

**STATE OF VERMONT
LIQUOR CONTROL BOARD**

In Re: **LAKE HOUSE SALOON, LLC**
67 MAIN STREET
BARTON, VERMONT

DOCKET NO. 2017-008

BOARD DECISION AND ORDER

The Department of Liquor Control (“DLC”) cited Lake House Saloon (“Licensee”), holder of First-Class and Third-Class Liquor Licenses, to appear for a February 8, 2017 contested hearing before the Liquor Control Board (“Board”) in Montpelier to address alleged violations of General Regulation Nos. 9, 17 (5 counts), 17(a) (5 counts) and 36. Jacob A. Humbert, Esq., Assistant Attorney General, represented DLC. Anne Marie MacEachern appeared on Licensee’s behalf. Ms. MacEachern is the Licensee’s owner and operator. The parties waived the opportunity to submit proposed findings of fact and conclusions of law.

The Board admitted State’s Exhibit 1: Picture of Donald Sackett’s DJ booth, State’s Exhibit 2: Picture of damage to DJ booth, Licensee’s Exhibit 1: 2010 Disclosure of Non-Profit Organization Form, and Licensee’s Exhibit 2: Letter from Town of Barton concerning Break-Open Tickets. The Board also considered the testimony of Donald Sackett, DLC Investigator Michael Welch, Ms. MacEachern, Clayton Butler, Lester Bousquet, Kevin Tartaglio, and DLC Director of Enforcement, Licensing and Education, William Goggins.

The Board rules as follows:

FINDINGS OF FACT

1. At all relevant times, Licensee held First-Class and Third-Class Liquor Licenses permitting the sale of beer, wine and spirits to the public for on-premises consumption.
2. DLC asserts that Licensee violated the following Regulations:

- a. General Regulation No. 9: Gambling on licensed premises: Any licensee wishing to conduct game(s) of chance on licensed premises must first obtain a permit from the Vermont Department of Liquor Control using the prescribed form or format. Licensees applying for and/or receiving a permit shall be subject to financial disclosure to the Department for the purpose of verifying the disbursement of proceeds in accordance with applicable Vermont statutes and/or regulations.
- b. General Regulation 17: No licensee shall sell or furnish alcoholic beverages to any individual displaying signs of intoxication from alcoholic beverages or other drugs / substances. No licensee shall allow alcoholic beverages to be consumed on the licensed premises by any individual displaying such signs of intoxication. No licensee shall allow any individual displaying such signs of intoxication to stay on the licensed premises, except under direct personal supervision by a licensee or licensee employee in a segregated nonpublic area when the patron's immediate departure could be expected to pose a risk of bodily injury to the patron or any other individual.
- c. General Regulation No. 17(a): Licensees or licensees' employees shall not serve alcoholic beverages to any individual whom it would be reasonable to expect would be under the influence as a result of the amount of alcohol served to that person. Under the influence, in this Regulation, shall mean that degree of intoxication that would render it unsafe or illegal for the patron to undertake normal and expected activities upon leaving the licensed premises.
- d. General Regulation No. 36: All licensees shall control the conduct of all individuals on their licensed premises. All licensees must ensure the safety of individuals entering, leaving, or remaining on the licensed premises. No licensee shall permit or suffer any disturbances, brawls, fighting or illegal activity upon the licensed premises; nor shall a licensee permit or suffer such premises to be conducted in such a manner as to render such premises or the streets, sidewalks, parking lots or highways adjacent thereto a public nuisance.

August 5, 2016

- 3. Licensee's owner and operator, Anne Marie MacEachern, hired Donald Sackett to provide DJ services at the licensed establishment. Ms. MacEachern has owned the licensed establishment for eight years and has worked there for 25 years.

