

**STATE OF VERMONT
LIQUOR CONTROL BOARD**

**IN RE: PAPA TREAT, LLC D/B/A BUXTON'S STORE
499 MAIN STREET
ORWELL, VERMONT**

BOARD DECISION AND ORDER

Papa Treat, LLC d/b/a Buxton's Store ("Licensee") appeared before the Liquor Control Board ("Board") on April 11, 2018 in Montpelier for a contested case hearing to consider sanctions against Licensee's tobacco license for an alleged January 27, 2018 violation of Education Regulation 3(b). Jacob A. Humbert, Esq., Assistant Attorney General, represented the Department of Liquor Control ("DLC"). Andrew Buxton, Licensee's owner, appeared on behalf of Licensee as its owner. The Board rules as follows:

FINDINGS OF FACT

1. At all relevant times, Licensee held a valid tobacco license and Second-Class Liquor License.
2. DLC asserts that Licensee violated Education Regulation No. 3(b) on or about January 27, 2018. The regulation reads as follows:

Each licensee shall ensure that every employee who is involved in the preparation, sale, service or solicitation of alcoholic beverages or the sale of tobacco products, or enforcing of alcohol and/or tobacco laws and regulations must complete a training program offered or approved by the Department of Liquor Control before the employee begins working in that capacity and at least once every two years thereafter. Each licensee shall maintain written documentation, signed by each employee trained of each training program conducted. A licensee may comply with this requirement by conducting its own training program on its premises, using all information and materials furnished by the Department of Liquor Control, or from a program approved by the department. A licensee who fails to comply with the requirements of this subsection shall be subject to a suspension of no less than one day of the license issued under this title.

3. DLC seeks to suspend Licensee's tobacco license for one day consistent with Education Regulation No. 3(b).

4. DLC called two witnesses, Investigator Michael Davidson and Sergeant Martin Prevost, Director of Licensing. Both witnesses and their credentials are well known to the Board.
5. Inv. Davidson testified that he supervised an underage tobacco compliance check at the Licensee's premises on January 27, 2018.
6. Inv. Davidson sent a minor, 17-year-old male, into the licensed premises to attempt to purchase a tobacco product.
7. The minor attempted to purchase a tobacco product from Licensee's employee/clerk, Meghan Connor. Ms. Connor properly asked to see the minor's identification, she reviewed the identification provided, and she refused to sell the tobacco product to the minor. Licensee passed the compliance check.
8. Inv. Davidson then entered the licensed establishment to report that the Licensee passed the compliance check, to identify the clerk involved in the compliance check and to review her training credentials.
9. Licensee provided Inv. Davidson was provided a "Certificate of Completion" from "sellerserver.com" with a certificate number "56004:21268475" indicating that Ms. Connor's training was completed on June 27, 2017.
10. Sellerserver.com issued the "Certificate of Completion" to Ms. Connor. A copy of the certificate, admitted as State's Exhibit 1, states: "this course meets all requirements for statutes 125.04, 125.17 and 134.68." There are no Vermont statutes or administrative rules numbered as such, nor are any of these related to any matters regarding alcohol or tobacco in Vermont.
11. This company, purportedly based in Houston, Texas, holds itself out as being authorized to provide Vermont-specific training for alcohol service. Mr. Buxton testified he paid \$25.00 to sellerserver.com for Ms. Connor's training. Mr. Buxton testified that Ms. Connor completed a three-hour online course and believed that she had attained proper certification.

12. Inv. Davidson forwarded a copy of Exhibit 1, via electronic means, to DLC.
13. DLC sent a letter to Licensee, admitted as State's Exhibit 2, indicating that the training provided by "sellerserver.com" was not authorized or approved by DLC.
14. Sgt. Martin Prevost testified that he confirmed that sellerserver.com is not authorized to provide training in Vermont. He testified that DLC maintains a list of entities it has authorized to provide seller or server training. This list was admitted as State's Exhibit 3. To be authorized, the entity would have to notify DLC of its intent to provide training and supply a copy of its curriculum and training materials. DLC will then review those materials and determine whether the entity is authorized to provide training. Sgt. Prevost testified that sellerserver.com has not applied for DLC certification at any time.
15. DLC does not maintain a list on its website of outside entities authorized to provide server training.
16. Mr. Buxton testified that Ms. Connor has now undergone in-house DLC training.

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/tobacco statute or regulation, the Board sits as a tribunal with a judicial function to perform and has statutory authority under 7 V.S.A. §§104, 108 and 210 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 No. 3(b), set forth above. There is no dispute that Licensee violated Education Regulation No. 3(b) because its employee, involved in the compliance check (which Licensee passed) did not undergo training "from a program approved by [DLC]."
5. This regulation is one of strict liability; if the Licensee does not provide training to its employees from a program approved by DLC, the rule is violated. The Board is reluctantly constrained to impose the mandatory sanction of a one-day suspension, notwithstanding the Licensee's credible, good faith efforts at compliance. We find no statutory basis either to reduce or eliminate the sanction. *See* 7 V.S.A. § 1002a(b)(2) and 7 V.S.A. § 213(c)(1)-(2) (mandating a one-day suspension). If the Board had discretion to waive the mandatory sanction, this may be an instance where such discretion would be exercised.
6. It appears more likely than not that sellerserver.com is engaging in unfair acts, deceptive practices and is making false representations regarding their authorization to provide training to individuals for the sale or service of alcohol in Vermont. This entity appears to be holding itself out as being regularly and principally engaged in a business of selling such services to Vermont consumers, including Licensee. We agree that Licensee reasonably relied on sellerserver.com's misleading statements of material fact, which induced it to purchase services from them and, as a direct result, to sustain the losses associated with the suspension discussed herein.

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 collaboratively between Licensee and DLC, for its violation of Education Regulation No. 3(b).

DATED at Montpelier, Vermont this 16th day of May 2018.

VERMONT LIQUOR CONTROL BOARD

A handwritten signature in black ink, appearing to read "Mark W. Manalich", written over a horizontal line.

Liquor Control Board 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).