

STATE OF VERMONT
LIQUOR CONTROL BOARD

IN RE:

Inferno Entertainment Inc.
19 Elliot Street
Brattleboro, Vermont

DECISION

The Liquor Control Board held proceedings in South Burlington, Vermont, on September 26, 2012, to consider the suspension or revocation of the First and Third class liquor licenses granted to Licensee, Inferno Entertainment Inc., 19 Elliot Street, Brattleboro, Vermont. The Licensee was present by and through Zachary Leroy, its incorporated owner and principal agent. The Department of Liquor Control (DLC) was represented by Assistant Attorney General Jacob A. Humbert.

A Notice of Hearing dated August 28, 2012, with investigative background documents attached, was sent to the Licensee by which it was alleged that the Licensee is not in good standing with respect to any and all taxes payable to the Commissioner of Taxes in violation of General Regulation No. 10.

General Regulation No. 10 was duly adopted by the Liquor Control Board.

FINDINGS OF FACT

1. The Licensee, Inferno Entertainment Inc., 19 Elliot Street, Brattleboro, Vermont, (Inferno) is the holder of first and third class liquor licenses by which it is entitled to sell liquor for on-premise consumption.

2. General Regulation No. 10 states:

No first or third class liquor license shall be issued to a person who is not first licensed with the Vermont Department of Taxes to collect the Vermont Rooms and Meals tax. Suspension of first or third class liquor licenses may result by action of the Liquor Control Board, after notice and hearing, upon certification to the Board by the Vermont Department of Taxes that the licensee has failed to collect the Vermont Rooms and Meals

tax, has failed to pay over to the Vermont Department of Taxes the Vermont Rooms and Meals tax collected, or is not licensed with the Vermont Department of Taxes to collect the Vermont Rooms and Meals tax.

3. Linda Ainsworth is a supervisory employee of the Tax Department of the State of Vermont and is one of its tax compliance officers. It is her duty to identify those individuals and/or entities who owe taxes to the State of Vermont. It is also part of her duties to report that status by letter and by testimony.

4. In that regard, she addressed a letter on the official stationary of the State of Vermont Department of Taxes to both Jacob Humbert, the attorney for the DLC, in his capacity as an Assistant Attorney General, and to Sergeant Martin Prevost, an Investigator with the Department of Liquor Control. The letter is signed by Ainsworth in her capacity as Tax Compliant Unit Supervisor, and states that Inferno Entertainment Inc. is not in good standing with respect to any and all taxes payable to the Vermont Commissioner of Taxes (underlining for clarity).

Said letter is marked as Plaintiff's 1 for identification and is admitted into evidence without objection from the Licensee.

5. According to Ainsworth, the status of the Licensee in this case remains "not in good standing" as of the time and date of this hearing.

6. The liability of Inferno Entertainment Inc. (Inferno) is not under appeal. (Taken from the testimony of Ainsworth).

7. At this point, the State rested.

8. Zachary Leroy opened Inferno as a place of business in November of 2010.

9. Inferno struggled financially right from the beginning. Leroy was and is in a constant position of robbing Peter to pay Paul so to speak, and proclaimed never to have had sufficient finances to pay all his bills at once.

10. Leroy had very little understanding of the area that his business was in as he was an outsider. He made some assumptions that customers would come once the facility was available to them to patronize. This did not quite happen and he has not enjoyed the customer base that he hoped and consequently has not had the income that he expected.

11. Inferno began to fall behind with their tax liability to the Tax Department in mid 2011. His father provided Inferno with financial assistance in the beginning, but is not in a position to help any further.

12. The bills he got from the Tax Department proclaiming his current liability he termed "astronomical" compared to what the actual tax liability would have been if he had reported his actual liability to them. He has not yet communicated with the Tax Department and has not filled out the forms necessary to report his actual income, so that their statements to him as to his liability could be corrected and adjusted. Leroy professed however the desire to contact the Tax Department and make the necessary filings to correct his tax liability. Notwithstanding a downward correction of his liability, his financial situation is such that he doubted whether he could payoff his actual liability at one time, and he has been hesitant to confront the Tax Department for that reason.

13. He believes his actual arrears with the Tax Department is somewhere in the vicinity of \$3,000.00 to \$5,000.00. This is based upon an estimated tax liability of somewhere between \$100.00 and \$300.00 a month based upon his actual receipts. Penalties and fees would be in addition.

14. Leroy was asked by Humbert if he would permit the Tax Department to send directly a statement of his liability to the Board. His hesitancy amounted to a negative response. Leroy stated that the tax liability according to the Tax Department records is based upon a substantially inflated projection of his monthly income and therefore a statement of tax liability owed to the Tax Department by Inferno would be grossly overstated. (Taken from the testimony of Leroy).

