

**STATE OF VERMONT
LIQUOR CONTROL BOARD**

**In Re: AGONY, LLC d/b/a THE LOCAL
 24 MERCHANTS ROW
 RUTLAND, VERMONT**

BOARD DECISION AND ORDER

Agony, LLC d/b/a The Local (“Licensee”) appeared before the Liquor Control Board (“Board”) on June 11, 2014 in Montpelier for a hearing to consider the suspension or revocation of its First and Third Class Liquor Licenses for alleged violations of General Regulation Nos. 7(a) and 36 on December 18, 2013. Jacob A. Humbert, Esq., Assistant Attorney General, represented the Department of Liquor Control (“DLC”). Licensee was represented by Charles “Chip” Greeno, its owner, who testified on its behalf. Chair O’Brien did not participate in this decision and Board Member Cassarino recused himself. Licensee declined an invitation to submit *Proposed Findings of Fact and Conclusions of Law*. 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 and spirits to the public for on-premises consumption.
2. DLC asserts that Licensee violated these General Regulations on December 18, 2013:
 - a. General Regulation No. 7(a): No licensee or employee of a licensed establishment shall interfere with, nor permit a patron 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. 36: It shall be the duty of all licensees to control the conduct of their patrons at all times. No disturbances, brawls, fighting or illegal activity shall be permitted or suffered upon any licensed premises; nor shall such premises be conducted in such a manner as to render said premises or the streets, sidewalks, parking lots or highways adjacent thereto a public nuisance.

3. The following *Findings* are based on Corporal Justin Daniel Souza, Patrol Sergeant Joseph J. Bartlett and Officer Damon Nguyen of the Rutland City Police Department, Investigator Michael Davidson of DLC and Mr. Greeno's testimony along with exhibits admitted into evidence, namely Licensee's surveillance video (seven (7) camera angles running concurrently) and four (4) photos of a patron, referred to as "Joshua."
4. On the night of December 18, 2013, Licensee hosted an "International Night," intended to draw local ski employees from various countries aged 18 years and older to its establishment.
5. Licensee's employees drew one large black "X" in marker on each hand of patrons under 21 years of age to prevent underage consumption of alcohol. Those of legal drinking age were issued wristbands and had a distinctive hand stamp placed on them to distinguish them from underage patrons. Mr. Greeno testified that he had two bouncers at the main entrance as well as three other "doormen" inside, including Greeno.
6. Bouncers/Doormen had access to, but did not consistently use metal detecting wands to prevent weapons from being brought in. There is no rule or license condition requiring the use of metal detectors. Licensee may be the only bar in the area using such devices.
7. Mr. Greeno indicates that it is not uncommon for patrons to bring knives into his establishment or to be in plain view; he sees people with knives "a lot" at his establishment. It is, apparently, Licensee's practice to confiscate any knives brought in and store them on a shelf while the patron is in the establishment and returning it to them upon leaving. According to Mr. Greeno, "there are usually a stack of knives at the door." Mr. Greeno elicited from Investigator Davidson that it is not illegal in Vermont for patrons to carry pocket knives into his establishment.
8. One patron, Joshua, age 19, entered Licensee's establishment that night.¹ Mr. Greeno testified that he "interviewed" Joshua upon arrival. Mr. Greeno testified that Joshua "seemed sober" and appeared "jovial." Mr. Greeno testified that Joshua speaks with a "street," "urban slang" that might mask intoxication. Joshua received a black "X" on each hand.
9. Approximately 20 minutes later, Joshua spoke with Mr. Greeno and told him that that "three black guys came in" who wanted to fight him.

¹ Joshua was not called as a witness by either party, although he was subpoenaed by DLC and present at the hearing.

