

**STATE OF VERMONT
LIQUOR CONTROL BOARD**

IN RE:

**Ekalview, LLC
d/b/a Bayside Pavilion
15 Georgia Shore Road
St. Albans Bay, Vermont**

DECISION

The Liquor Control Board (LCB) held proceedings in Montpelier, Vermont, on January 23, 2013, to consider the 2012 first class renewal application for a liquor license submitted by Ekalview, LLC. The Licensee was present by and through Charles R. Lowe and Debbie Lowe, his wife. Both are managers with authority to act in this proceeding. The Licensee was not represented by an attorney. The Department of Liquor Control (DLC) was present and represented by Assistant Attorney General Jacob A. Humbert.

Before the LCB for consideration is a 2012 first class liquor license and tobacco license application for Ekalview, LLC, d/b/a Bayside Pavilion, 15 Georgia Shore Road, St. Albans Bay, Vermont. The application is dated November 4, 2012 and is signed by Donna Holmes as owner and Debbie Lowe as manager.

FINDINGS OF FACT

1. The applicant, Ekalview, LLC, (hereinafter "Bayside") seeks a 2012 first class liquor license and a tobacco license for its location at 15 Georgia Shore Road. By an additional application, Bayside also seeks a third class liquor license.
2. Martin Prevost, a license investigator for the DLC, testified. He is the DLC Investigator charged with the investigation and processing of applications for liquor licenses.

3. He received the Bayside application in question on or about December 14, 2012 and did a routine background check as is done for every new applicant and renewal applicant.

4. That background check revealed that a license was issued to Bayside initially approximately 12 years ago and that license has been renewed from year to year. Mr. Charles Lowe, also known as Chuck Lowe, because of a felony conviction, caused the LCB to condition the initial license to Bayside against Charles Lowe having any ownership or management involvement with the license or the licensed premises. At this time however, sufficient time has passed with respect to the Charles Lowe felony conviction so that Charles Lowe is not now a concern in the issuing of this requested license. He has for some time been a manager at Bayside.

5. However, Charles Lowe and Debbie Lowe, have an adult son "Josh" who is a bartender by trade and works at the Bayside Pavilion as a bartender. Some time in 2009 he was convicted of both a felony and misdemeanor sale of narcotics in two Vermont counties. One sale took place at Bayside during a time when Chuck Lowe was its manager. Josh received a three year sentence including probation from February of 2009 to February of 2012.

6. Since the probationary period for Josh Lowe has just passed, it is of concern to the DLC that a liquor license not be issued to Bayside Pavilion if Josh a convicted felon is to be employed there.

7. Prevost recommended to the Board that if Charles and Deborah Lowe insist on employing their son Josh on the premises, that the license application be denied. If, on the other hand, the license can be conditioned so that they do not employ their son Josh on the premises, then the license should be granted subject to that condition.

8. It has come to Prevost's attention that Josh is now once again alleged to be engaged in drug activity, after the probationary period ended in February of 2012. (Taken from the testimony of Martin Prevost).

9. Charles R. Lowe a/k/a Chuck Lowe testified.

10. He was arrested in 1988 and as a result was imprisoned for ten years. Before the incident in question, he was never in trouble with the law and has not since been in trouble with the law. Since his release from prison, he has made it a point to emphasize to his son Josh what a devastating and life altering experience it was for him to be convicted of a crime and to be incarcerated for ten years. He stated to his son that the incident and the memory haunts him still.

11. While he was in prison, his sister-in-law Donna Holmes, was the owner of Bayside Pavilion at 15 Georgia Shore Road, and his wife Deborah became its manager. After his release from prison, he began a graduated involvement with Bayside, eventually becoming its manager.

12. Although Charles was the manager of Bayside and Josh was working on the premises under him in 2009, he and his wife Deborah had no idea that Josh was involved in drug activity resulting in his conviction.

13. He has made every effort to counsel Josh against repeating his father's mistake. As a consequence he and Deborah cannot believe that Josh is now once again in trouble with the law, and therefore question the accuracy of Investigator Prevost's statements. (Taken from the testimony of Charles Lowe).

14. At this point, Martin Prevost addressed the Board and suggested that now would be a good time for the Board to order a five minute adjournment of the hearing to allow Charles and Deborah Lowe to make a call to their son, to talk with him about the information that

Prevost will give them, so they can learn for themselves from Josh himself what has again happened.

15. The Board agreed with Prevost and recessed the hearing for the purpose of allowing Charles and Deborah Lowe to make the suggested phone call to their son. In approximately ten minutes, the hearing resumed.