4. Mr. Sackett had routinely performed at Licensee's establishment for eight years as a DJ or "entertainer" until the evening of August 5-6, 2016.
5. Mr. Sackett's equipment includes a table with an amplifier, a control station (which controls the lights), a soundboard and two computers. He has a lighting rig, with multiple colored lights suspended above him. He described his equipment as "sensitive stuff."
6. According to Mr. Sackett, the night of August 5, 2016 started out normal "for all practical purposes." His shift was scheduled to end at 1:45 a.m. on August 6, 2016. About ten minutes prior to that, a fight between two patrons broke out on an outside deck and quickly moved inside. Additional people became involved in the fight. According to Mr. Sackett, approximately 15-20 people were "going at each other." The group came closer to Mr. Sackett's equipment and he "got overran."
7. During what Mr. Sackett described as a brawl, his equipment (which includes an amplifier that weighs 30 pounds) was knocked over. He testified that when his equipment was knocked over, he was temporarily pinned into a corner behind his lighting rig, as other items fell onto the floor. Mr. Sackett was not hurt in the incident. He was, however, "in a state of disbelief" while trying to protect himself and his equipment.
8. Mr. Sackett offered photographs of his typical set up (State's Exhibit 1) and how it appeared after the incident that he described (State's Exhibit 2). He testified that the cord that supplies power to the lighting rig was severed which caused short circuits. According to Mr. Sackett, the total cost of the damage was \$1,200.00.
9. Patrons assisted Mr. Sackett in picking up his equipment.
10. Mr. Sackett asked Ms. MacEachern to examine the damaged equipment to which he replied, "I hope you've got insurance."

11. After that evening, Mr. Sackett and Ms. MacEachern discussed the event over Facebook Messenger. Mr. Sackett wanted to be compensated for the damage to his equipment. He also wanted a protective cage built for him to shield him from the crowd. Ms. MacEachern declined, but provided the names of the people that she felt were responsible and those individuals' probation officers. Ms. MacEachern responded to Mr. Sackett: "It's a rough place always have been and probably will always be (sic)." She continued to state that he "Need[ed] to expect things to happen." Ms. MacEachern stated that there have been "many things" damaged by her "lovely patrons."
12. Mr. Sackett had prior encounters with rambunctious patrons, including one patron who hit him with her coat causing damage to a computer screen. His practice was to embarrass or call out the offending patron over his DJ equipment's loudspeaker. Ms. MacEachern counseled him against doing this. He described this defense maneuver as a means to avoid personal injury as, necessarily, "a matter of survival." This is a place where, according to Mr. Sackett, he "could get his ass kicked or stabbed," though this never happened.
13. After this incident, Mr. Sackett parted ways with Ms. MacEachern and began performing regularly at other establishments.
14. Ms. MacEachern does not contest that there was an altercation in her establishment that evening.
15. Licensee called Clayton Butler, an employee who worked as a front-door bouncer that evening. He testified that there was no brawl, but a "disturbance" outside the licensed establishment on its rear deck. Mr. Butler testified that there were two belligerent patrons at the licensed establishment. In hindsight, it appeared these two individuals were there "to kick somebody's ass." He worked swiftly to diffuse the situation which included physically engaging with these individuals and moving them from the rear of the licensed establishment to the front exit of the licensed establishment.

16. While escorting one of the belligerent patrons, the second belligerent patron slapped Mr. Butler hard on his shoulder, which caused Mr. Butler to spin around. That individual then indicated that he was not trying to assault Mr. Butler, but to simply get his attention for some unexplained reason. By the time that Mr. Butler was able to return his focus on escorting the first belligerent patron out of the licensed establishment, the first belligerent patron grabbed Mr. Butler from the side and placed him in a “pretty good chokehold.” Mr. Butler broke free of the chokehold just in time for the second belligerent patron to punch Mr. Butler in the jaw. A third patron may have entered the fray, knocking Mr. Butler over and into Mr. Sackett’s equipment, causing damage to it.
17. Mr. Butler ultimately forced the belligerent patrons out of the licensed establishment and told them to “never come back.”
18. Mr. Butler did not call the police because of the time it would take to respond, during which they would have to detain the participants, and his preference was to get them away from the licensed establishment. He testified that these two patrons were not intoxicated at time. There was no evidence to the contrary. The participants in the dispute were placed on the Licensee’s “barred list,” which according to Ms. MacEachern has over 90 patrons’ names on it.
19. Licensee called Lester Bousquet. He has worked security for the Licensee since October 2016. He has no personal knowledge of the August 2016 incident. He testified that he has many years’ experience working security and is trained in spotting signs of intoxication in patrons.
20. Licensee called Kevin Tartaglio, a former employee, to testify. He had no personal knowledge of the events at issue in this matter. He testified that the Licensee is careful on issues of overservice and appropriately staffs the bar to keep its patrons safe.

