

**STATE OF VERMONT
LIQUOR CONTROL BOARD**

**In Re: CHURCH HOLDINGS, INC.
D/B/A CHURCH & MAIN
156 CHURCH STREET
BURLINGTON, VERMONT**

DOCKET NO. 2017-015

BOARD DECISION

Church Holdings, Inc. d/b/a Church and Main (“Licensee”) appeared before the Liquor Control Board (“Board”) on July 12, 2017 in Montpelier for a contested case hearing to consider sanctions against its First and Third-Class Liquor Licenses. The Department of Liquor Control (“DLC”) alleges that Licensee violated General Regulation Nos. 7(a), 16, 17, and 34. Jacob A. Humbert, Esq., Assistant Attorney General, represents DLC. Ned Church, Licensee’s owner, appeared on behalf of the Licensee. 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, fortified wine and spirits to the public for on-premises consumption.
2. In its June 1, 2016 Notice of Hearing, DLC alleged that Licensee violated the following General Regulations, duly adopted by the Board, on April 30, 2017:
 - a. General Regulation No. 7(a): No licensee, licensee employee or any individual performing work or services for a licensee on a licensed premises shall interfere with, nor permit any other individual to interfere with, provide false written or verbal information to, or fail to cooperate with a Liquor Control Investigator or other Vermont Law Enforcement Officer in the performance of their duties.
 - b. General Regulation No. 16: No licensee or licensee employee, or any individual involved in the sale, preparation or furnishing of alcoholic beverages, or sale of tobacco products and/or the enforcement on the premises of the laws, rules and regulations of this State pertaining to the sale or furnishing of alcoholic beverages, or sale of tobacco products, shall

consume or display the effects of alcohol or any illegal substance while in the performance of their duties.

- c. General Regulation No. 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.
 - d. General Regulation No. 34: A licensee shall not lock the doors of its licensed premises where alcoholic beverages are stored, sold, furnished or consumed if any individual other than the on duty licensee or on duty licensee employees are on the licensed premises.
- 3. The Board considered testimony from Sergeant Thomas Nash of the Burlington Police Department and Mr. Church.
 - 4. Sgt. Nash is certified by the Vermont Criminal Justice Training Council as a Level III (full-time) law enforcement officer. He is also a field supervisor. During his shifts, he supervises a team of officers. Late on Friday and Saturday evenings, at approximately 2:00 a.m., his team is stationed on or around the Church Street Marketplace. The purpose of this detail is to ensure safety as the area's bars close for the evening. Sgt. Nash estimates that as many as 4,000 people crowd into the Church Street Marketplace area at and around the various bars' closing time.
 - 5. Sgt. Nash testified that, at or close to 2:00 a.m., bars typically turn off their music and turn up the house lights as a signal to patrons that it is time to leave.
 - 6. Sgt. Nash was on duty during the early morning hours of April 30, 2017. He was stationed at the corner of Church and Main Streets in Burlington, with a clear view of the outside (and prior to 2:40 a.m., the inside) of the licensed establishment.

7. He noticed that the Licensee, by 2:20 a.m., still had its lights “dimmed for service;” that the music had not stopped; and that there were many patrons inside “mingling,” and “holding glasses.”
8. Sgt. Nash entered the licensed establishment shortly thereafter and told a male bartender inside and stationed behind the bar that everyone needed to be out by 2:30 a.m. The bartender acknowledged this. Sgt. Nash left the licensed establishment.
9. Sgt. Nash returned to the licensed establishment approximately 20 minutes later at approximately 2:40 a.m. He noticed that blinds were now covering the windows so he could not see inside as he had been able to earlier in the evening. He noticed that music was still playing.
10. He went around to a glass door, which allowed him to look inside. He noticed that approximately the same number of people were inside that were inside 20 minutes earlier. He tried to enter the licensed establishment, but the door was now locked. Sgt. Nash then attempted to get a bartender’s attention by knocking; no one answered.
11. Sgt. Nash was ultimately able to gain entry because a patron exited the licensed establishment through that door, opening the door from the inside.
12. Upon entering the licensed establishment for the second time, he noted that the house lights remained dimmed and that the music continued.
13. Sgt. Nash told a bartender that Licensee had already been warned, and because it was then 2:40 a.m., everyone must leave immediately. The bartender responded that he was trying, but the patrons were not leaving.
14. Sgt. Nash observed that Licensee engaged in no efforts since his last visit to get the patrons to leave. In fact, Sgt. Nash watched a patron pay a bar tab with a credit card at 2:40 a.m.

