

**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 August 4, 2015 in Montpelier for a contested case hearing to consider the suspension or revocation of its First and Third Class Liquor Licenses for alleged violations of a Board Order on a stipulated settlement dated November 12, 2014, General Regulation Nos. 7(a) and 45 and Education Regulation No. 3(b). 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. The parties 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 the following on June 19, 2015:
 - 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. 45: All licensee employees must be hired by the licensee and paid on a fixed salary or hourly basis. All employees must have the required withholdings deducted from their wages and the required reporting of such withholdings must be made to the Vermont Department of Labor. A first, second and/or third class licensee shall not contract out any work, labor or services directly or indirectly related to the preparation, sale or service of alcoholic beverages. All such duties shall be performed by individuals who are employees in fact and by law.

- c. Education Regulation 3(b): 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.
 - d. November 12, 2014 Settlement Agreement, signed by Licensee, which provides in relevant part: "All patrons shall be screened with metal detecting equipment to screen for weapons prior to being granted entry into the premises." Colloquially, this screening is referred to as "wanding" at times throughout this decision.
3. The Board took notice of and admitted into evidence the November 12, 2014 Settlement Agreement (State's Exhibit 1), its June 17, 2014 Decision and Order (State's Exhibit 2).
 4. The following Findings of Fact are based on the testimony of Sergeant Tom Curran of DLC, Investigator Michael Davidson of DLC and Mr. Greeno.
 5. Sergeant Tom P. Curran has served as a DLC sergeant for 3 years and has been employed by DLC since 1999. He has been a full-time, certified Vermont law enforcement officer (Tier 3) since 1993.
 6. Sgt. Curran testified that on Friday, June 19, 2015, during the early morning hours just after midnight, he observed six (6) patrons entering the Licensee's establishment. None of these patrons were screened with metal detecting equipment.
 7. Sgt. Curran noted that there was no doorman or anyone "working the door" at that time.
 8. Sgt. Curran went inside the establishment to ensure that those who entered the premises before him were actual patrons and not, for example, employees.
 9. Sgt. Curran noted that there was one female bartender working inside the establishment, later identified as Colleen Crete.
 10. Sgt. Curran then proceeded to an outside consumption area, described as a "tiki bar."
 11. Sgt. Curran noticed that a man was sitting behind the "tiki bar" consuming alcoholic beverages. He was identified as Jade Warner.
 12. Mr. Warner alleged that he was only there as a cook and has served some sodas, but was not serving alcohol.

13. Ms. Crete, upon questioning confirmed that Mr. Warner was, in fact, working as a bartender that evening.
14. Sgt. Curran then confronted Mr. Warner, who conceded that he was a bartender for the Licensee and had served alcoholic beverages that evening, but did not have the requisite DLC training. He did not want to get Mr. Greeno/ the Licensee in trouble.
15. Mr. Warner claimed to be paid \$50.00 in cash for each night that he works and conceded that he is not on the Licensee's payroll.
16. Additionally, Sgt. Curran testified that Ms. Crete was unaware of the requirement that all patrons be "wanded."
17. Investigator Michael Davidson testified next. He has been an investigator for approximately 14 years. He has been a full-time, Tier 3 certified law enforcement officer since 1988.
18. Later during the day of June 19, 2015, Inv. Davidson went to Licensee and spoke with Mr. Greeno about potential violations, including an employee not on payroll, that same employee being untruthful about his employment status, that same employee's failure to undergo requisite training and the Licensee's failure to "wand" all patrons.
19. Mr. Greeno testified that the licensed establishment is open four days per week: Wednesday to Saturday each week.
20. Mr. Greeno indicated that he made arrangements to get Mr. Warner on payroll for the next pay cycle. Mr. Greeno confirmed that Mr. Warner worked at the Licensee's establishment 4-5 days per week.
21. Mr. Greeno conceded, for example, that he elected to not screen people on Thursdays, a night during which there's an "open mic" for stand-up comedians.
22. Mr. Greeno testified that he did not understand why he was required to screen patrons every night of the week, but conceded that he had voluntarily agreed to this condition. He admits that Licensee did not follow this requirement.
23. Mr. Greeno did not petition the Board for any relief from the Order requiring "wanding" prior to violating it. He simply decided that this requirement was discretionary.
24. Mr. Greeno indicated that Mr. Warner was not on payroll because there was no intention of Mr. Warner remaining as an employee other than for a brief time. When another job Mr. Warner was pursuing fell through, he became a full-time employee. He then admitted that Ms. Crete had also been left off of Licensee's payroll for a substantial time.
25. Of concern, Mr. Greeno offered a revisionist history of his establishment's prior violations. He testified that there had not been stabbings at his premises or involving his patrons. This

contradicts prior decisions and final orders of this Board for which no appeal was filed. The Board's findings on those issues are conclusive and unappealable. The Board lacks jurisdiction to revisit these issues and the Board will incorporate its findings from its previous decision and the approved settlement agreement as if set forth herein at length.

