

**STATE OF VERMONT
LIQUOR CONTROL BOARD**

**In Re: 165 CHURCH STREET, LLC D/B/A ZEN LOUNGE
 165 CHURCH STREET
 BURLINGTON, VERMONT**

BOARD DECISION AND ORDER

165 Church Street, LLC d/b/a Zen Lounge (“Licensee”) appeared before the Liquor Control Board (“Board”) on April 13, 2016 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 General Regulation Nos. 12, 13, 17, and 36 (2 counts) occurring on December 17, 2015 and into the early morning hours of December 18, 2015. Jacob A. Humbert, Esq., Assistant Attorney General, represented the Department of Liquor Control (“DLC”). Andrew D. Manitsky, Esq. appeared on behalf of Licensee. Both parties submitted *Proposed Findings of Fact and Conclusions of Law*. The Board rules as follows:

FINDINGS OF FACT

1. At all relevant times, Licensee held First 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 or about December 17-18, 2015.

General Regulation No 12. No licensee or licensee employee shall sell or furnish alcoholic beverages to any individual who is less than twenty-one years of age, nor shall a licensee or the licensee employee permit or suffer alcoholic beverages to be consumed upon the licensed premises by any individual who is less than twenty-one years of age.

General Regulation No. 13. For individuals of questionable age, all liquor and tobacco licensees and their employees shall demand that such individual exhibit a valid operator’s license, valid non-driver identification card, or enhanced driver’s license, which has been issued by this state or another state or foreign jurisdiction,

a valid United States military identification card, a valid passport card or valid passport all of which bear the person's photograph and signature, name, date of birth, and expiration date.

General Regulation No. 17. No licensee shall sell or furnish alcoholic beverages to any individual displaying signs of intoxication from alcoholic beverages or other drugs / substances. No licensee shall allow alcoholic beverages to be consumed on the licensed premises by any individual displaying such signs of intoxication. No licensee shall allow any individual displaying such signs of intoxication to stay on the licensed premises, except under direct personal supervision by a licensee or licensee employee in a segregated nonpublic area when the patron's immediate departure could be expected to pose a risk of bodily injury to the patron or any other individual.

General Regulation No. 36. All licensees shall control the conduct of all individuals on their licensed premises. All licensees must ensure the safety of individuals entering, leaving, or remaining on the licensed premises. No licensee shall permit or suffer any disturbances, brawls, fighting or illegal activity upon the licensed premises; nor shall a licensee permit or suffer such premises to be conducted in such a manner as to render such premises or the streets, sidewalks, parking lots or highways adjacent thereto a public nuisance.

General Regulation No. 36a. The Board may find, that a licensee suffered a disturbance, brawl, fight or illegal activity upon the licensed premises or upon the streets, sidewalks, parking lots or highways adjacent thereto if any individual engaged in such conduct had been allowed to stay on the licensed premises while displaying signs of intoxication from alcohol, drugs or other substances, and/or if it would be reasonable to expect that such individual would be intoxicated as a result of the amount of alcohol served to that individual. Under such facts, the Board may conclude that any such individual's conduct should have been anticipated.

Regal Spencer Incident

3. On December 17, 2015, Licensee was open and allowed admittance to patrons aged 18 and over. Licensee held a "going away party" in honor of a person identified DeAndre Demarco Walters.

4. Underage patrons (over 18 but younger than 21) were marked with an "X" on their hands, while patrons who were 21 and over received a wristband.
5. Regal Spencer, then age 20, went to Licensee at approximately 10:30 p.m. His girlfriend, Jamie Norseth, dropped him off at Licensee's entrance.
6. Mr. Spencer sought entry into Licensee. He did not claim to be over 21.
7. Mr. Spencer presented a temporary paper identification issued by the Vermont Department of Motor Vehicles. His enhanced license was not yet available.
8. Ian Fields and Joseph Smith, Licensee's bouncers, denied Mr. Spencer entry based on their determination that his identification was unacceptable.
9. Mr. Spencer was agitated by Licensee's refusal to let him in. He called one of the bouncers a "fag" or "faggot." He notes that he should not have done this. At that point, he left Licensee's establishment.
10. Mr. Smith testified that, when he turned Mr. Spencer away, he smelled alcohol on Mr. Spencer's breath. Mr. Spencer testified that he had not been drinking prior to his first effort to gain entry into Licensee's establishment.
11. After being turned away the first time, Mr. Spencer testified that he called Mr. Walters, who advised that he would tell the owner that Mr. Spencer was "with him" and that he would be let in.
12. Mr. Spencer returned to the Licensee's establishment about an hour later; he tried again to get in. Mr. Spencer testified that, at this point, he was allowed entry into Licensee's establishment. Mr. Spencer testified that the owner let him in.
13. Mr. Spencer is the only person that testified to this sequence of events leading to his admittance to Licensee.