November 19, 2016

21. Michael Welch, DLC Investigator, performed an undercover, plain-clothed detail at Licensee's establishment with Inv. Michael Davidson on November 19, 2016.
22. Inv. Welch testified. He entered the licensed establishment at about 10:20 p.m. He estimates that there were 40-50 patrons present and there was a band playing. He noted that there were two bartenders working. He observed several patrons throughout the night at the licensed establishment who demonstrated significant signs of intoxication and who were being served alcoholic beverages.
 - a. At 10:30 p.m. Inv. Welch observed a male patron in a dark blue hoodie sweatshirt, standing by a pool table. He had "a sway" while standing. He was unsteady on his feet and his eyes were watery. He was four feet away from this man. At 11:20 p.m., this patron came up to Inv. Welch's right side and ordered a shot. The bartender appeared to have a difficult time understanding what the patron was ordering, but the individual was served a shot nevertheless.
 - b. At 10:35 p.m., a male patron in gray t-shirt was three feet away from Inv. Welch. The patron was slurring his speech while ordering a drink. The bartender served him a drink. At 11:14 p.m., that same gentleman ordered a beer. The bartender asked the patron whether he wanted a cold glass. The patron could not understand the question.
 - c. At 11:10 p.m. a male patron wearing a camouflage hat ordered a beer. He was unable to stand without swaying. The bartender appeared to have trouble understanding the patron due to the patron's intoxication. He was served a beer. The bartender served this patron two more beers, at 11:25 p.m. and 11:45 p.m.
 - d. At midnight, a female patron spilled her drink as she was being escorted out of the licensed establishment.

- e. At 12:10 a.m., Inv. Welch saw a male patron wearing a “Señor Frogs” tank top walk to the bar while swaying and sweating profusely. He was served an alcoholic beverage.
 - f. At 12:54 a.m., a male who appeared to have a disability presented with bloodshot, watery eyes, and was “loud” at the bar. Another patron went up to the bar and asked the bartender if the man who appeared to have a disability had been “cut off;” the response was “no.” The patron consumed five or six beers in Inv. Welch’s presence. Inv. Welch indicated that, in his training and experience, he is able to distinguish signs of intoxication from signs of disability. Inv. Welch believed that this patron was intoxicated.
 - g. Later, at approximately 1:04 a.m., there was an older female patron seated next to Inv. Davidson. She was demonstrating an “increasing lack of fine motor skills.” She did make clear that she had a designated driver. She later dropped her beer, but had difficulty picking up the beer. She fumbled with her wallet whilst paying.
23. According to Inv. Welch, the bar “had no off switch.” They did not cut anyone off; no one was being shut off.

Break-Open Tickets

24. Ms. MacEachern is the president of the ladies’ auxiliary of her local American Legion post. Licensee’s sale of Break-Open Tickets benefits this American Legion post (which does not hold a liquor license) and raises approximately \$3000 per month.
25. DLC, in its January 23, 2017 Notice of Hearing, alleged that Licensee “failed to obtain a nonprofit disclosure permit from the Vermont Department of Liquor Control noting the sale of break open tickets on your licensed premises in violation of General Regulation #9.”

There is no allegation that any of the proceeds of the sale of Break-Open Tickets had been misdirected or mishandled in any way.

26. Inv. Skyler Genest testified regarding the alleged violation of General Regulation No. 9.
27. On December 3, 2016, Inv. Welch told Inv. Genest that Licensee was selling Break-Open Tickets at its establishment. Inv. Genest was concerned that Licensee was not authorized by DLC to sell Break-Open Tickets.
28. Inv. Genest met with Ms. MacEachern. She indicated that she believed that she had complied with her licensing obligations.
29. William Goggins, DLC's Director of Education, Licensing and Enforcement testified to the process by which a first and/or third class licensee becomes permitted to sell Break-Open Tickets. Licensee is to complete a "Non-profit Disclosure Form" *each year* where Licensee designates the non-profit organization benefitting from the sales of Break-Open Tickets. This allows DLC to verify that the non-profit organization is aware of the arrangement and that monies are being properly transmitted to the non-profit from the licensee.
30. Ms. MacEachern believed Licensee had complied by submitting forms to her local liquor board in Barton, Vermont. She produced an approval for Break-Open Tickets for the year 2010. DLC, through counsel and through Director Goggins, confirmed that it last had a disclosure form for 2015 and that Licensee had a pending 2016-2017 application which has been held pending the resolution of the alleged General Regulation No. 9 violation.
31. DLC does not allege that Licensee mishandled or misappropriated any break-open ticket funds. DLC does not allege that permission to sell Break-Open Tickets, if properly sought, would have been denied for any reason. DLC's allegation is limited to a procedural violation.

CONCLUSIONS OF LAW

Consistent with the above *Findings of Fact*, the Board concludes as follows:

1. 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).
2. 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.
3. Licensee was properly notified of the 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). Licensee appeared at and participated in the hearing.
4. DLC must prove all alleged violations by a preponderance of the evidence. If any violations are found, then the Board has concluded that DLC has met its burden.