16. Deborah Lowe testified. She and her husband Chuck had a telephone conversation with their son Josh just moments before and he confirmed that this past summer he was driving a car which was pulled over by the police and a joint of marijuana was found in the car. He was charged with possession of marijuana and went to Court. It is her understanding that he was ordered by the Court to pay a \$450.00 donation to a charity of his choice as his punishment and the matter would be dismissed. She understands that Josh paid \$450.00 to North Country Counseling (NCSS) and the matter has now been dismissed.

17. During the testimony of Deborah Lowe, Chuck Lowe was clearly heard to say from a few feet away that he knew nothing about Josh's recent difficulty with the law. Deborah Lowe testified that she heard something about this incident previous to this hearing but thought that the matter was in no way pending and had been dismissed and therefore was of no further force and effect. (Taken from the testimony of Deborah Lowe and the spontaneous statement by Chuck Lowe while still under oath).

18. Martin Prevost testified while still under oath. The Lowe family, particularly Deborah Lowe, are anxious to downplay this issue with respect to their son Josh. Here we have a situation where the mother Deborah knew that there was an incident with her son, but never told her husband about it. When he questioned the mother, Deborah, she wished to downplay it, had not recognized it for what it was, i.e., that their son Josh, in spite of his conviction for the

sale of marijuana and in spite of his father's entreaties to his son to keep out of trouble, nevertheless had a joint of marijuana in the car that he was driving. From this one can see that Josh did not confide equally in both parents and the father Charles has not been kept informed by Deborah. (Taken from the testimony of Prevost).

19. At this point, Board Member Thomas Gallagher announced that he will abstain from participating in the decision in this case.

20. The hearing concluded. Findings were waived.

CONCLUSIONS

1. The applicant, Ekalview, LLC, d/b/a Bayside Pavilion, 15 Georgia Shore Road, St. Albans Bay, Vermont, seeks a 2012 first class and third class liquor license by which it would be permitted to sell alcohol on the Bayside Pavilion premises.

2. The facts lead the Board to conclude that but for the presence of Josh Lowe on the licensed premises, there is no reason not to issue the license sought by Bayside.

3. It is equally true however that while the father Charles Lowe was the manager of the Bayside Pavilion premises, his son worked from time to time as a bartender, as well as in the kitchen of Bayside. Sometime in 2009, Josh sold marijuana from Bayside in violation of the criminal statutes for which he was convicted. Josh did this in spite of his father's sincere firm warnings to his son about the dire consequences of committing a crime.

4 Josh either did not know, or did not care, about the consequences to the liquor licenses at Bayside Pavilion resulting from his employment on the premises while engaged in criminal activity. When Josh was a bartender at Bayside, he was its agent, and his activities reflect on Bayside, his employer, and the liquor licensee.

5. The three year probationary period which ended in February of 2012 had barely ended and yet Josh Lowe, a 24 year old adult, surely now aware of the criminality associated with the sale and possession of marijuana, nevertheless had marijuana in a car that he was driving.

6. Josh did not bring the fact that he was stopped by the police, and that a marijuana cigarette was discovered by the police in the car he was driving, to the attention of his parents, at least not to the attention of his father. It is also clear that Deborah Lowe never informed her husband Charles Lowe about this most recent incident between Josh and the police.

7. We believe the conclusion reached by Investigator Prevost that Deborah Lowe wished to downplay this recent incident and seemed to believe that because a \$450.00 donation was made to charity as directed by the Court that somehow this payment washed away the significance of that incident for liquor licensing purposes. It does not.

8. The Board concludes that it cannot ignore the recent incident between Josh and the law. First off, the probationary period which ended in approximately February of 2012, is still very recent and if nothing else had happened, it would still be too soon for the Board to assume that in this short period of time Josh had learned a lesson and had changed his life. Now, however, with the incident of the marijuana cigarette in a car Josh was driving, Josh has given the Board good reason to believe that he has not learned his lesson and that he takes his former conviction lightly and without concern for the effect that it has on the liquor licenses at Bayside Pavilion.

9. Chair Stephanie O'Brien was absent in the hearing of this matter and therefore did not participate in its decision.

DECISION

It is the determination of the Liquor Control Board, Thomas Gallagher abstaining and Chair Stephanie M. O'Brien absent, that the 2012 first and third class liquor license application of Bayside now pending before the Department of Liquor Control be granted subject to the absolute condition that Josh Lowe not be employed on the premises for a period of two (2) years from the time of the issuance of the liquor licenses. If, at the end of two (2) years, a criminal background check on Josh Lowe reveals that he has rehabilitated himself and is clean and free of any pertinent violations of law, Bayside can reapply to the DLC for permission to employ Josh Lowe on the licensed premises.

Dated at Rutland, Vermont, on this 4 day of March, 2013.

LIQUOR CONTROL BOARD

By:


John Cassarino, Member and acting
Chairman