

**STATE OF VERMONT  
LIQUOR CONTROL BOARD**

**IN RE:**

**R & F Damon Realty, Inc.  
The Dam Store  
89 Route 7 North  
Milton, Vermont**

**DECISION**

The Liquor Control Board (LCB) held proceedings in Montpelier, Vermont, on June 13, 2012, to consider the suspension or revocation of the Second Class Liquor License granted to Licensee, R & F Damon Realty, Inc., The Dam Store, 89 Route 7 North, Milton, Vermont. The Licensee was present by and through Richard S. Damon, President. 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 May 15, 2012, with Investigator's Report attached, was sent to the Licensee alleging that on April 10, 2012, it allowed its employee to interfere with a Vermont Law Enforcement Officer while in the performance of their duties in violation of General Regulation No. 7(a). General Regulation No. 7(a) was duly adopted by the Liquor Control Board.

**FINDINGS OF FACT**

1. The Licensee, R & F Damon Realty, Inc., The Dam Store, 89 Route 7 North, Milton, Vermont, is the holder of a Second Class Liquor License by which it is permitted to sell alcoholic liquor for off premise consumption.

2. General Regulation No. 7(a) states:

No licensee or employee of a licensed establishment shall interfere with, nor permit a patron to interfere with, provide false written or verbal information to, or

fail to cooperate with a Liquor Control investigator or other Vermont Law Enforcement Officer in the performance of their duties.

3. On April 10, 2012, Milton, Vermont Patrolman Charles T. Brown in his cruiser and another Milton Police officer in his cruiser responded to a 911 call at approximately 8:29 p.m. to the effect that a trespasser was heading up the hill from The Dam Store.

4. Brown and the other officer each in their own police vehicle pulled into a driveway of The Dam Store in order to briefly stop and seek a more clear GPS fix on the location where the call came from so as to respond more specifically to the location where the trespasser was seen.

5. Within a minute or so, the clerk came out of The Dam Store and told Brown and the other officer to get off their property. They explained that they would be there only momentarily as they tried to get a GPS fix on a trespasser, but the clerk indicated that he did not care, to get off the property, that they weren't wanted there. They immediately drove from the property and sought another location to obtain their GPS fix and in the so doing were delayed anywhere from three to five (3-5) minutes in obtaining their GPS fix.

6. After the officers terminated their response to that 911 call, they returned to the store to try to talk to the clerk, but found that the premises were closed.

7. Officer Brown then contacted DLC Investigator Jay Clark and asked for his assistance in rectifying the situation with the The Dam Store since it was a liquor licensee and the officer understood that liquor licensees need to allow Law Enforcement Officers to have access to the premises during business hours when the premises are open to the public.

8. Officer Brown was a customer of the store and was aware of no interaction either professionally or personally with the store or any its personnel that seemingly could form a basis

for the harsh treatment that they received from the store clerk. (Taken from the testimony of Patrolman Charles T. Brown, Milton, Vermont PD).

9. Jay Clark, a DLC Investigator, was called by Officer Brown on the evening of April 10, 2012, who related to Clark his experience at The Dam Store earlier that evening. Brown hoped that Clark would be able to educate the store and/or the clerk in question so that this incident would not occur again.

10. On April 11, 2012, at approximately 2:00 p.m., Clark visited The Dam Store and spoke with a male clerk by the name of Fields. When questioned by Clark, Fields quickly identified himself as the clerk who told the police the evening before to get off their property. He was adamant that they wanted nothing further to do with the police but had no idea that those actions of denying the police the use of the premises during working hours while the police were engaged in police business was a violation of a liquor regulation.

11. During that conversation, Fields advised Clark that The Dam Store was dissatisfied with the police investigation of an embezzlement case that they had with a former clerk. Clark advised that a more acceptable remedy would have been for them to take their grievances to the Chief of Police and/or Town authorities.

