

**STATE OF VERMONT
LIQUOR CONTROL BOARD**

**IN RE: ZG HOLDINGS, LLC D/B/A ZERO GRAVITY CRAFT BREWING
 716 PINE STREET
 BURLINGTON, VERMONT**

BOARD DECISION AND ORDER

The Liquor Control Board (“Board”) held proceedings in Montpelier, Vermont on December 2, 2015 to consider proposed sanctions against Licensee, ZG Holdings, LLC d/b/a Zero Gravity Craft Brewing, holder of First and Third-Class Liquor Licenses, for alleged violations of General Regulations Nos. 16, 34 and 49(a). Licensee was present and represented by Paul Sayer, its co-owner. The Department of Liquor Control (“DLC”) was present and represented by Jacob A. Humbert, Esq., Assistant Attorney General. The parties elected not to submit *Proposed Findings of Facts* for the Board’s consideration. The Board finds and rules as follows:

FINDINGS OF FACT

1. DLC alleges that the Licensee violated the following regulations on or about September 26, 2015:
 - a. General Regulation No. 16: No licensee or licensee employee, or any individual involved in the sale, preparation or furnishing of alcoholic beverages, or sale of tobacco products and/or the enforcement on the premises of the laws, rules and regulations of this State pertaining to the sale or furnishing of alcoholic beverages, or sale of tobacco products, shall consume or display the effects of alcohol or any illegal substance while in the performance of their duties.
 - b. General Regulation No. 34: A licensee shall not lock the doors of its licensed premises where alcoholic beverages are stored, sold, furnished or consumed if any individual other than the on duty licensee or on duty licensee employees are on the licensed premises.
 - c. General Regulation No. 49(a): No licensee or licensee employee shall offer, permit or suffer on the licensed premises games, contests, or promotions, which encourage the rapid or excessive consumption of alcoholic beverages. No licensee or licensee employee shall furnish alcoholic beverages to any individual for no charge.

2. DLC called DLC Investigator Mathew Gonyo to testify. He has served for 15 years as DLC investigator and has been a certified, full time law enforcement officer since 1998.
3. On September 26, 2015, at approximately 10:40 p.m., Investigator Gonyo conducted a "routine inspection" of the licensed establishment at 716 Pine Street, Burlington.
4. He began his inspection by making observations from outside the licensed establishment.
5. Investigator Gonyo testified that he watched from outside for approximately 15 minutes. He described the front entrance as having very large windows. His initial impression was that the licensed establishment looked closed. The lights were dimmed.
6. Investigator Gonyo noted two men inside the licensed premises. One man was sitting at the bar consuming a beer. Another male, believed to be a bartender, was performing "normal work functions," including cleaning up the bar area, wiping down the counter, tending to bar stools and sweeping floors. He had taken a clear glass and poured himself a beer from a tap located on the wall. He set the glass on the bar.
7. During those 15 minutes of observation from outside, Investigator Gonyo observed the "bartender," later identified as Jeff Baumann, the Licensee's bar manager consume beer from the glass on three separate occasions, with work (as described in the preceding paragraph) interspersed in between.
8. After making the above observations, Investigator Gonyo tried to go into the front door of the licensed establishment, but it was locked. Investigator Gonyo testified that he then knocked "loudly" on the entrance door. Matt Wilson, a co-owner, went to the door and let Investigator Gonyo in after he identified himself as a DLC investigator.
9. Once inside, Investigator Gonyo discussed his observations with Mr. Wilson and Mr. Baumann. Investigator Gonyo inspected the glass that Mr. Baumann was drinking from and confirmed that it was beer. Mr. Baumann confirmed that he was drinking Green State Lager, a beer that Licensee brews.

10. Investigator Gonyo testified that during his discussion with Mr. Wilson, he conceded that Mr. Baumann should not have been drinking while performing work duties. Mr. Wilson, however, felt that the citation for a free drink was “over the top” as they are the manufacturer of the beer and should be allowed to provide an employee a drink.
11. Investigator Gonyo issued three administrative tickets corresponding to the General Regulations identified above. None of these tickets required an in-person hearing or carried the potential for a suspension. Each ticket imposed monetary penalties: General Regulation No. 16 (in the amount of \$510.00), General Regulation No. 34 (in the amount of \$260.00) and General Regulation No. 49(a) (in the amount of \$260.00) for a total of \$1,030.00 in fines. Copies of the administrative tickets were admitted into evidence as DLC’s Exhibit 1 and the substance of those administrative tickets are hereby incorporated by reference as if set forth at length herein.
12. Investigator Gonyo testified that, after he issued the administrative tickets, Mr. Wilson asked him whether it is permissible for employees of a licensee to sample products, especially where the licensee is the producer of the product, for quality control. Investigator Gonyo testified that there is “investigator discretion” to allow an employee to sample a beer when, for example, a keg is just tapped, to ensure quality control. According to Investigator Gonyo, this typically involves the employee “swishing and spitting” or using a small tasting glass. He did not feel that occurred here for two reasons: First, during the observation period, it did not appear that a new keg was tapped. Second, Mr. Baumann was observed consuming beer from a standard-size drinking glass several times with breaks in between during which work was performed. To Investigator Gonyo, it appeared to be the normal consumption of a drink, not a mere sample or taste.
13. At the time of Investigator Gonyo’s inspection, the premises were closed and the doors were locked, but Mr. Baumann was still “on the clock.”

