

**STATE OF VERMONT
LIQUOR CONTROL BOARD**

IN RE:

**Bottoms Up Bar and Grill, LLC
5 River Street
Richford, Vermont**

DECISION

The Liquor Control Board (LCB) held proceedings on October 31, 2012 at Montpelier, Vermont, to consider the suspension or revocation of the first and third class liquor licenses granted to Licensee, Bottoms Up Bar and Grill, LLC, 5 River Street, Richford, Vermont. The Licensee was present by and through Jason William Failing, its incorporated principal. The Licensee was not represented by an attorney. The Department of Liquor Control (DLC) was represented by Assistant Attorney General Jacob A. Humbert.

An amended Notice of Hearing dated October 12, 2012, with Investigators' Reports attached, was sent to the Licensee by which it was alleged that:

- a. 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; and
- b. on September 1, 2012, it served alcoholic beverages to persons displaying obvious signs of intoxication and that it allowed those patrons to stay on the licensed premises in a public non-segregated area in violation of General Regulation No. 17; and
- c. on September 1, 2012, it served alcoholic beverages to patrons whom it was reasonable to expect were under the influence as a result of the amount of alcohol served to those patrons in violation of General Regulation No. 17(a); and

d. on September 1, 2012, the streets, sidewalks and highways adjacent thereto were rendered a public nuisance as a result of the amount of alcohol served to its patrons in violation of General Regulation No. 36(a).

After the Notice of Hearing was sent and prior to the beginning of this proceeding on October 31, 2012, the Licensee had paid the fine associated with the violation of General Regulations No. 17, 17(a), 36 and 36(a). This hearing, therefore, concerns only General Regulation No. 10.

General Regulation No. 10 as well as General Regulations No. 17, 17(a), 36 and 36(a) were duly adopted by the Liquor Control Board.

FINDINGS OF FACT

1. The Licensee, Bottoms Up Bar and Grill, LLC, 5 River Street, Richford, 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 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, Tax Compliance Supervisor, State of Vermont Tax Department, testified. By State of Vermont Tax Department letter signed by her as Compliance Unit Supervisor, dated August 24, 2012, and addressed to Chief William Goggins and Sargent Martin Prevost both of the DLC, she notified the DLC that the liquor licensee entitled Bottoms Up Bar and Grill, LLC was NOT in good standing with respect to any and all taxes payable to the

Commissioner of Taxes. The status of the Licensee continues NOT in good standing as of the date of this hearing on October 31, 2012. The liability of Bottoms Up Bar and Grill, LLC, according to Tax Department records, is not under appeal. She identified State's Exhibit 1 as the standard NOT in good standing letter in question. State's Exhibit 1 was admitted into evidence without objection from the Licensee. (Underlining for clarity in understanding). (Taken from testimony of Ainsworth).

4. At this point, the State rested.

5. Jason William Failing, the incorporated owner of Bottoms Up Bar and Grill, LLC, at 5 River Street, Richford, Vermont, stated that he believed his liability to the State of Vermont Department of Taxes was nearly caught up. He believed it to be an obligation in the nature of \$200.00, more or less, fees and penalties excluded. The tax liability, for which he is not in good standing, is the tax liability for the month of September, 2012, which required payment of the requisite taxes to the Tax Department by the 25th of October, just past.

According to Failing, he needed an extension of 24 hours in order to raise the sum which will bring him into good standing with the Tax Department. (Taken from testimony of Failing).

6. Linda Ainsworth was recalled for redirect testimony. Bottoms Up Bar and Grill, LLC, in addition to the obligation identified by Failing, is an obligation to the Tax Department of the State of Vermont for the month of July and August for an amount in the nature of \$300.00, more or less, not including penalties and interest.

In addition, there will be a small amount of penalty and interest associated with the tax filing and payment that was due on the 25th of October, 2012 up to the date that it is actually paid.

7. The DLC, by and through Humbert, its attorney, asked the Board to impose a short performance deadline upon this Licensee, which would be entirely in keeping with Failing's testimony of needing only a day to make up the tax deficiency.

8. At this point, the hearing ended, both Bottoms Up Bar and Grill, LLC and the Department resting.

CONCLUSIONS

1. The Licensee, Bottoms Up Bar and Grill, LLC, 5 River Street, Richford 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, is straightforward, as it relates to this case, and requires that a suspension of first and third class liquor licenses may result by action of the LCB after notice and hearing, once the Vermont Department of Taxes has certified to the Board that the Licensee has failed to collect the Vermont Rooms and Meals tax and pay over to the Vermont Department of Taxes the taxes which are owed. The conditions precedent such as notice and hearing have occurred. State's 1 is the indicated "NOT" in good standing certification by the Department of Taxes to the LCB.

3. Therefore, the Licensee is in violation of General Regulation No. 10 in that he has an unsatisfied obligation to the Tax Department, all of which has been set forth in the factual portion of this decision.

4. In keeping with the Licensee's statement to the Board that the Licensee required an additional 24 hours to become in good standing with the State of Vermont Tax Department, the Board will delay the statutory suspension accordingly.

DECISION

It is the determination of the Liquor Control Board that the first and third class liquor licenses granted to Bottoms Up Bar and Grill, LLC, 5 River Street, Richford, Vermont, shall be suspended on November 7, 2012 unless by close of business on November 6, 2012, the Licensee has delivered to the DLC a letter from the State of Vermont Tax Department stating that it was then in good standing (underlining for clarity).

If, however, no letter from the Tax Department declaring that the Licensee is an entity in good standing, has been received by the DLC by the close of business on November 6, 2012, then the licenses which shall be suspended from the opening of business on November 7, 2012 shall remain suspended until the Licensee's status with the Tax Department is in good standing and a Tax Department letter so stating has been received by the DLC.

Dated at S. Burlington, Vermont, on this 5th day of November, 2012.

LIQUOR CONTROL BOARD

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