

STATE OF VERMONT
LIQUOR CONTROL BOARD

**In Re: CK SPORTS, INC., D/B/A C & K'S SPORTS BAR
12 MALLETT'S BAY AVENUE
WINOOSKI, VERMONT**

BOARD DECISION AND ORDER

CK Sports, Inc. d/b/a C & K's Sports Bar ("Licensee") received and was properly notified of a September 29, 2015 Notice of Hearing directing it to appear before the Liquor Control Board ("Board") on October 14, 2015 at Montpelier, Vermont for a contested case hearing to consider the suspension or revocation of its First and Third Class Liquor Licenses for violations of General Regulations Nos. 21 (1 count) and 50(a) (7 counts). Christopher Coleman, a co-owner, appeared at the Hearing on behalf of Licensee. Jacob A. Humbert, Esq., Assistant Attorney General, represents DLC. Based on the evidence presented, the Board rules as follows:

FINDINGS OF FACT

1. The General Regulations implicated in this matter are as follows:

General Regulation No. 21: Any individual having a direct or vested financial interest in the business of the licensee must be disclosed on the license application. The licensee must notify the Department no less than 20 days before any intended changes in the ownership of and /or financial interest of any person or entity in the licensed entity can occur. Any such changes not approved by the Department, may place the license in jeopardy and/or may result in administrative penalties after a Board hearing.

General Regulation No. 50(a): Misrepresentation of a material fact on any Department of Liquor Control form or in other written communication with the Department shall be grounds for non-issuance, suspension or revocation of the liquor license, after notice and hearing.

2. Liquor license applications and renewal applications specifically require disclosure of the names of any and all individual(s) having a direct or vested financial interest in the business of the licensee.
3. Our applications also, though they need not do so, include language identical or similar to the following, in bold type: "MISREPRESENTATION OF A MATERIAL FACT ON ANY

LICENSE APPLICATION SHALL BE GROUNDS FOR SUSPENSION OR REVOCATION OF THE LICENSE, AFTER NOTICE AND HEARING.” Of course, it is expected that all information provided on an application to hold a liquor license be complete and truthful.

4. DLC called Investigator Matt Gonyo as its sole witness, who testified the Licensee is co-owned by Mr. Coleman and Kyle Tipson. Mr. Tipson is not listed on any license or renewal applications on file with DLC.

5. Mr. Coleman does not contest this. Mr. Coleman confirms that he is a co-owner of the licensed establishment with Kyle Tipson and that Mr. Tipson has been a co-owner of said establishment at all relevant times.

6. Mr. Coleman testified under oath that his is the only name that appears on the 2009 application for the Licensee’s First and Third Class License as well as each and every renewal application submitted to DLC subsequent to that 2009 application, including 2010, 2011, 2012, 2013, 2014 and 2015.

7. Mr. Coleman testified that he and Mr. Tipson consciously decided to omit Mr. Tipson’s name from all filings with DLC because of a circa-2008 conviction for driving under the influence. Mr. Coleman testified that they believed that a DUI conviction precluded one from holding a Vermont liquor license.

8. Mr. Coleman intends to sell his interest in Licensee to Mr. Tipson.

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 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). Ensuring public safety is the Board's most important function. We believe that Licensees who conceal the identity of those with a financial interest in the sale of alcohol in this State pose a great threat to public safety and thwart proper enforcement of our laws and regulations.

3. Under 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 administrative penalty may be imposed after a hearing before the board [.]”

4. The Board, *sua sponte*, takes judicial notice of all of Licensee's liquor license application and renewal applications and that Mr Tipson's name does not appear on any of them.

5. We find that the failure to disclose and/or intentional decision to withhold disclosure of Mr. Tipson's name from the 2009 license application and from each renewal application violate General Regulation No. 21, which required timely disclosure of all individuals having a direct or vested financial interest in the business of the licensee.

6. We find further that the identity of the individuals having a direct or vested financial interest in the business of the licensee is a material fact considered in granting a liquor license. The intentional omission of an individual, namely Mr. Tipson, having a direct or vested financial interest in the business of the licensee on a DLC application and/or renewal application violates General Regulation No. 50(a), which forbids misrepresentations of material fact in connection with any DLC form or written communication. Licensee violated this General Regulation on the initial application and in six subsequent renewal applications.

7. We find that a suspension is warranted for the violation of General Regulation No. 21 and a fine for each year of material misrepresentation, which are seven separate violations of General Regulation No. 50(a).

8. The Board wants to ensure that all individuals having a direct or vested financial interest in the business of this Licensee are properly disclosed and that DLC investigates whether these person(s) are eligible to hold Vermont liquor licensee.

9. The Board also wants to ensure that the suspension is served and fine is paid regardless of any present intent of Mr. Coleman to sell his interest in Licensee.

ORDER

Based on the foregoing, the Board imposes the following sanctions:

- **LICENSEE'S FIRST AND THIRD CLASS LIQUOR LICENSES ARE SUSPENDED FOR THREE (3) DAYS, FROM THE OPENING OF BUSINESS ON FRIDAY, NOVEMBER 20, 2015 TO THE CLOSE OF BUSINESS ON SUNDAY, NOVEMBER 22, 2015;**
- **LICENSEE SHALL PAY A FINE OF \$100.00 FOR EACH OF THE SEVEN VIOLATIONS OF GENERAL REGULATION NO. 50(A) FOR A TOTAL OF SEVEN HUNDRED DOLLARS (\$700.00);**
- **ON OR BEFORE NOVEMBER 23, 2015, LICENSEE MUST COMPLY WITH GENERAL REGULATION NO. 21 AND DISCLOSE, IN WRITING, THE NAMES OF ANY AND ALL INDIVIDUALS HAVING A DIRECT OR VESTED FINANCIAL INTEREST IN THE BUSINESS OF THE LICENSEE;**
- **THE SUSPENSION SHALL CONTINUE BEYOND THREE DAYS, SPECIFICALLY BEYOND THE CLOSE OF BUSINESS ON NOVEMBER 22, 2015 AND INDEFINITELY AND UNTIL THE \$700.00 FINE IMPOSED ABOVE IS PAID IN FULL AND/OR LICENSEE COMPLIES WITH GENERAL REGULATION NO. 21;**
- **DLC IS DIRECTED TO INVESTIGATE SAID DISCLOSURES, INCLUDING MR. TIPSON'S FITNESS TO BE ASSOCIATED WITH A VERMONT LIQUOR LICENSE AND TO BRING TO THE BOARD'S ATTENTION ANY CONCERNS;**
- **NO NEW OR RENEWAL APPLICATION FOR LICENSE(S) WILL BE APPROVED, REGARDLESS OF CURRENT OWNERS, AT LICENSEE'S PREMISES OR WITH REGARD TO CK SPORTS, INC. OR ANY SUCCESSOR ENTITY UNTIL THE FINE IS PAID AND SUSPENSION IS SERVED.**

Dated at Montpelier, Vermont this 14th day of October 2015.

VERMONT LIQUOR CONTROL BOARD

By: Stephanie M. O'Brien
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).