14. Mr. Smith testified that he was at the front door the entire time, and that Mr. Spencer was turned away on two separate occasions.
15. Ms. Norseth testified that she did not see Mr. Spencer enter the Licensee's establishment; she was at an adjacent establishment purchasing food. Subsequently, she went into the bar separately.
16. Ms. Norseth testified that, later that evening, Licensee's staff stated that Mr. Spencer "wasn't allowed in, and then he came back and snuck his way in."
17. Kashif "Cash" Spencer, Mr. Spencer's first cousin, testified that he did not see Mr. Spencer enter Licensee's establishment; he does not know how he got in.
18. Mr. Spencer testified that, upon entry into Licensee's establishment, he received a "yellow" bracelet from the "owner." Mr. Spencer could not positively identify the owner, Robert Rapatski, who was sitting next to him during the hearing.
19. Mr. Spencer or his mother apparently took a picture of his arm which had a crumpled, green wristband on it; the photo was admitted as State's Exhibit 1.
20. In response to seeing a photo depicting a different color wristband on his wrist, Mr. Spencer testified that he "mixed up the colors."
21. Kashif Spencer testified that he did not remember what color bracelet he received upon entry into Licensee's establishment.
22. Ms. Norseth, who is over 21 years old, testified that she was given a "yellow or green" bracelet.
23. Mr. Rapatski testified that the "over 21" bracelets that evening were "blue." He also testified that Licensee provides special gold-colored bracelets for VIP guests. Mr. Spencer did not testify that he received a VIP bracelet. Mr. Rapatski did not offer any evidence to corroborate that the bracelet color that night was "blue." Accordingly, given

the conflicting and/or unsubstantiated testimony, the Board cannot conclude with reasonable certainty which color wristband was actually used that night.

24. Nevertheless, it is undisputed that Mr. Spencer gained entry into Licensee's establishment.
25. Once inside, Mr. Spencer testified that he purchased a beer with cash, a fact that he did not offer in his first discussion with the police; it was not mentioned until a follow-up meeting with law enforcement approximately a month later in January 2016.
26. Mr. Fields, who also had been at the door when Mr. Spencer was turned away, discovered that Mr. Spencer had gained entry to Licensee's establishment.
27. Mr. Fields began to remove Regal Spencer from the Licensee's establishment, but he did not leave. He kept talking to other patrons. As a result, Mr. Smith said he put his hand on Mr. Spencer's back to escort him out. Mr. Spencer exclaimed, "get your f-ing hands off of me" and "don't touch me."
28. Mr. Smith testified that Mr. Spencer "assaulted" Mr. Fields.
29. Mr. Smith testified that Mr. Spencer began to act aggressively, which resulted in Mr. Smith putting Mr. Spencer in a headlock, with his arm around the neck, above his shoulder. Mr. Spencer resisted and began kicking and punching towards Mr. Smith. Mr. Smith lost his grip on Mr. Spencer.
30. A group of other patrons rushed towards them.
31. Mr. Fields then picked Mr. Spencer up around waist in an attempt to carry him down the stairs.
32. Mr. Spencer testified that he was "thrown" down the stairs and injured. His girlfriend and cousin testified similarly. All witnesses agreed that there was a struggle.
33. Mr. Spencer escaped this grip and fell down the stairs.

