

**STATE OF VERMONT
LIQUOR CONTROL BOARD**

VERMONT DEPARTMENT OF LIBRARIES
REFERENCE & LAW INFORMATION SERVICES
PAVILION OFFICE BLDG. 109 STATE ST.
MONTPELIER, VERMONT 05609

IN RE:

**Luminat Management Corporation
d/b/a Stone's Lodge under Mt. Stratton
1 River Road
Winhall, Vermont**

DECISION

The Liquor Control Board (LCB) held proceedings in Montpelier, Vermont, on June 13, 2012, to consider the suspension or revocation of the First and Third Class Licenses granted to Licensee, Luminat Management Corporation, d/b/a Stone's Lodge under Mt. Stratton, 1 River Road, Winhall, Vermont. The Licensee was present by and through Jeffrey Gaudet, general manager. The Licensee was not represented by an attorney. The Department of Liquor Control (DLC) was present and represented by Assistant Attorney General Jacob A. Humbert.

A Notice of Hearing, dated April 30, 2012, was sent to the Licensee with Investigator's Report attached, by which it was alleged that on March 8, 2012, it allowed a patron displaying obvious signs of intoxication to remain on the premises in a public non-segregated area in violation of General Regulation No. 17. General Regulation No. 17 was duly adopted by the Liquor Control Board.

FINDINGS OF FACT

1. The Licensee, Luminat Management Corporation, d/b/a Stone's Lodge under Mt. Stratton, 1 River Road, Winhall, Vermont, is the holder of First and Third Class Liquor Licenses by which it is permitted to sell alcoholic liquor for on-premise consumption.

2. General Regulation No. 17 states:

No alcoholic beverages shall be sold or furnished to a person displaying signs of intoxication from alcoholic beverages or other drugs/substances. No alcoholic

beverages may be consumed on the licensed premises by any person displaying such signs of intoxication. No person displaying such signs of intoxication shall be allowed to stay on the licensed premises, except under direct personal supervision by a licensee or his or her employees in a segregated non public area when the patron's immediate departure could be expected to pose a risk of bodily injury to the patron or any other person.

3. On March 8, 2012, there was a winter recreational event entitled Snowboard Weekend in the Winhall, Vermont ski area, which was in its third night.

4. The licensed premises known as Stone's Lodge consist of a bar, with dining area, the necessary kitchen facility and a contiguous attached hotel.

5. That evening at approximately 11:30 p.m., the Licensee's general manager, Jeffrey Gaudet was on duty acting as a third bartender when necessary. In addition, there were two other bartenders and a doorman. At that time, the wait staff were gone for the evening. The two (2) bouncers may also have been released for the evening. (Taken from the testimony of Thomas Curran and Jeffrey Gaudet).

6. DLC Investigator Thomas Curran, doing a routine investigation of the area's licensed premises, at approximately 11:30 p.m. that evening, entered the licensed premises through the kitchen door and made his way from the back to the bar area. The patron count was approximately 50.

Curran noted two things. First, there was a male patron seated at the bar who was swinging his arms and his loud voice and general demeanor gave the impression of a person who might be intoxicated. Curran decided to check on him again before he left. The second item that caused Curran to stop and observe was that the doorman was letting patrons into the premises without carding them. He carded only two out of ten incoming patrons.

7. Curran sought out the manager, Gaudet, who was bartending at an interior bar and explained what he had seen with respect to the doorman and asked if the doorman in fact had

been trained. Gaudet said that he had. Then Curran asked for the DLC certificate for the doorman showing that he had been trained. While Gaudet was looking for the doorman's training certificate, Curran also asked him if the doorman was on the payroll. At this point, Gaudet admitted that he was not on the payroll. Not long thereafter, Gaudet also admitted that the doorman had not been trained.

8. At this point, Curran wrote a ticket against the licensed premises for violation of General Regulation No. 45, i.e., having an employee who was not on the payroll and that ticket required a payment of \$250.00. The second ticket was for a violation of General Regulation No. 3(b) for having an employee on the premises whose job required a training certificate and who in fact had not been trained and that ticket was for \$100.00. Both tickets were subsequently paid.

9. On the way out of the premises, approximately 15 minutes later, Curran took another look at the man seated on the bar stool. The patron was now passed out, his legs and arms were out straight. Bartenders who were working behind the bar were walking back and forth near him but took no action. His bar stool was facing away from the bar. There was no indication that this patron had been served an alcoholic beverage by the licensed establishment.

10. Curran sought the attention of Gaudet once more and brought the patron who was passed out on the bar stool to his attention. Gaudet woke this individual up and two other patrons who were friends of the patron each assisted in carrying him out with an arm over each of their shoulders as the patron could not walk on his own. This patron was intoxicated from alcohol consumption and his physical condition displayed that alcohol consumption so that it was a violation of General Regulation No. 17 for the patron to remain on the licensed premises unsegregated from the other patrons under the supervision of the Licensee's staff until he could be removed safely from the premises.

11. Curran wrote a third administrative ticket for the violation of General Regulation No. 17 requiring a \$500.00 payment. As of the date of this hearing, the \$500.00 had not been paid as the Licensee denied the violation. (Taken from the testimony of Curran).

