete records covering the operation of their licensed establishment, including all invoices covering the purchase of alcoholic beverages [], and all financial records including but not limited to daily receipts for the sale of alcohol [.] The reason Ms. Rogers gave is that there is no room for them;
  - e. that at least one of Licensee's employees, Peter Nardell, had been paid from cash out of a tip jar in lieu of being paid via payroll, which may be a violation of General Regulation No. 45; and
  - f. that Licensee purchased and made available to patrons alcoholic beverages purchased off invoice, which may be tantamount to a violation of General Regulation No. 4.
4. Investigator Davidson testified that his first request for Licensee's business records was made in or around April 2016. Licensee has not fully complied in over six months.
5. DLC's request for records was part of an investigation into an incident in which three patrons of Licensee were found dead subsequent to their leaving Licensee's establishment and was not limited to stock records.

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<sup>1</sup> Ms. Rogers is adamant that DLC only sought stock information and no business records.

## 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 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. §236 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 First and Third-Class Liquor Licenses as defined by 7 V.S.A. §2(10) and §(22) and is, therefore, subject to this Board's jurisdiction.
4. Licensee was properly notified of the alleged violation of General Regulation No. 7 and of its right to appear at a hearing to respond to these alleged violations consistent with 3 V.S.A. §809(a)-(c). Licensee appeared and contested the alleged violations. The evidence in this matter remains open for a limited time and only on a limited issue, completely unrelated to General Regulation No. 7.
5. DLC must prove the alleged violation of General Regulation No. 7 by a preponderance of the evidence, which is the usual standard of proof in state administrative adjudications. *See Huddleston v. University of Vermont*, 719 A.2d 415 (1998); 3 V.S.A. §§ 801-849; *In re Muzzy*, 141 Vt. 463, 472, 449 A.2d 970, 974 (1982). This standard compels DLC to prove that, more likely than not, a violation occurred. If any violations are found, then the Board has concluded that DLC has met its burden.
6. General Regulation No. 7 requires licensees to allow the "Board, the Commissioner, and/or any of their assistants or Investigators to examine the licensed premises as well as all records" at any time for any reason. The General Regulation does not require a compelling reason or any threshold finding of necessity as a condition precedent to required disclosure. No subpoena is required.

7. General Regulation No. 7 contains a separate requirement that “licensees shall keep *on their licensed premises* for a period of two years a complete record covering the operation of their license, including all invoices covering the purchase of alcoholic beverages and/or tobacco, and all financial records including but not limited to daily receipts for the sale of alcohol and/or tobacco.” (Emphasis added).
8. A contested case hearing was held on October 26, 2016 and Licensee presented sworn testimony regarding the alleged violation of General Regulation No. 7 through its corporate officer, Rosemary Rogers.
9. Based on her testimony, we conclude that Licensee clearly violated General Regulation No. 7 on two grounds: (1) Ms. Rogers’ admission that two years’ worth of records were not kept on the licensed premises at all relevant times; and (2) that the records requested by DLC have not been made available for DLC inspection.
10. While we do not reach the alleged violations of General Regulations 17 and 17(a) at this time, the legitimate public health and safety concern implicated here is that DLC’s investigation stemmed from a triple-fatality motor vehicle accident where each occupant was indisputably a patron of the Licensee. It is of no moment that DLC has not alleged specific prejudice that records undisclosed might have been relevant or even crucial to its investigation. The Licensee’s failure to adhere to General Regulation No. 7 here demands that a suspension be ordered immediately.
11. We acknowledge that the parties were afforded until November 23, 2016 to submit Proposed Findings of Fact and Conclusions of Law. Upon further reflection of the evidence considered at the Hearing, we conclude that awaiting such Findings related to the violation of General Regulation No. 7 would be futile. Licensee admitted the violation as set forth above. Licensee’s ongoing violation of this Regulation and its failure to comply with DLC’s request for records under that Regulation is against the public’s interests. *See* Rule 10, Department of Liquor Control’s Administrative Organization and Procedures, and Agency Rules of Practice.

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, the Board **SUSPENDS** the First and Third Class licenses of Licensee for thirty (30) days effective at Noon on Friday, October 28, 2016 to noon on Sunday, November 27, 2016. During this suspension, no alcoholic beverages may be served, sold, consumed or allowed to be consumed.

Licensee is further **ORDERED** to comply with General Regulation No. 7 and provide for inspection any and all documents requested by the Department of Liquor Control's Investigator(s) immediately. Failure to comply may result in a lengthier suspension.

DATED at Montpelier, Vermont this 27<sup>th</sup> day of October 2016.

**VERMONT LIQUOR CONTROL BOARD**

By:   
Stephanie M. O'Brien, 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).