34. Mr. Spencer threw his keys at the bouncers in anger, but missed. He then left Licensee's establishment and walked to his mother's home in Colchester, which took between one and two hours.
35. Ms. Norseth testified that she walked with Mr. Spencer to his mother's home. Testimony: ("Q. You walked together? A. Yes.") On the walk home, according to Ms. Norseth, Regal Spencer was crying and upset.
36. Mr. Spencer testified that he walked home alone. Testimony: ("Q. Did your girlfriend, Ms. Norseth, walk with you? A. Nope.")
37. Mr. Spencer, during this journey, could have stopped at, and was in close proximity to, a medical facility with an emergency department.
38. Mr. Spencer first sought medical treatment on Sunday, December 20, 2015. Mr. Spencer's medical record of that date, which we admitted, describes Mr. Spencer's injuries as the result of a "fall." There is no reference in Mr. Spencer's medical records to an altercation or having been "thrown," but there is reference to a "complicated situation with calling the police." This was never explained at the Hearing. The diagnosis was a fractured distal humerus and potential wrist fracture. These appeared to be new findings as there is reference to prior films from 2010.
39. Mr. Fields was charged with aggravated assault.
40. Licensee has moved to strike State's Exhibit 1, the photo of Mr. Spencer's arm with a green wristband on it given that it was not properly authenticated. The Board will not strike the exhibit, but does find that there are questions over when, by whom and what circumstances it was taken, which detracts significantly from its value as probative of any material issue.

Victor Anghelache Incident

41. On December 18, 2015 at approximately 1:39 a.m. (during the same evening as the Regal Spencer incident), Burlington Police Department Officers William Drinkwine and Nicholas Rienzi responded to a dispatch call originating from Mr. Smith.
42. Mr. Smith called to report that a man had a gun, had threatened to shoot staff and was last seen walking north up Church Street.
43. The man, identified as Victor Anghelache had been a patron inside Licensee's establishment. He had been observed by Licensee's staff shaking the DJ booth and yelling for the music to be changed. Licensee's staff asked him to leave and escorted him out. When Licensee's staff began removing him, he threatened to kill another bouncer, identified as Henry Reuss. Mr. Anghelache hurled other invectives at Mr. Reuss and other members of Licensee's staff.
44. Mr. Smith told Officer Drinkwine that he believed Mr. Anghelache was "highly intoxicated." Mr. Smith smelled alcohol on Mr. Anghelache's breath. Another member of Licensee's staff states that Mr. Anghelache "was displaying violent hand gestures and wily eyes" while being removed from Licensee's establishment.
45. When Mr. Anghelache was ultimately removed from Licensee's establishment and was outside on the street adjacent to it, he revealed that he had a gun inside the waistband of his pants. In addition, Mr. Anghelache made further threatening comments to the bouncers, telling them that they were "going to go night-night." Mr. Smith did not believe that Mr. Anghelache had any intention to draw or use the weapon. Mr. Reuss was less certain, given Mr. Anghelache's level of intoxication.
46. The police found and detained Mr. Anghelache in front of another bar, Ri-Ra, on Church Street, Burlington, at approximately 1:49 a.m. on December 18, 2015, about ten minutes after responding to Mr. Smith's call. According to Officer Rienzi, Mr. Anghelache had slurred speech and was not responsive to simple questions.

47. Mr. Smith was called over to make a positive identification. Mr. Smith positively identified Mr. Anghelache as the suspect.
48. Mr. Anghelache was arrested and charged with aggravated assault.
49. Officer Drinkwine next saw Mr. Anghelache at the Burlington police station at approximately 2:40 a.m. According to him, Mr. Anghelache smelled heavily of intoxicants, was slurring his words, and had watery and bloodshot eyes. Mr. Anghelache refused to provide a breath sample.

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 held First and Third Class Liquor Licenses as defined by 7 V.S.A. §2(10) and (22) at all relevant times to this matter and is, therefore, subject to this Board's jurisdiction.

Regal Spencer Incident

4. The evidence is quite clear that Licensee did not allow Mr. Spencer entry into its establishment on December 17, 2015.
 - a. It is uncontested that Mr. Spencer was angered by the bouncers' refusal to let him in the licensed establishment.

