

**STATE OF VERMONT  
LIQUOR CONTROL BOARD**

**In Re:           AGONY, LLC d/b/a THE LOCAL  
                  24 MERCHANTS ROW  
                  RUTLAND, VERMONT**

**DOCKET NO. 2017-005**

**BOARD DECISION AND  
ORDER OF REVOCATION**

The Department of Liquor Control (“DLC”) cited and properly served notice to Agony, LLC d/b/a The Local (“Licensee”), holder of suspended First-Class and Third-Class Liquor Licenses, for a February 8, 2017 contested hearing before the Liquor Control Board (“Board”) in Montpelier to address alleged violations of General Regulation Nos. 17/17(a) (two counts) and 36/36(a). Jacob A. Humbert, Esq., Assistant Attorney General, represented DLC. Licensee did not appear at the hearing and notified the Board and DLC counsel that it did not intend to appear at the hearing.

The Board admitted a video recording taken inside the licensed establishment on November 5, 2016 and considered testimony from Rutland Police Corporal Damon Nguyen and DLC Investigator Michael Davidson. The Board finds violations of General Regulation Nos. 17, 17(a) (two counts) and 36/36a, (one count) based on the following:

**FINDINGS OF FACT**

1. At all relevant times, Licensee held First-Class and Third-Class Liquor Licenses, subject to conditions imposed via prior rulings of this Board, permitting the sale of beer, wine and spirits to the public for on-premises consumption. These licenses are currently suspended by an order of the Board dated February 8, 2017 for violations detailed in this Board’s August 22, 2016 *Order*.
  
2. DLC asserts that Licensee violated the following Regulations:

- a. 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.
- b. General Regulation No. 17(a): Licensees or licensees' employees shall not serve alcoholic beverages to any individual whom it would be reasonable to expect would be under the influence as a result of the amount of alcohol served to that person. Under the influence, in this Regulation, shall mean that degree of intoxication that would render it unsafe or illegal for the patron to undertake normal and expected activities upon leaving the licensed premises.
- c. 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.
- d. General Regulation No. 36(a): 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.

**November 5, 2016**

3. Corporal Damon Nguyen of the Rutland City Police Department testified. He has been certified by the Vermont Criminal Justice Training Council as a full time Police Officer since 2011.
4. At approximately 2:00 a.m. on November 5, 2016, Cpl. Nguyen was on duty in front of Licensee's establishment to monitor foot traffic at closing time. (Closing time is 2:00 a.m.) At that time, a patron exiting the licensed establishment told him that there was a fight

occurring inside. Cpl. Nguyen also observed a male patron being removed by security for fighting.

5. Cpl. Nguyen heard this male patron yell that he “got punched first” and stated that the male patron tried to go back inside the licensed establishment, but he was stopped by Licensee’s security staff.
6. Cpl. Nguyen radioed and notified dispatch of the fight. He then went inside the bar and saw several clusters of people fighting. As Cpl. Nguyen was trying to separate people and remove them from the licensed establishment, a male lunged in front of him from his right side and punched another male standing behind him on his left side. Both males then wrestled with each other and fought with each other on a pool table nearby. Cpl. Nguyen grabbed the male who instigated the fight and “arm-barred” him to the floor.
7. Cpl. Nguyen later identified this man as James Leroy Scott. Mr. Scott demonstrated incoherent and extreme slurred speech among other indicia of intoxication. He resisted efforts by Cpl. Nguyen and another officer to handcuff him, but was ultimately handcuffed and taken to Cpl. Nguyen’s cruiser and transported to the Rutland City Police Department for processing.
8. Cpl. Nguyen indicated that once inside the licensed establishment he was offered no assistance by any of Licensee’s security staff.
9. Upon a search of Mr. Scott’s person, Cpl. Nguyen found two separate rubber banded white baggies that appeared to have been washed and dried as if part of laundry, only leaving a brown stain behind. Based on his experience and training, Cpl. Nguyen believed that these baggies had contained heroin.
10. Licensee provided DLC investigator Michael Davidson with video footage from November 5, 2016. The Board takes notice that the video recording and preservation of 30 days’ worth of video recordings taken inside the licensed establishment was a requirement under a prior

settlement agreement dated November 12, 2014. Inv. Davidson testified that the video shows that Licensee had no control over its patrons and its behavior was a threat to public safety.

