

**STATE OF VERMONT  
LIQUOR CONTROL BOARD**

**In Re: SLIMAIN HANDY’S CONVENIENCE STORE, INC.  
D/B/A SIMON’S ESSEX CENTER STORE & DELI  
134 JERICHO ROAD  
ESSEX, VERMONT**

**DOCKET NO. 2017-010**

**BOARD DECISION AND ORDER**

Slimain Handy’s Convenience Store, Inc. d/b/a Simon’s Essex Center Store & Deli (“Licensee”) appeared before the Liquor Control Board (“Board”) on April 5, 2017 in Montpelier for a contested case hearing to consider sanctions against Licensee’s tobacco license for an alleged, February 7, 2017, violation of Education Regulation 3(d). Jacob A. Humbert, Esq., Assistant Attorney General, represented the Department of Liquor Control (“DLC”). Joe Handy, Store Manager, and Todd Pratt, General Manager, appeared on behalf of Licensee as its owner and waived his option to submit proposed findings for the Board’s consideration. The Board rules as follows:

**FINDINGS OF FACT**

1. At all relevant times, Licensee held a valid tobacco license: License No. 04312-004-TOBC-01.
2. DLC asserts that Licensee violated the Following General Regulations on or about February 7, 2017:

3(d) All records, and certificates on pre-approved Department forms, indicating that an employee has been trained must be kept on all licensed establishments at all times. Those training records shall be available at all times and must be presented immediately to a Liquor Control Investigator or a Vermont Law Enforcement Officer if it is requested.
3. DLC Sgt. Martin Prevost performed a tobacco compliance check during the evening of February 7, 2017.
4. Sgt. Prevost testified that Licensee’s employee, Brandon Lynn “passed” a compliance check by refusing a sale of a tobacco product to an underage patron.

5. Sgt. Prevost entered Licensee's store to report that it passed the tobacco compliance check.
6. Sgt. Prevost then requested Mr. Lynn to produce the Licensee's DLC training records. The records were not available. Records were not presented to the DLC investigator.
7. Sgt. Prevost confirmed that there was no evidence in DLC's database that Mr. Lynn had received training.
8. Sgt. Prevost testified that Mr. Lynn was polite and cooperative; he looked for ten minutes and did not locate training records.
9. The Board admitted DLC Exhibit 1 (Notice of Violation) and Exhibit 2 (Copy of Licensee Education statute); and Licensee Exhibit 1 (Payroll information for Mr. Lynn) and Exhibit 2 (Evidence of Mr. Lynn's training).
10. Contrary to the Notice of Hearing, DLC clarified at Hearing that DLC does not seek a suspension of any license to sell alcoholic beverages. The Notice of Hearing indicated that the Board would consider suspension or revocation of Licensee's Second-Class Liquor Licenses and is error. Only Licensee's tobacco license is implicated here.

### **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 a 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).

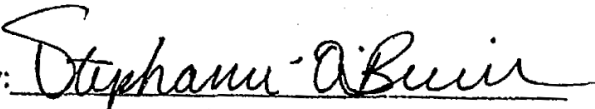
3. Licensee held a tobacco license at all relevant times to this matter and is, therefore, subject to this Board's jurisdiction.
4. The sole issue for the Board's consideration is whether Licensee violated Education Regulation 3(d), set forth above.
5. This regulation is one of strict liability; if the Licensee does not produce the training records to a Liquor Control Investigator or a Vermont Law Enforcement Officer upon request, the rule is violated.
6. The evidence is unequivocal that a DLC Liquor Control Investigator requested training records from a licensee and they were not immediately produced .
7. License, therefore, violated Education Regulation 3(d). The scheduled penalty for such a violation is a one-day suspension of a tobacco license. While the Board has broad discretion as to impose a stricter penalty, the scheduled penalty is appropriate here.

## **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 day, with the date to be determined by DLC, for its violation of Education Regulation 3(d).

DATED at Montpelier, Vermont this 16<sup>th</sup> day of May 2017.

### **VERMONT LIQUOR CONTROL BOARD**

By:   
Stephanie M. O'Brien, Chair

  
Julian Sbardella, Member

  
Martin Manahan, Member

  
Sam Guy, 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).