- b. It is uncontested that Mr. Spencer returned at least a second time to Licensee in an effort to gain entry.
 - c. It is also undisputed that Mr. Spencer somehow gained entry into the licensed premises.
 - d. No one, including Mr. Spencer's girlfriend and cousin, corroborated Mr. Spencer's account of how he gained entry.
 - e. It is undisputed that, once spotted inside the Licensee by Licensee's staff, he was ordered to leave.
 - f. Mr. Spencer's inconsistent testimony on ancillary issues, such as the color of the wristband he was allegedly given by Licensee and with whom he walked home from Licensee, serve to cast doubt on his credibility as a witness.
5. Given the uncontested facts, it is extraordinarily unlikely that Mr. Spencer was permitted entry into the Licensee's establishment by its staff or owner. Had Licensee's owner or staff permitted Mr. Spencer inside the Licensee's establishment (as a "VIP" or general patron), Mr. Spencer would not have been ordered to leave by Licensee's staff.
 6. The only logical conclusion is that Licensee removed Mr. Spencer because he had entered its establishment without permission.
 7. Mr. Spencer bears significant blame for any injuries he may have sustained during his exit from the Licensee's establishment.
 8. For the above reasons, we do not find that Licensee violated General Regulations Nos. 12 and 13. The uncontroverted evidence is that Licensee scrutinized Mr. Spencer's identification and denied him entry as many as two separate times. There is insufficient support for any contention that Mr. Spencer was permitted inside and furnished an alcoholic beverage once inside Licensee's establishment.

Victor Anghelache Incident

9. The evidence has shown that Victor Anghelache was displaying signs of intoxication during and after his time in the Zen Lounge that evening. Officers Rienzi and Drinkwine observed such signs at approximately 1:49 a.m. and 2:40 a.m. respectively.

10. Licensee's staff acknowledged that they observed signs of Mr. Anghelache's intoxication while he was still inside the Licensee's establishment. Though the first stark evidence of Mr. Anghelache's intoxicated state was his shaking of the DJ booth, we presume that his intoxicated condition, during which he was allowed to stay on the licensed premises, was continuous for some period of time prior to that. *See In Re Tweer*, 146 Vt. 36, 38, 498 A.2d 499, 501 (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.") (citation omitted); *Ackerman v. Kogut*, 117 Vt. 40, 43-44, 84 A.2d 131, 134 (1951) (reasonable to infer that person, with flushed face, bloodshot eyes and disarranged clothes at 8:30 p.m., and who was staggering immediately after 8:00 p.m. car accident, would have been apparently under the influence of intoxicating liquors at 7:30 p.m. when served two beers at restaurant). In further support of this presumption, Mr. Anghelache was displaying signs of intoxication nearly an hour after he was removed from Licensee's establishment, which indicates substantial consumption that evening. Therefore, by a preponderance of the evidence, Licensee committed one violation of General Regulation No. 17.

11. We do not find a violation of General Regulation No. 36, which is set forth at length above, based on the evidence presented. Licensee's staff took reasonable and prompt steps to remove an intoxicated and combative patron from its premises, accompanied said patron out of the licensed establishment, monitored the intoxicated patron outside (appearing to have diffused what could have been a very serious incident), called law enforcement within a reasonable period of time and cooperated fully with them. In contrast, *see In re: Agony LLC d/b/a The Local* (August 22, 2016) at Conclusions of Law, ¶17-22.¹ (Licensee who

¹ This decision can be found at:
http://liquorcontrol.vermont.gov/sites/dlc/files/documents/BoardDecisions/2016_08_22_Agony_LLC.pdf

asks intoxicated patrons to leave but not accompany or observe patrons after exiting licensed establishment risks General Regulation No. 36 violation).

Appropriate Sanction

12. Licensee surrendered its First and Third-Class liquor licenses in July 2016, meaning that there are no current licenses to suspend or revoke.
13. 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 [.]”
14. For the violation of General Regulation No. 17, we conclude that an administrative penalty of \$500.00 is a reasonable sanction given that the most significant sanction previously imposed by the Board upon this Licensee was a \$250.00 administrative penalty for a General Regulation 7(a) violation in June 2015.

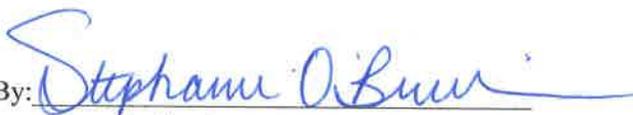
ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Board finds a violation of General Regulation No. 17, dismisses all other alleged violations arising from the events of December 17-18, 2015 and imposes an administrative penalty of \$500.00.

This administrative penalty must be paid in full before any application or reapplication by this Licensee or Licensee's principals, or any other entity applying for a liquor license at the same premises as Licensee, will be considered by the Board.

DATED at Montpelier, Vermont this 25th day of October 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).