15. Linda Ainsworth continued under oath.

16. The Tax Department records reflect tax assessments for Inferno which date back to February of 2011. They did send him an estimated bill because Inferno did not file monthly reports to the Tax Department. As a consequence, they are billing him based on projected income of approximately \$5,000.00 a month. The total now due is in the nature of \$102,000.00, including penalties and fees. She estimated that the tax liability portion itself is in the nature of \$71,000.00, more or less, and the remainder consists of penalties, fees and interest.

Inferno filed in December, 2011 showing an income of \$556.00, and then filed in February, 2012 showing \$228.00 in income. No monthly income reports were filed since then.

17. The \$5,000.00, more or less, is really a penalty against Inferno for failing to file a return. However, Leroy can contact the Tax Department and upon receipt of valid monthly reports of income, they will adjust the penalty and interest as well as the actual liability to reflect the actual tax which is due. (Taken from the testimony of Linda Ainsworth).

18. Humbert addressed the Board stating that under 32 V.S.A. § 3113 upon notice from the Tax Department, and after hearing, in a case where the tax liability is not under appeal, a letter from the Tax Department, which is State's 1, is prima facia evidence of the tax liability enabling the Board to revoke the liquor license unless there is immediate payment of the tax

delinquency. The statute in question does permit the Board to take into consideration financial hardship, but notwithstanding the testimony of Leroy to that effect, there is no formal statement of hardship in the Tax Department records and there has been no contact with the Tax Department by the tax payer.

19. At this point, the State rested and the Licensee rested.

20. Requests for findings were waived by the License as well as the State.

CONCLUSIONS

1. The Licensee, Inferno Entertainment Inc., 19 Elliot Street, Brattleboro 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. 10, which is set forth in full in the Findings portion of this Decision, as it relates to Inferno in this case, states that first and third class liquor licensees (such as an Inferno), after notice and hearing (as has just been concluded) upon certification to the LCB by the Vermont Department of Taxes (State's 1) that the Licensee is delinquent with the Tax Department in its stated tax obligations, are subject to a suspension of their liquor licenses.

3. In this case, Inferno's incorporated owner and principal agent (Leroy) has admitted that Inferno is delinquent in its obligations to the Tax Department of the State of Vermont.

4. Inferno filed as required on December 11 showing income of \$556.00 and then filed once more in February of 2012 showing \$228.00 in income. Since then Inferno failed to file monthly reports.

5. As a consequence, the Tax Department has sent him an "estimated" bill showing income of \$5,000.00 a month, which admittedly is an amount calculated to perform the services of a penalty to induce the noncompliant taxpayer to file a monthly report.

6. Under that monthly estimated liability, there is now due to the Tax Department the sum of \$102,000.00, which includes penalties, fees and interest. Of this amount, \$71,000.00, more or less, is the estimated tax, the rest is penalties, fees and interest.

7. The Tax Department, by and through Linda Ainsworth, its Tax Compliance Supervisor, has stated that the Licensee Inferno can contact the Tax Department which, after receiving the necessary filings from the License, will adjust the delinquency so that it is based upon actual income and will adjust the penalty and interest accordingly.

8. The Tax Department will also work with the Licensee to achieve a mutual contractual arrangement whereby the arrearage and all of the penalties and interest due are paid over time while at the same time the Licensee will be required to file necessary reports monthly and to pay what is due monthly.

9. The Board admonishes the Licensee for his failure to contact the Tax Department heretofore to make whatever arrangement with the Tax Department he can make to determine his actual tax liability and to achieve a mutual contractual understanding as to how that actual liability will be paid in the future. It is also obvious to the Board that the Licensee has no ability financially to pay off at one time its liability to the Tax Department. Actually, at this point, neither Inferno nor the Tax Department knows what that liability is until Leroy files the necessary delinquent monthly statements of income so that his liability can be determined. The Board has heard the License express the desire to get reorganized and be able to determine whether he can continue in business and fulfill his tax obligations.

DECISION

It is the determination of the Liquor Control Board that the Inferno Entertainment Inc. liquor licenses will be suspended on the 30th day following the date of service of this Decision on the Licensee unless and until by that time the DLC has received from the Tax Department of the State of Vermont a letter stating that Inferno is now in compliance or has committed itself to a payment plan which is to their satisfaction.

Dated at So. Burlington, Vermont, this 29th day of October, 2012.

VERMONT LIQUOR CONTROL BOARD

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