12. Clark issued Ticket No. 00727 on April 11, 2012 for a violation of General Regulation No. 7(a) carrying a penalty of \$500.00. The penalty remains unpaid as The Dam Store denied the violation. (Taken from the testimony of Clark).

13 Member Freed questioned whether the Board had the jurisdiction to enforce General Regulation No. 7(a) against a licensee for a matter having nothing to do with The Dam Store's liquor license, and was not a liquor issue in the first place.

14. When the store clerk approached the parked Milton Police vehicles on April 10, 2012 during what little discussion there was, the police told the clerk that they were there to get a GPS fix on a police matter that had to do with the pursuit of a trespasser. So it was clear to the clerk that the store's liquor license was not a basis for the police presence on the property.

15. Humbert argued that the plain meaning of the provisions of General Regulation No. 7(a) extends to "... a Liquor Control Investigator or other Vermont Law Enforcement Officer in the performance of their duties", the prohibition against being interfered with, and for being given false written or verbal information and the failure to receive cooperation from a licensee or its employee.

The Department will provide a legal memoranda to the Liquor Control Board on this issue. (Taken from the record discussion between Member Freed and Attorney Humbert).

16. At this point, the State rested.

17. Richard S. Damon is the president of the Licensee corporation. Fields, the clerk in question, is his wife's son, and is not a member of or an officer of the licensee corporation.

18. The Dam Store is a small business and requires all of the family to provide services as clerks in order to stay open. In that regard, Fields is now at the store and was not able to be at this hearing for that reason. He (Richard) is at the store every day and so has personal knowledge about the following issues.

19. First, for approximately six (6) or more months, the Vermont Agency of Transportation has undertaken a road improvement project that caused the store to lose a substantial amount of income. His complaints brought about no relief.

Secondly, he complained to the Milton Police Department for years concerning the presence of an alleged drug house on the other side of Route 7 beneath their property with

blatant and obvious drug activity going on at disturbing hours in the evening, only to be told time and time again by the police that there was nothing that they could do unless and until a crime is committed.

20. Coincidentally, he recently asked the Milton Police Department to increase their presence in the area of the store because of an embezzlement issue.

21. An attempt by Damon to recite facts which were told to him by Fields were objected to on the basis of hearsay by the Department, which objection the Board sustained.

22. There are two curb cuts serving the property from Route 7. As the Board understands Richard Damon's explanation, a vehicle traveling north on Route 7 wishing to enter The Dam Store property can use the first curb cut or the second curb cut that serve the property. A vehicle, however, traveling south on Route 7 wishing to enter The Dam Store can only use the first curb cut it comes upon, but not the second curb cut. Stated otherwise, a vehicle traveling north can enter the property from the first curb cut as well as the second. A vehicle exiting the store can only use the first curb cut just mentioned. A vehicle traveling north or traveling south on Route 7 can use what would be the second curb cut to a north traveling vehicle and the first curb cut to a south traveling vehicle, but that curb cut cannot be used to exit the property.

(Taken from the testimony of Richard S. Damon).

23. Investigator Clark was recalled. During his discussion with Fields on April 11, 2012, the day after the incident, most of the conversation concerned the violation of General Regulation No. 7(a) by the ordering of police vehicles off the property. Clark could not recall Fields mentioning anything to him about the driveway being blocked. Fields' apparent animosity against the police had to do with a broad spectrum of frustration. (Taken from the testimony of Clark).

24. At this point, the Licensee rested and the hearing ended. Findings were waived by the Licensee and the State. The State, however, wished to present the Board with its Brief concerning the applicability of General Regulation No. 7(a) to the facts here in question.

### **CONCLUSIONS**

1. The Licensee, R & F Damon Realty, Inc., The Dam Store, 89 Route 7 North, Milton, Vermont, is the holder of a Second Class Liquor License by which it is permitted to sell alcoholic liquor for off premise consumption.