11. The Board admitted and reviewed the video footage from November 5, 2016. The video confirms a chaotic situation inside the licensed establishment. There were multiple, as many as seven, separate fights taking place simultaneously at and beyond 2:00 a.m. The Board finds that there was, indeed, a brawl, at the licensed premises.
12. The video corroborates Cpl. Nguyen's testimony regarding his observations inside the licensed establishment.
13. Security staff clearly did not assist law enforcement with their efforts to quell the brawl that ensued inside the licensed premises as either unwilling or occupied with other disturbances outside the licensed establishment on the adjacent sidewalk and street.
14. Inv. Davidson interviewed Licensee's owner, Chip Greeno, about the brawl that evening. Inv. Davidson's testified that Mr. Greeno believed that there was no fight that night because nobody ended up in the hospital.

**Sunday, December 18, 2016**

15. According to Investigator Davidson, on December 18, 2016, Rutland City Police arrested Elise Castonguay, Licensee's bartender, for suspicion of DUI. She was operating a motor vehicle just after 2 a.m. on Merchants Row, Rutland, near Licensee's establishment. An alcho-sensor test showed that Ms. Castonguay had a .256% BAC at 2:41 a.m. and evidentiary, "datamaster," BAC of 0.229 taken at 4:04 a.m.
16. Ms. Castonguay was not working at Licensee that night, but was celebrating her birthday and had been consuming alcoholic beverages at numerous establishments, culminating with a visit to Licensee. Ms. Castonguay admitted to drinking several shots with each shot followed by a beer chaser while at the licensed establishment. In addition, other patrons bought Ms.

Castonguay “celebratory” drinks. Ms. Castonguay advised police after her arrest that she felt she was close to a blackout state. Mr. Greeno advised Inv. Davidson that he did not believe Ms. Castonguay was demonstrating signs of intoxication in the bar before leaving but he did not work that night. Ms. Castonguay left the licensed establishment in her vehicle. Licensee’s staff believed that she had a ride home.

### **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 the 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). Licensee did not appear. Through counsel, Licensee advised that it was not planning to appear at the Hearing. The Hearing was held and the evidence closed on February 8, 2017.
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.

### **General Regulation No. 17**

5. The Board concludes that, based on credible testimony presented, there is sufficient evidence to conclude that Mr. Scott was allowed to remain on the Licensee’s premises in a

significantly intoxicated state sufficient to form the basis of a General Regulation No. 17 violation.

**General Regulation No. 17(a)**

6. The Board will dismiss the alleged, November 5, 2016 violation of General Regulation No. 17(a) as there was no evidence provided of over service of any patrons. While it is clear that alcohol played a significant role in the brawl that ensued that evening, the only testimony offered and video presented addressed a period of time after Licensee stopped serving alcohol for the evening. There was no testimony about the nature and extent of service of any specific patron, including Mr. Scott; the only testimony confirmed his intoxicated state, not how he achieved that state.
7. There is no question that, on December 18, 2016, Licensee served Ms. Castonguay an amount of alcohol where it is reasonable to expect that she would be under the influence as a result of such service.
8. There is no dispute that at the time Ms. Castonguay was arrested on suspicion of DUI she was traveling in a motor vehicle from the licensed establishment where she consumed alcoholic beverages as part of a birthday celebration. *See In Re Tweer*, 146 Vt. 36, 38 (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). It was certainly unsafe and illegal for the patron to undertake normal and expected activities upon leaving the licensed premises, including operating a motor vehicle. Her operation of a motor vehicle with a BAC approximately triple the legal limit put her life and others’ lives in danger. This is sufficient for a finding of one General Regulation No. 17a violation.

**General Regulation Nos. 36/36a**

9. It is very clear that Licensee's actions and, namely inactions, led to and contributed to the November 5, 2016 brawl on and around its premises. Licensee failed to control the conduct of all individuals on their licensed premises and failed to ensure the safety of individuals entering, leaving, or remaining on the licensed premises. The Licensee's inaction, especially its failure to assist law enforcement inside the licensed establishment, contributed to the nature and extent of the brawl suffered upon the licensed premises. We find that allowing patrons, such as Mr. Scott, to stay on the licensed premises in an intoxicated state contributed to the brawl. It is well beyond a preponderance of the evidence that Licensee violated General Regulation No. 36/36a.