12. At this point, the State rested.

13. On that date and at the time in question, three patron who were guests of the hotel, which is part of the licensed establishment complex, entered the bar together. The three were friends. The other two were not visibly intoxicated, but this third patron was. He was immediately so identified by the bartenders who declined to serve him an alcoholic beverage and then sat him down at a bar stool which was at the closest point where he could be observed by staff. He was within touching distance of a bartender.

14. The hotel did not have an innkeeper and therefore it was the intention of the bartenders to keep this intoxicated patron under observation until the other two friends were going to leave and then the three could leave together. It was deemed undesirable to send the intoxicated patron into the hotel room in the condition he was in by himself.

15. Admittedly, the patron had passed out when he was seen by the liquor inspector the second time.

16. Gaudet felt that under the manpower limitations he had, as there was only himself, a doorman and two bartenders on duty, without an innkeeper he did not want to send that intoxicated patron into the hotel room. Nor did he wish to assertively tell one or both of the friends of the intoxicated patron that at that point they had to remove him from the premises. It was their belief that they were taking care of this intoxicated patron as best they could.

17. It is unclear, to the Board, from the testimony of Gaudet whether the two (2) bouncers were on the licensed premises at that point or not.

18. Admittedly, however, the Licensee, by and through its agents, did not in conformity with General Regulation No. 17, remove the intoxicated patron from the public area of the bar and bring him to a segregated non-public area under supervision. (Taken from the testimony of Gaudet).

19. At this point, the Licensee rested and the hearing concluded. Findings were waived.

CONCLUSIONS

1. The Licensee, Luminat Management Corporation, d/b/a Stone's Lodge under Mt. Stratton, 1 River Road, Winhall, Vermont, is the holder of First and Third Class Licenses by which it is permitted to sell alcoholic liquor for on premise consumption.

2. General Regulation No. 17 is set forth in full in the Findings portion of this Decision. As far as it relates to this case, it requires simply that when a patron is displaying signs of intoxication, he or she be removed from the general bar population and placed in a segregated non-public area under supervision, when that person's immediate departure could be expected to pose a risk of bodily injury to the patron or any other person.

3. The material facts in this case are largely uncontested. There is no question that on March 8, 2012, at approximately 11:30 p.m., DLC Inspector Thomas Curran found a patron sitting at a bar stool that he suspected when he first entered was intoxicated and that he would check on him on his way out. The patron apparently was loud and swinging his arms and evidenced other non-specified bodily characteristics with which Curran was familiar and caused him to be suspicious.

4. Curran concluded his business some 15 minutes later after inspecting the premises and issuing two tickets for violations of General Regulation No. 45 and General Regulation No.

3(b), each of which carried a fine, and each of those two fines have been paid. Those violations are no longer a part of the Board's consideration in this case.

When he passed the patron that he suspected required a further check, he found that he was passed out, sitting on the bar stool with the back of the bar stool facing the bar with his feet and arms straight out. When he called the attention of Gaudet to this patron's condition, Gaudet managed to waken him and at that point the two friends of the intoxicated patron with an arm over each of their shoulders were able to carry him out. The patron was not able to safely walk.

5. This patron was definitely displaying signs of intoxication and to have him on the licensed premises sitting on a bar stool was a violation of General Regulation No. 17.

6. The Board understands that no drinks were served to this patron by the bartenders and there was no evidence of the consumption of an alcoholic beverage by this patron.

7. Curran estimated the patron population at that time in the evening was approximately 50. The two bartenders were busy behind the bar and the manager, was acting as a third bartender serving patrons at another bar in the interior. The licensed premises were understaffed and so management allegedly could not deal with the problem that developed with this intoxicated patron in compliance with General Regulation No. 17

8. The Board understands the concern of Gaudet, the manager, i.e., that he did not want to return this very intoxicated patron to his hotel room in a hotel without an innkeeper where the two roommates of the patron were still in the bar. The circumstances that unfolded taxed the staff beyond their ability to handle the problem appropriately, said Gaudet. We do not agree entirely. It would have taken little effort, when the alcohol impaired patron was first

identified, to find his friends, explain the need to remove him from the bar premises, and thereby initiate the same result 30 or so minutes before the patron was seen by Investigator Curran.

If, in fact, the bouncers were still on the premises, the lack of sufficient staff argument is not available.

9. Gaudet during his testimony remarked that they were unaware of the "new" regulations, meaning that General Regulation No. 17 had provisions in it which came to play in this cause that he did not know of. Apparently, the bartender did not understand either. This lack of understanding of current regulations which have been in effect for several years causes the Board to conclude that a retraining of management and serving staff is in order.

DECISION

It is the determination of the Liquor Control Board that the Licensee pay to the Department of Liquor Control the sum of \$250.00 in payment of Ticket No. 00407 which was issued on March 9, 2012 by Investigator Thomas Curran for violation of General Regulation No. 17. The Board is reducing the amount of the ticket from \$500.00 to \$250.00 in due consideration of the circumstances in which the Licensee dealt with this patron.

However, the Licensee's management and all staff who are required to be trained, will undergo alcohol server retraining as directed by the Department of Liquor Control to be satisfactorily completed within sixty (60) days of the date of this Decision.

Dated at So. Burlington, Vermont, on this 22nd day of August, 2012.

LIQUOR CONTROL BOARD

By:


Stephanie M. O'Brien, Chair