14. Licensee called its first witness, Jeff Baumann. Mr. Baumann confirmed that he was on duty and was drinking Green State Lager from a ten-ounce glass which was filled halfway at the time of Investigator Gonyo's investigation.
15. Licensee's closing time is listed as 10:00 p.m., but patrons are permitted to stay to finish their drinks after that time. On the night at issue, the last patrons departed at approximately 10:15 p.m. or 10:20 p.m. After the patrons left, Mr. Baumann drank the Green State Lager. He specifically waited until the last patrons left to try out the beer, which had been tapped during service hours, but not yet poured for a patron. Mr. Baumann felt it most appropriate to test the quality of the keg after the last patron departed rather than consuming the beer in a patron's presence.
16. Mr. Baumann testified that he drank the beer under a directive from Mr. Sayer to test this particular keg of Green State Lager, which was labeled "below s.p." or below the standpipe on the keg collar. These kegs, based on their location after the keg-ing process, may contain dead yeast cells, particulates and other sediment rendering the beer unable to be served and "not a proper representation of the beer." Perhaps, two out of sixty kegs of Green State Lager produced in that batch had this distinction. He testified that the concerns with "below standpipe" kegs require tasting; the potential defects in the beer are not simply observable by sight alone.
17. According to Mr. Baumann, co-owner Matt Wilson was sitting at the bar drinking a Black Cat Porter, a beer that was recently tapped for the first time a day or two before. Mr. Wilson had not yet tried it.
18. It is undisputed that neither Mr. Baumann nor Mr. Wilson paid for the beer they consumed on September 26, 2015.
19. Mr. Sayer testified as well. He was not present at the licensed establishment on September 26, 2015. He confirmed that Licensee did not seek a hearing on the alleged violations to contest

them or Investigator Gonyo's reports or testimony, but to seek clarity on how brewers are able to maintain quality control and to "keep tabs on the beer."

20. Mr. Sayer asserted that Mr. Wilson was consuming the Black Cat Porter in a dual role, as an owner testing his company's product, but also enjoying it as well.

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 of 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 December 2, 2015.
5. 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. Notably, Licensee does not contest the alleged violations.
6. Consistent with the above *Findings of Fact*, the Board concludes that Licensee did violate General Regulations Nos. 16 and 49(a), but will dismiss the violation of General Regulation No. 34.

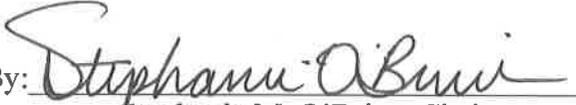
7. With regard to the issues of the regulations governing “drinking on duty” (General Regulation No. 16) and “free beer” (General Regulation no. 49(a)), we defer to the Investigator’s analysis of the events of September 26, 2015. Namely, Mr. Baumann did more than sample a beer for quality control purposes; he consumed a beer at the bar on the First and Third-Class licensed premises over a protracted period of time with breaks in between to perform work functions. DLC established a violation of General Regulation No. 16. Likewise, Mr. Wilson consumed a beer at the bar. Neither employee paid for the beers poured; therefore DLC established a violation of General Regulation No. 49(a).
8. The Board dismisses the violation of General Regulation No. 34. Certainly, the doors were locked while alcohol was being consumed on the licensed premises. Mr. Baumann, however, was clearly on duty at the time. Accordingly, his consumption of a beer would not violate *that* Regulation. Mr. Wilson was admittedly in a dual role of testing his business’ product, but also enjoying it. There is insufficient evidence of Mr. Wilson’s “on duty” status at the time. Accordingly, we do not find a violation.
9. The Board notes that Licensee could have been cited for two counts (and two separate fines) for free drinks and drinking while on duty (assuming Mr. Wilson was on duty).
10. 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 [.]”
11. The Board will impose the penalties listed on the administrative tickets for violations of General Regulations Nos. 16 and 49(a).

ORDER

Based on the foregoing *Findings of Fact* and *Conclusions of Law*, Licensee, ZG Holdings, LLC d/b/a Zero Gravity Craft Brewing, has violated General Regulations Nos. 16 and 49(a) and the Board hereby **ORDERS** that Licensee pay a total fine of **\$770.00**, the scheduled fines for violations of General Regulation No. 16 (in the amount of \$510.00) and General Regulation No. 49(a) (in the amount of \$260.00). The alleged violation of General Regulation No. 34 is hereby **DISMISSED**.

DATED at Montpelier, Vermont this 13th day of January 2016.

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).