General Regulation No. 9

5. We conclude that Licensee did not provide DLC with a current "Non-profit Disclosure Form," which is required as a condition precedent to the legal sale of Break-Open Tickets. Licensee, therefore, violated General Regulation No. 9.
6. We find that this is, however, a violation of form, rather than substance. Licensee's fund-raising efforts for her organization are commendable. A warning is the only appropriate sanction.

7. DLC should consider whether its publicly available information on a Licensee's *annual* obligations with respect to break-open ticket sales and compliance with General Regulation No. 9, including its Website and Forms, including that which is found at, http://liquorcontrol.vermont.gov/sites/dlc/files/documents/Licensing/Forms/Form_Nonprofit_Disclosure.pdf, are clear.

General Regulation No. 17/17a

8. The Board finds that there was credible evidence of over service and service to intoxicated patrons at the licensee's establishment on November 19, 2016. The notice of hearing and presentation of evidence was not sufficiently clear as to which of Licensee's conduct, as it relates to as many as ten different patrons, either violated General Regulation 17 or General Regulation No 17(a). In an exercise of discretion, however, and based on the specific facts of this case, we find more than ample evidence of one violation of each General Regulation No. 17 and No. 17(a).

General Regulation No. 36

9. The Regulation is not intended to impose strict liability on a Licensee whenever and just because a fight breaks; it requires Licensees to prevent, to the extent possible, incidents before they happen or to promptly address those that do. We do not find that either Ms. MacEachern or Mr. Butler made efforts to hide the fact that the fight occurred. We find that the Licensee, through Mr. Butler, took immediate steps to address the fight. Mr. Butler and Mr. Sackett's equipment, not the Licensee's patrons, bore the brunt of any resulting injury.
10. We appreciate Mr. Sackett's efforts to speak openly about the incidents of August 5-6, 2016 and fears he faced that evening. We do find that Mr. Sackett's description of events may be tempered by his desire to receive compensation for the damage to his DJ equipment, a matter outside the Board's jurisdiction.

11. Given the evidence about the fight that took place on August 5-6, 2016 and that Licensee may have benefitted from additional security staff to have prevented such disturbances, we do find that violation of General Regulation No. 36 occurred. This regulation does not require that a fight escalate into a brawl for a violation to be found. *See* General Regulation no. 36 (“No licensee shall permit or suffer any disturbances, brawls, fighting or illegal activity upon the licensed premises.”). Given Mr. Butler’s credible testimony about his immediate efforts to diffuse the situation and the fact that no patrons were injured, we find that a warning is an appropriate sanction.

Proper Sanction For General Regulation 17 and 17(a) violations

12. The Board will issue a written warning for the violations of General Regulation Nos. 9 and 36. To impose an appropriate sanction for the violations of General Regulations Nos. 17 and 17(a), the Board must consider this Licensee’s prior enforcement history, which includes, most recently, the following sanctions:

- a) In December 2016, Licensee agreed to pay fines for two violations of General Regulation No. 17(a).
- b) In April 2014, the Board found that Licensee violated General Regulations 36 (2 counts) and 37 (6 counts). Its licenses were suspended for three (3) days effective at the start of business on Friday, April 25, 2014 through and including the close of business on Sunday, April 27, 2014.

13. Given the enforcement history, a longer suspension is appropriate for the violation of General Regulation No. 17 and a fine is appropriate for the violation of General Regulation No. 17(a). Further violations will result in more serious sanctions.

ORDER

Based on the foregoing *Findings of Fact* and *Conclusions of Law*, the Board hereby issues a written **WARNING** for the violations of General Regulations Nos. 9 and 36. Furthermore, the Board finds violations of one count of General Regulation No. 17 and one count of General Regulation No. 17(a)

The Board hereby **ORDERS** that Lake House Saloon's First-Class and Third Class Liquor Licenses be suspended effective at the start of business on Wednesday, April 26, 2017 through and including the close of business on Sunday, April 30, 2017.

Licensee is also **FINED**, consistent with 7 V.S.A. §236(b), the amount of \$500.00 to be paid within 30 days of this Order.

DATED at Montpelier, Vermont this 8th day of March 2017.

VERMONT LIQUOR CONTROL BOARD

By: Stephanie O'Brien
Stephanie M. O'Brien, Chair

Julian Sbardella
Julian Sbardella, Member

Thomas Lauzon
Thomas Lauzon, Member

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).