2. General Regulation No. 7(a), which is set forth in full in the Findings is simple to state and understand. Its applicability to the police matter in question is not so simple however.

3. At approximately 8:30 p.m. on April 10, 2012, two Milton police cruisers, each occupied by a patrolman traveling north on Route 7 from the police station, entered into The Dam Store property by using the second curb cut and there parked their vehicles for approximately a minute. The Board was unable to learn exactly where the two police vehicles were parked, for the lack of a competent witness.

That curb cut used is one of two curb cuts that could be used by northbound traffic wishing to enter The Dam Store, but is the only curb cut to be used by southbound traffic on Route 7 wishing to enter The Dam Store. The first curb cut that a northbound driver encounters on Route 7 is the only curb cut that can be used to exit The Dam Store property. According to the testimony, that was not the curb cut which was allegedly blocked by the officers' vehicles.

4. Within a minute of the officers parking their vehicles for the purpose of orienting their GPS so that they could pinpoint a call concerning a trespasser on property in the general vicinity of The Dam Store, they were ordered off the property by Fields, the store clerk.

5. Fields heard the officers explain why they were there, i.e., they were responding to a police matter that had nothing do to with The Dam Store or its liquor license. The Board recognizes that this jurisdictional difference did not form a basis for the decision of Fields to order the police cars off the property. Fields and other family members have issues with the Police Department and with the Agency of Transportation of the State of Vermont that do not relate to its having a liquor license.

6. The Board has considered the Department's Memorandum of Law dated June 25, 2012 encouraging the Board to exercise its authority under General Regulation No. 7(a) to enforce the right of the Milton Police Department Officers coming on the property of the Licensee under the facts in question, while in the performance of their police duties, free from the interference of the Licensee that occurred in this case. Such enforcement would be by letter of warning, license suspension or administrative penalty (7. V.S.A. 236(D1).

7. The Department argued that the conduct of the law enforcement officers was reasonable under the circumstances and did not exceed the limit of consent afforded to members of the general public by The Dam Store which was during that time open for business.

8. The Board, however, without making a policy statement declaring that it lacks jurisdiction to adjudicate this matter, under the facts of this case because of the absence of any nexus between the police business that brought the officers to the store property and the store's liquor license, it declines to exercise its jurisdiction and will not adjudicate this matter.

Furthermore, during the hearing, it became clear to the Board from the statements of Richard Damon that:

(a) he was apologetic for the incident and the hostility shown by his stepson Fields; and

(b) he recognized the inconsistency between his having asked the Milton Police Department to increase their presence around The Dam Store just a week or two before and the angry outburst of Fields on April 10; and

(c) he appeared to agree that the best solution to their grievances with the Milton Police Department is to seek a calm discussion with the Milton Police Chief and/or, if necessary, Town Selectmen.

9. The Board, therefore, declines to exercise jurisdiction under General Regulation No. 7(a) to enforce 7(a) against The Dam Store under the facts presented, and in what it presumes will be a singular incident. The Board may rule otherwise in another case under other facts and circumstances.

10. If the matter was serious enough for the State's Attorney to take action against The Dam Store for throwing the police off its property, the police are not without a remedy. However, under the singular facts of this case, it is doubtful whether the State's Attorney will prosecute. This entire matter could have been remedied by a discussion between the Chief of Police and/or City fathers and the Licensee.

11. The Board will dismiss this matter. Findings were waived by the Licensee as well as the DLC.

### **DECISION**

It is the determination of the Liquor Control Board that it declines to exercise jurisdiction to adjudicate this incident under General Regulation No. 7(a) lacking any nexus between The Dam Store's liquor license and the basis for the police presence on the property. The matter is DISMISSED.

Dated at Grand Isle, Vermont, on this 24<sup>th</sup> day of August, 2012.

LIQUOR CONTROL BOARD

By: Stephanie O'Brien  
Stephanie M. O'Brien, Chair