

**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") appeared before the Liquor Control Board ("Board") on December 14, 2016 at Montpelier, Vermont for a Contested Case Hearing to consider sanctions against its First and Third Class Liquor Licenses for an alleged violation of this Board's April 13, 2016 Order. Kyle Tipson, owner, appeared at the Hearing on behalf of Licensee. Jacob A. Humbert, Esq., Assistant Attorney General, represented the Department of Liquor Control ("DLC"). Members Cassarino and Lauzon did not participate in this matter. The parties waived the opportunity to submit Proposed Findings. Based on the evidence presented, including testimony from DLC Investigator Jay Clark and Mr. Tipson, the Board rules as follows:

FINDINGS OF FACT

1. On October 14, 2015, this Board sanctioned Licensee for violations of General Regulation Nos. 21 and 50(a) for failing to disclose on its initial application, and in six subsequent renewal applications, the identity of all individuals having a direct or vested financial interest in its business.¹ The Board concluded that Kyle Tipson, at all relevant times, had a direct or vested financial interest in the business of the Licensee and his identity and relationship to the Licensee was never disclosed to DLC. The Board's sanctions included a license suspension and fines.

¹This decision is hereby incorporated by reference as if set forth at length herein and may be found at:
http://liquorcontrol.vermont.gov/sites/dlc/files/documents/BoardDecisions/2015_10_14_CK_Sports_Inc.pdf

2. Subsequent to our Order, and after apparent compliance with the terms of that Order, Licensee expressed continued interest in legally adding Mr. Tipson to its Licenses. Consequently, DLC investigated Mr. Tipson's fitness to hold a Vermont Liquor License.

3. At the April 13, 2016 Board Hearing to consider Mr. Tipson's application, DLC Investigator Matt Gonyo, a certified and experienced law enforcement officer testified regarding his review of Mr. Tipson's application. In doing so, he conducted a "routine background investigation to determine whether there were any criminal convictions within the last fifteen years." His investigation revealed a "few criminal convictions." These included convictions for DUI ("driving under the influence") in 2000 and 2009, both apparently charged as first offenses. Notwithstanding these issues, Investigator Gonyo supported granting Mr. Tipson a license, but with conditions that should include a requirement to provide breath samples upon request of law enforcement if there was concern with him "drinking on the job."

4. Mr. Tipson testified about the "blemishes" on his criminal record, proclaimed that he has turned his life around, started a family and agreed that a breathalyzer requirement would be reasonable.

5. Following the April 13, 2016 hearing and on that same day, the Board's granted Licensee's request to add Kyle Tipson as an owner to its First and Third-Class Liquor Licenses, subject to the following conditions that shall apply until the end of the 2018-2019 licensing period, or at the close of business on April 30, 2019:

LICENSEE AND/OR MR. TIPSON SHALL NOTIFY DLC IF MR. TIPSON IS CHARGED [WITH] OR CONVICTED OF ANY CRIME WITHIN 30 DAYS OF ANY CHARGE OR CONVICTION.

MR. TIPSON SHALL PROVIDE A BREATH SAMPLE AT THE REQUEST OF LAW ENFORCEMENT AT ANY TIME WHILE HE IS ON THE LICENSED PREMISES.²

² This decision is hereby incorporated by reference as if set forth at length herein and may be found at: http://liquorcontrol.vermont.gov/sites/dlc/files/documents/BoardDecisions/2016_04_13_CK_Sports_Inc.pdf

6. Both of these prior Board Orders, discussed above, are final and were not appealed. The time for appealing them to the Vermont Supreme Court has expired.

7. The State charged Mr. Tipson with a third DUI (charged as a second offense) on June 4, 2016. Mr. Tipson testified that just prior to his arrest he had been drinking at the Licensed establishment. The criminal matter remains pending.

8. DLC Investigator Jay Clark, a certified and experienced law enforcement officer, testified that Mr. Tipson did not disclose the facts of his arrest to him, despite several opportunities to do so, either telephonically or during in-person meetings at the Licensee's establishment.

9. Mr. Tipson confirmed that he failed to notify DLC of this charge within 30 days or at any time thereafter. Mr. Tipson testified that he left a message to Investigator Clark to "call him back" within 30 days of the arrest, but did not indicate the reason for the call nor did he make any subsequent efforts, either verbally or in writing, to notify DLC of his pending criminal charge. Instead, according to Mr. Tipson, he assumed that DLC knew about it and drafted a letter regarding his arrest, which he kept behind the bar in case anyone asked about the pending charge.

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. Granting or denying a liquor license application is a discretionary function entrusted to the Board. *See In re DLC Corp.*, 167 Vt. 544, 548 (1998).

3. A liquor license is a privilege and not a right. *In re Judy Ann's Inc.*, 143 Vt. 228 (1983). Such privilege is subordinate to the public interest and police power of the state. *See Carousel Grill v. Liquor Control Board*, 123 Vt. 93, 94 (1962). At the forefront of the Board's duties, we

are charged with ensuring public safety. Determining whether a license can be granted and to whom a license may be granted is a matter entrusted to us and is not a matter that is taken lightly.

4. 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.

5. 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).

6. Licensee was properly notified of the alleged violation and of its right to appear at a hearing to respond to these alleged violations consistent with 3 V.S.A. §809(a)-(c). Licensee appeared and contested the alleged violations.

7. DLC must prove all alleged violations by a preponderance of the evidence, which is the usual standard of proof in state administrative adjudications. *See Huddleston v. University of Vermont*, 719 A.2d 415 (1998); 3 V.S.A. §§ 801-849; *In re Muzzy*, 141 Vt. 463, 472, 449 A.2d 970, 974 (1982). This standard compels DLC to prove that, more likely than not, a violation occurred. If any violations are found, then the Board has concluded that DLC has met its burden.

8. This is the third time that this Licensee has been before the Board in approximately one year on matters relating to Mr. Tipson. The Board gave Mr. Tipson a chance to hold a Liquor License and imposed conditions on him that, if followed, would have allowed him the opportunity to be a successful Licensee.

9. The decision to grant Mr. Tipson's application was not easy. The prior violations of law, namely DUI's, are of significant concern to the Board. The Board entrusts its Licensees to not only to follow the laws and regulations related to beverage alcohol, but to prevent others, including its employees or patrons, from violating these laws and regulations as well. We

trusted Mr. Tipson's assurances that he had straightened out his life and would be a responsible Licensee.

10. Unfortunately, fewer than two months after giving Mr. Tipson this opportunity, we conclude that he violated the conditions of our April 13, 2016 Order by not reporting his DUI arrest to DLC within 30 days. The Board's order was clear as is his noncompliance with it.

11. Under these circumstances, and in the interest of public safety, the Board has no alternative but to revoke the Licensee's First and Thrd-Class Liquor Licenses.

ORDER

Based on the foregoing, the Board **REVOKES** Licensee's First and Third-Class Liquor Licenses effective immediately. In the event that any principal of Licensee, a successor entity, or anyone acting on its behalf or at their direction applies for any liquor license at any time in the future, DLC must refer the applicant to the Board for a hearing before the application can be considered. A "successor entity" for this purpose, is an entity that consists in whole or in part, some or all, of the same owners, stockholders, directors, officers, partners and/or individuals as the revoked Licensee.

Dated at Montpelier, Vermont this 16th day of December 2016.

VERMONT LIQUOR CONTROL BOARD

By: 
Stephanie M. O'Brien, Chair


Melissa Mazza-Paquette, Member


Julian Sbardella, Member

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).