CONCLUSIONS OF LAW

Consistent with the above *Findings of Fact*, the Board concludes as follows:

1. 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).
2. 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.
3. 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 August 4, 2015.
4. 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.
5. Mr. Greeno conceded all violations, obviating the need for a detailed analysis and weighing of facts. The facts that support the violations and that DLC has met its burden of proof, are briefly set forth below:

Violation of Settlement Agreement

6. Licensee resolved prior violations alleged against it through a stipulated settlement agreement approved by the Board on November 12, 2014.
7. Licensee, in signing that settlement agreement
acknowledges and agrees that, at all times and in all communications and proceedings related to this matter and to this Agreement, it has had the right to

be and has been represented and advised by legal counsel. Licensee has carefully reviewed and considered this Agreement with the assistance of its counsel. Licensee agrees and understands that, by executing this Agreement, it is waiving any right to a formal hearing related to the Notice of Hearing (thereby waiving any right to be presented with the evidence against it, to cross-examine adverse witnesses, and to offer evidence of his own to contest the DLC's allegation(s)) and waiving any right to challenge the jurisdiction and continuing jurisdiction of the Board in this matter.

8. By agreeing to this settlement and upon the Board's approval of it, it had and still has the force and effect of a Board Order and is legally binding on Licensee.
9. In that settlement agreement, Licensee agreed that: "All patrons shall be screened with metal detecting equipment to screen for weapons prior to being granted entry into the premises." Licensee is bound by the terms of that agreement. Licensee had no authority or discretion to deviate from this requirement. The Board is charged only with determining whether Licensee violated this obligation under the Settlement Agreement.
10. Any issues regarding the reasonableness of Licensee's obligation, one that Licensee freely accepted, is not before the Board and will not be addressed here.
11. By failing to screen all patrons entering its premises, Licensee has violated the clear terms it agreed to in the settlement agreement.

Violation of General Regulations No. 7(a), 45 and Education Regulation No. 3(b)

12. These regulations are incorporated by reference and all involve Mr. Warner's relationship to the Licensee.
13. Mr. Warner lied to a DLC Investigator about his employment status at Licensee by misrepresenting his role as a bartender. Licensee did not contest this. This lie is imputed to the Licensee. The Licensee is responsible and liable for the misconduct of its employees.
14. Mr. Warner was not on payroll as required by General Regulation No. 45. Licensee did not contest this. Licensee admitted that another employee was not on payroll, however, that matter is not properly before us to sanction and does not form any part of the suspension or fine found below.
15. We will, however, require that Licensee remedy all issues from a state and federal tax perspective, with respect to any and all of its employees.
16. Also, it appears that Mr. Warner was consuming alcoholic beverages while on duty, but this was not charged and this matter too is not properly before us.
17. Mr. Warner did not complete a training program offered or approved by the Department of Liquor Control on or before June 19, 2015. Licensee did not contest this.

18. Licensee violated General Regulations No. 7(a) and No. 45 as well as Education Regulation No. 3(b).

Prior Enforcement History

19. Having found violations here, we must determine an appropriate sanction.
20. Before we do, we turn to this Licensee's prior enforcement history, which is significant. This Licensee returns for a Hearing before this Board regarding alleged violations of our Regulations for the third time since June 11, 2014. After a contested case hearing on that date, the Board suspended Licensee's licenses on June 17, 2014 for three days for violating General Regulation No. 36. In our decision, we recommended "wandering" all patrons before entry for potential weapons; we did not require it. Licensee returned for another contested case hearing before the Board on November 12, 2014 for subsequent, alleged violations of General Regulations Nos. 17 and 36(a). Licensee waived its right to a hearing on the merits. Licensee conceded the violations. Licensee agreed to a seven-day suspension and other sanctions, including the screening requirement, discussed above, and that which was violated.
21. For violations of General Regulations Nos. 7(a) and 45 and terms of the November 12, 2014 Settlement Agreement, we find that a seven-business-day suspension is appropriate and we also impose a \$250.00 fine. Licensee must also correct the payroll deficiencies it admitted to at hearing.
22. Additionally, under Education Regulation No. 3(b), "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." Having found this violation, we have no authority to order anything less than a one-day suspension of each of Licensee's licenses.
23. Should Licensee commit further violations, the sanction of revocation will be seriously considered.

ORDER

Based on the foregoing *Findings of Fact* and *Conclusions of Law*, the Board hereby **ORDERS** that Agony, LLC's First and Third Class Liquor Licenses be:

- **SUSPENDED** seven (7) business days and **FINED** \$250.00 for violations of General Regulations Nos. 7(a) and No. 45 and terms of the November 12, 2014 Settlement Agreement;
- **SUSPENDED** one (1) business day for violation of Education Regulation 3(b);
- **ORDERED** to amend any and all payroll tax returns state and federal as they relate to any and all employees who have not been paid on payroll, including, but not limited to Mr. Warner within sixty (60) days from the date of this Order;
- The November 12, 2014 Settlement Agreement remains in full force and effect with respect to all terms including the "wandering" requirement; and
- The Fine shall be payable to the Vermont Department of Liquor Control within 30 days of this Order.

The eight (8) business-day **SUSPENSION** is effective:

1. From the beginning of business on Wednesday, October 14, 2015 to the close of business on Saturday, October 17, 2015

AND

2. From the beginning of business on Wednesday, October 21, 2015 to the close of business on Saturday, October 24, 2015.

DATED at Montpelier, Vermont this 9th day of September 2015.

VERMONT LIQUOR CONTROL BOARD

By: 
Stephanie M. O'Brien, 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).