**Proper Sanction**

10. To impose an appropriate sanction, the Board must consider this Licensee's prior enforcement history.
11. DLC cited Licensee for a hearing before this Board for alleged violations of our Regulations for the fifth time since June 2014, more than any other Licensee in Vermont. The hearings included the following dispositions:
  - a. On June 17, 2014, the Board suspended Licensee's licenses for three days following a fight between patrons that resulted in a stabbing.
  - b. On November 12, 2014, the Board accepted a settlement agreement wherein Licensee agreed that it violated General Regulation Nos. 17 and 36 stemming from incidents of overservice of patrons and contributing to an aggravated assault that occurred on the sidewalk adjacent to the licensed premises. Licensee served a seven day suspension and agreed to a conditioned license wherein all patrons were to be screened by a metal detection device prior to entry and archived video recordings of the Licensee's interior were to be kept. These conditions were

imposed at Licensee's behest and ordered by the Board only by Licensee's stipulation.

- c. On September 9, 2015, the Board imposed an eight day suspension of Licensee's licenses plus a \$250 fine for failure to abide by its agreement to use a metal detector on patrons entering its establishment along with violations of General Regulation Nos. 7(a) and 45 and Education Regulation 3(b).
  - d. On August 22, 2016, the Board suspended Licensee's licenses for twenty-one days for multiple violations of General Regulation Nos. 17/17a and 36/36a following an incident where an overserved patron threatened and chased other patrons with an operating chainsaw across the street from the licensed establishment. Licensee appealed that decision to the Vermont Supreme Court and sought a stay of the suspension pending the outcome of the appeal. The Board granted the request for stay. The Vermont Supreme Court dismissed the appeal on February 7, 2017.
  - e. On February 8, 2017, the Board imposed the stayed 21-day suspension first ordered on August 22, 2016. At the time of this decision, Licensee's liquor licenses are under suspension and will remain under suspension until the close of business on February 28, 2017.
12. The Board previously warned that should Licensee commit further violations, license revocation was likely to occur. Numerous opportunities have been given to this Licensee, which has continued to be a substantial and ever increasing threat to public safety. In the latest instance, Licensee's misconduct threatened the safety of law enforcement and its off-duty bartender. Once Licensee's current suspension is served, revocation is the only appropriate sanction for the violation of General Regulation No. 36/36a.
13. In the event that any principal of Agony, LLC, The Local, Charles "Chip" Greeno, a successor entity and/or anyone acting on their behalf or at their direction, applies for any

form of Vermont liquor license at any time in the future or for a license at the same address, DLC must refer the applicant to the Board for a hearing before the application can be considered. A “successor entity” for this purpose, includes an entity that consists in whole or in part, some or all, of the same stockholders, directors, officers, partners and/or individuals as the revoked Licensee.

14. With no valid liquor licenses remaining to suspend or revoke, based on the remaining violations of General Regulation No. 17 and General Regulation No. 17(a), the Board fines the Licensee the maximum permissible for each violation, \$2,500.00. *See* 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 [.]”). The total fine imposed, therefore, is \$5,000.00.
  
15. Given the involvement of Licensee’s staff in the service of alcoholic beverages that gave rise to the violations found, the Board finds that all of the Licensee’s employees, including Ms. Castonguay, should be recertified by DLC should they wish to serve or sell alcoholic beverages on behalf of another licensee. They are required to attend an in-person DLC retraining and otherwise meet with DLC approval if he/she wishes to sell or serve alcohol on behalf of another licensed establishment.

## ORDER

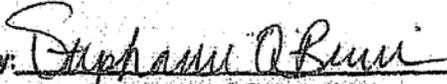
Based on the foregoing *Findings of Fact* and *Conclusions of Law*, the Board dismisses one alleged violation of General Regulation No. 17(a) and finds one violation each of General Regulation No. 17, 17(a) and 36/36(a).

The Board hereby **ORDERS** that Agony, LLC's First-Class and Third Class Liquor Licenses, currently under suspension, are **REVOKED** effective March 1, 2017.

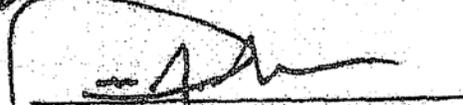
Licensee is also **FINED** \$5,000.00, to be paid within 30 days of this Order, and all employees of Licensee are required to attend in-person DLC retraining should they wish to serve alcoholic beverages on behalf of another licensed establishment.

**DATED** at Montpelier, Vermont this 23<sup>rd</sup> day of February 2017.

### VERMONT LIQUOR CONTROL BOARD

By:   
Stephanie M. O'Brien, Chair

  
Julian Sbardella, Member

  
Thomas Lauzon, 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).