10. Mr. Greeno counseled Joshua that this “isn’t a school dance,” not to “act like a kid,” pointing out to Joshua that he is “19, not 16” years old. Mr. Greeno told Joshua that if he were to have a problem with another adult, to come to him and “I will handle it” and that there was no reason to have to fight anyone.
11. Shortly thereafter, Joshua is observed on surveillance video confronting another patron, identified as “Ricardo,” near the establishment’s restroom area. After briefly exchanging words (there is no audio associated with the video) with Ricardo, Joshua threw a punch towards Ricardo’s head, hitting him, and they wrestled to the ground. Based on the video, Joshua appeared to be the aggressor.
12. Within a minute, it appears that Mr. Greeno, who had been standing by the dance floor and noticed the commotion near the restrooms, intervened and began escorting Ricardo towards the exit. Joshua exclaimed to Mr. Greeno, “I got jumped!” Mr. Greeno did not see the fight.
13. While Mr. Greeno was escorting Ricardo toward the exit, with Joshua closely nearby, Mr. Greeno observed that Ricardo had a knife in his hand. Further, Mr. Greeno was aware that Ricardo tried to reach around him to make contact with Joshua, but Mr. Greeno believed that he had blocked him.
14. Ricardo can be observed on video making two swatting motions towards Joshua. It is presumed that this is when Ricardo caused two puncture wounds to Joshua’s left forearm. This incident (or the very recent altercation) may also have led to a long scratch on Joshua’s lower abdomen; it is not clear. Mr. Greeno acknowledges that he saw Ricardo’s knife in his hand, but he did not immediately know that Joshua had been cut. The photos admitted reveal no damage to Joshua’s clothing, which likely concealed the knife wounds. Mr. Greeno testified, however, that he did not take (or attempt to take) the knife from Ricardo because he did not think it had been used. Certainly, it was not taken at the door. Ricardo had not been “wanded.”
15. Mr. Greeno removed Joshua and Ricardo from his establishment. Ricardo apparently took off running “around the corner” and out of sight.
16. Apparently, while outside, Joshua indicated to Mr. Greeno that he was not hurt from the altercation or from the knife. Although he had blood on his hand, Joshua indicated that the blood was from Ricardo and not his.

17. Joshua remained outside and pleaded to be let back in. Mr. Greeno testified that he would review the video to see what had happened.
18. Mr. Greeno asserts that, in the short time between the fight and the call to police discussed below, approximately 10 minutes, he reviewed the surveillance video and determined that Joshua had been at fault for the altercation. Mr. Greeno told Joshua that he could not return to the establishment.
19. Joshua was unhappy with this development. He allegedly remained outside the establishment yelling racial epithets about Ricardo and hurled invectives towards Mr. Greeno.
20. Mr. Greeno, finding this disruptive to his business, called the Rutland City Police Department's non-emergency number, seeking a trespass order to keep Joshua away from his establishment. He did not report to police that there had been a fight involving a knife or a stabbing.
21. Officer Nguyen, in particular, felt that Mr. Greeno should have reported that a knife was involved in the incident leading to his call, as he believed he was responding to a comparatively minor incident, perhaps only a "shoving match." Sgt. Bartlett indicated that it would have been helpful to know about the knife because an investigation into an aggravated assault is far more intense than one for a simple altercation.
22. Approximately an hour after the initial call seeking the trespass order, Sgt. Bartlett located the vehicle known to him to be used by Joshua's girlfriend and pulled alongside the vehicle finding Joshua in the passenger seat. He initiated a traffic stop.
23. Sgt. Bartlett noted that Joshua appeared intoxicated. Joshua provided a preliminary, or "Alcosensor," breath test showing a .184 blood alcohol content. Since Joshua was underage, intoxicated and reported as disorderly, Sgt. Bartlett took him into custody for those reasons and also to document the alleged assault that Joshua had now reported. Sgt. Bartlett testified that he took "a mess of photos," approximately 17 pictures, but only four (4) were offered into evidence.
24. Law enforcement then returned to the establishment to discuss Joshua's report of the stabbing with Mr. Greeno and his staff. Mr. Greeno reviewed the surveillance video with the responding officers. He enlisted his staff to track down Ricardo via Facebook. And, he

burned a CD-ROM of the surveillance video for law enforcement to use in this proceeding without objection.

25. All testifying officers, when questioned specifically, conceded that Mr. Greeno and his staff were cooperative in their investigation.

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 the 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) and is, therefore, subject to this Board's jurisdiction.
4. Licensee was properly notified of its alleged violations and of its right to appear at a hearing to respond to these alleged violations consistent with 3 V.S.A. §809(a)-(c). The Hearing was held and the evidence closed on June 11, 2014.
5. Licensee retained counsel, who did not appear or send substitute counsel from his firm. Previously, in an exercise of its discretion and to ensure timely adjudication of matters of public safety as implicated herein, the Board voted to deny a motion to continue based on counsel's availability. Mr. Greeno appeared and raised no objection to going forward. He indicated that given the "straightforward" nature of the facts, he needed no "legal trickery." The Board even offered Licensee, through Mr. Greeno, an opportunity to submit *Proposed Findings* which may have been prepared with the assistance of counsel and with review of the audio transcript of the hearing; Licensee declined.
6. DLC must prove all alleged violations by a preponderance of the evidence. If any violations are found, then the Board has concluded that DLC has met its burden.
7. Consistent with the above *Findings of Fact*, the Board concludes that Licensee did not violate General Regulation 7(a), set forth at length above, because:

- a. There was no evidence that Mr. Greeno provided false information to or intended to mislead or interfere with law enforcement. By DLC's witness testimony, Mr. Greeno was cooperative. He produced video for their review that night, even burning a CD-ROM copy of that video for their use that provided multiple views in real time of the events that transpired. He instructed employees to use social media to identify Ricardo. There appeared no effort to conceal the events of that night, although Mr. Greeno appears, before placing the call to police, to have known that Ricardo had had a knife in his hand during the incident. Although it may have been for reasons less severe than an aggravated assault, Mr. Greeno called law enforcement within a reasonable time following the incident at his establishment.
 - b. While it might have been helpful for Mr. Greeno to tell the police dispatcher every fact known to him that led to his request for police intervention, he was cooperative with all arriving law enforcement officers. There is no evidence he intended to deceive the police regarding the need for law enforcement. To require that a citizen detail to a dispatcher every reason or danger that could be visited upon responding law enforcement officers would essentially shift the responsibilities, at least in part, of a police dispatcher to private citizens.
8. The Board does find that Licensee violated Rule 36, set forth at length above:
- a. As an initial matter, the Regulation is not intended to impose strict liability on a Licensee whenever a fight breaks out and solely because a fight broke out; it requires Licensees to prevent, to the extent possible, incidents before they happen or where the licensee knew or should have known that dangerous situations, namely fights or bodily injuries may occur.
 - b. Licensee, through Mr. Greeno, certainly knew of the significant likelihood that a fight would ensue between Joshua and other patron(s) and was specifically warned by him in advance.
 - c. Whether Joshua was intoxicated upon arrival or became intoxicated while inside the establishment is not clear, but a combination of facts leads to the conclusion that, more likely than not, Joshua was intoxicated while on the licensed premises and this intoxication contributed to the ensuing altercation and his injury: (1) his significantly elevated blood alcohol content one hour after being kicked out of the bar; (2) Sgt.

Bartlett's observation of Joshua being intoxicated; (3) Joshua's conduct at the licensed establishment, punching another man with no discernable provocation; and (4) Joshua's conduct after being kicked out of the establishment, including shouting racial epithets just outside the establishment, a public nuisance, which indeed led to Mr. Greeno calling the police. See *In Re Tweer*, 146 Vt. 36, 38 (1985) ("intoxication may be evidenced circumstantially by prior or subsequent condition of intoxication within such time that the condition may be supposed to be continuous"); *In re: Rusty Nail Acquisition, Inc.*, 2009 VT 68 at ¶8 ("commonly recognized signs of intoxication," are sufficient to establish predicates of a General Regulation violation).

- d. The groundwork, therefore, for a fight to occur was laid before it happened and Mr. Greeno was aware. Nothing further was done to prevent this, other than to advise Joshua, the underage patron of his establishment to "act like a man" and, additionally, to come get Mr. Greeno if another patron was giving Joshua any trouble.
 - e. By allowing Joshua to remain on the premises, likely under the influence of alcohol, Licensee violated a significant tenet of Rule 36 that Licensee must ensure the safety of individuals entering, leaving, or remaining on the licensed premise. Licensee failed to control the conduct of its patrons.
 - f. Further, Mr. Greeno noted that Ricardo, fresh from a fight with Joshua, held a knife in his hand, yet no action was taken. Joshua was ultimately cut by that knife. It appears that knives either are or should be a concern at Licensee's establishment, given the typical "stack of knives" at the door on a given evening. Although protocols are in place to keep knives out of patrons' hands while in the establishment, it appears that these procedures are not consistently followed.
9. Licensee's enforcement history reveals one prior violation of General Regulation No. 36, which it resolved by paying a fine.

ORDER

Based on the foregoing *Findings of Fact* and *Conclusions of Law*, Agony, LLC has violated General Regulation No. 36 and the Board hereby **ORDERS** that its First and Third Class Liquor Licenses be suspended for three (3) days, from the opening of business to the close of business on Thursday, Friday, and Saturday July 10th - 12th, 2014.

The Board also **ORDERS** that every employee of Licensee, including Mr. Greeno, receive in-person DLC alcohol server retraining to its satisfaction within 45 days of this Order.

The Board **RECOMMENDS**, but cannot Order, that Licensee use a metal detection device on all patrons entering its establishment to screen for potential weapons.

The alleged violation of General Regulation No. 7(a) violation is hereby **DISMISSED**.

DATED at Essex Junction, Vermont this 17th day of June 2014.

VERMONT LIQUOR CONTROL BOARD

By: Melissa Mazza-Paquette
Melissa Mazza-Paquette, Acting 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).