

**STATE OF VERMONT
LIQUOR CONTROL BOARD**

In Re: WELLFLEET, INC.

**D/B/A SAXTONS RIVER VILLAGE MARKET
25 MAIN STREET
SAXTONS RIVER, VERMONT**

DOCKET NO. 2017-012

BOARD DECISION AND ORDER

Wellfleet, Inc. d/b/a Saxtons River Village Market (“Licensee”) appeared before the Liquor Control Board (“Board”) on May 10, 2017 in Montpelier for a contested case hearing. The Board considered whether to impose sanctions against Licensee’s Second-Class Liquor License for an alleged, February 23, 2017, violation of General Regulation No. 13. Jacob A. Humbert, Esq., Assistant Attorney General, represented the Department of Liquor Control (“DLC”). Averill Larsen, owner, appeared on behalf of Licensee. The Board rules as follows:

FINDINGS OF FACT

1. At all relevant times, Licensee held a valid Second-Class Liquor License.
2. DLC asserts that Licensee violated the Following General Regulations on February 23, 2017:

General Regulation No. 13: For individuals of questionable age, all liquor and tobacco licensees and their employees shall demand that such individual exhibit a valid operator’s license, valid non-driver identification card, or enhanced driver’s license, which has been issued by this state or another state or foreign jurisdiction, a valid United States military identification card, a valid passport card or valid passport all of which bear the person’s photograph and signature, name, date of birth, and expiration date.

3. We relied on the testimony of three witnesses: DLC Investigator Wilbur Ladd, a minor working undercover for DLC and Ms. Larsen.
4. During the morning hours of February 23, 2017, DLC performed a compliance check of this alcohol retailer. At that time, DLC Investigator Wilbur Ladd and a minor entered the

Licensed Establishment. Ms. Larsen was the only employee in the Licensed Establishment and was behind the counter working the cash register.

5. The minor attempted to purchase a 24-ounce can of Bud Light. He brought the can to the checkout area and placed the can of beer down on the counter.
6. Ms. Larsen, sensing that the minor was underage, looked at the minor and asked him “how old are you?” The minor responded that he is 18 years old. Ms. Larsen then asked, incredulously, “why are you trying to buy beer if you’re only 18?”
7. Licensee refused to consummate the sale.
8. At that point, the minor left the Licensed Establishment.
9. Licensee did not ask the minor for identification at any time.
10. DLC subsequently notified Licensee that it passed the compliance check for refusing a sale to a minor. Around the same time, Licensee also received a notice of a \$260.00 fine for violation of General Regulation No. 13.
11. Licensee pursued her right to a hearing on this alleged violation.

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).

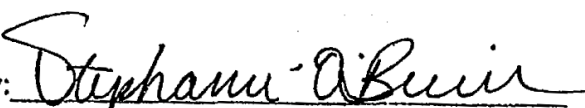
3. Licensee held a Second-Class Liquor License, as defined by 7 V.S.A. §2(19), at all relevant times to this matter and is, therefore, subject to this Board's jurisdiction.
4. The sole issue for the Board's consideration is whether Licensee violated General Regulation 13, set forth above.
5. Our regulations provide two distinct requirements relevant to this matter: an absolute prohibition on the sale of alcoholic beverages to persons under 21 years of age (*See* General Regulation No. 12) and a requirement that, in the circumstances described above, that the Licensee *demand* valid identification as proscribed in General Regulation No. 13 (Emphasis added).
6. These regulations are ones of strict liability; if the Licensee sells alcohol to a minor or does not demand that a person of questionable age, who seeks to purchase alcohol, produces identification as proscribed in General Regulation No. 13, the regulations have been violated.
7. License complied with General Regulation No. 12. License violated General Regulation No. 13.
8. This case might present a circumstance in which faithful adherence to the General Regulation No. 13 seems wholly unwarranted and unnecessary. Following standard protocols, even in such circumstances, is required. The Board wishes to see uniformity in its Licensees' application of and enforcement of our Regulations.
9. Given the specific facts of this case, Licensee's refusal to sell alcohol to a minor and Licensee's candor towards the Board at the hearing, and in an exercise our discretion, we decline to impose a fine here and, instead, issue a warning instead.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Board issues a Warning for its violation General Regulation No. 13.

DATED at Montpelier, Vermont this 26th day of June 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).