15. At that point, a bartender now (verbally) called for patrons to leave.
16. Sgt. Nash decided to remain at the licensed establishment to ensure that patrons departed.
17. Not long after the announcement to leave was made, a male approached him. The male appeared to be intoxicated. Sgt. Nash described him as unsteady on his feet with bloodshot eyes and a “confrontational” affect. The man spoke with a slight slur to his speech. Sgt. Nash testified that this male had “certainly has been consuming alcohol” that evening.
18. Sgt. Nash stated that the man got close to him and said: “what the hell are you doing?” Sgt. Nash, who was in full uniform, was taken aback by the comment and replied, simply, that “the bar can get in a lot of trouble for being open.” The man now identified himself as the Licensee’s manager.¹ The manager then asserted that they were celebrating the licensed establishment’s last night in business and asked Sgt. Nash: “why are you targeting us tonight?” He then told Sgt. Nash that all patrons remaining on premises (about 20 people) were employees, such that they were not in violation. At this point, other bartenders intervened and worked to move the manager away from Sgt. Nash.
19. Sgt. Nash explained to another bartender, who was apologetic for the manager’s conduct, that his warning to the Licensee was ignored, so now he had no choice but to cite them for violations of our Regulations.
20. DLC rested at this point.
21. Ned Church testified. He did not contest the violations or Sgt. Nash’s account of April 30, 2017’s events. Mr. Church apologized for the conduct of his former manager.
22. We agree with Licensee that Sgt. Nash’s testimony is credible in all respects.

¹ Mr. Church testified that the man in question was, indeed, the Licensee’s manager.

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 considering 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 holds First and Third-Class Liquor Licenses as defined by 7 V.S.A. §2(10) and §(22). Licensee is, therefore, subject to this Board's jurisdiction.
4. Licensee was properly notified of the alleged violations detailed above and of its right to appear at a hearing to respond to the above-listed, alleged violations consistent with 3 V.S.A. §809(a)-(c).
5. DLC must prove the alleged violations 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. Licensee does not contest these alleged violations. Our analysis, then, that Licensee violated the four General Regulations as charged, above, is brief:
 - a. Licensee, through its bartender and manager, interfered with and failed to cooperate with Sgt. Nash, a Vermont law enforcement officer, in the performance of his duties sufficient to violate General Regulation No. 7a.;

- b. Licensee's manager displayed the effects of alcohol while in the performance of his duties sufficient to violate General Regulation No. 16;
 - c. Licensee's manager was allowed to stay on the licensed premises while displaying such signs of intoxication sufficient to violate General Regulation No. 17; and
 - d. Licensee locked the doors of its licensed premises while patrons were inside such premises sufficient to violate General Regulation No. 34.
- 7. Licensee did not renew its liquor licenses for the year beginning May 1, 2017. Given that there are no licenses to suspend or revoke, the Board is left only with the power to impose an administrative penalty.
- 8. The Board approved a schedule of administrative penalties for violations of General Regulation in November 2016, in relevant part as follows:
 - a. General Regulation No. 7(a): \$510.00
 - b. General Regulation No. 16: \$510.00
 - c. General Regulation No. 17: \$510.00
 - d. General Regulation No. 34: \$260.00
- 9. A licensee may waive the right to a hearing by paying the scheduled penalty amount. Once a violation is denied, the Board is no longer constrained to any schedule of penalties and may impose. *See 7 V.S.A. §236(b)* ("[a]s an alternative to and in lieu of the authority to suspend or revoke any permit or license, the liquor control board shall also have the power to impose an administrative penalty of up to \$2,500.00 per violation against a [...] holder of a first, second or third class license for a violation of the conditions under which the license was issued or of this title or of any rule or regulation adopted by the board. The total administrative penalty the Board could impose here is \$10,000.00, or \$2,500.00 for each violation. Nevertheless, DLC seeks the Board to impose a total administrative of \$1,790.00.
- 10. Given that Licensee had no violation of any type since we granted its licenses nearly seven years ago, we agree with DLC's position and will impose the fine sought. Given the

Licensee's admission of these violations and its prior record, if the fine is paid within 30 days, we will reduce the administrative penalty by half.


ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Board assesses an **ADMINISTRATIVE PENALTY** in the amount of \$1,790.00 to be paid to DLC.

If the administrative penalty is paid within 30 days of this Order, the amount payable to DLC shall be reduced by one-half to \$895.00 and constitute payment in full.

DATED at Montpelier, Vermont this 17th day of July 2017.

VERMONT LIQUOR CONTROL BOARD

By: 
Martin Manahan, Acting Chair