

STATE OF VERMONT
LIQUOR CONTROL BOARD

IN RE:

Irfan Corp.
d/b/a Brattleboro Discount Beverage & Bottle Redemption; Agency #2055
157 Marlboro Road
Brattleboro, Vermont

DECISION

The Liquor Control Board held proceedings in Montpelier, Vermont, on February 22, 2012, to consider the suspension or revocation of the second class liquor license, the tobacco license and Agency contract granted to Licensee, Irfan Corp., d/b/a Brattleboro Discount Beverage & Bottle Redemption; Agency #2055, 157 Marlboro Road, Brattleboro, Vermont. The Licensee was present by and through Farogh Wien, its incorporated owner, and by Nabeel Butt, its manager, and by its attorney, Matthew T. Birmingham, III. The Department of Liquor Control (DLC) was present and represented by Assistant Attorney General Jacob A. Humbert.

A Notice of Hearing dated December 29, 2011, with Investigative Report attached, was sent to the Licensee, in which it was alleged:

(a) That on November 11, 2011 (corrected to November 18, 2011), its manager, Nabeel Butt, knowingly provided false information to Investigators from the Vermont Department of Liquor Control and to corporate tax examiners from the Vermont Department of Taxes in violation of General Regulation Number 7(a); and

(b) That it has knowingly been purchasing tobacco products from an entity not licensed in Vermont to sell tobacco products in violation of General Regulation Number 36.

Said Regulations were duly adopted by the Liquor Control Board (LCB).

Final deliberation by the LCB on this matter took place on May 11, 2012.

Upon the request of the Licensee for a continuance, the hearing was held in Montpelier, Vermont, on February 22, 2012 instead as originally noticed to take place in Burlington, Vermont, on January 23, 2012.

FINDINGS OF FACT

1. The Licensee, Irfan Corp., d/b/a Brattleboro Discount Beverage & Bottle Redemption; Agency #2055, 157 Marlboro Road, Brattleboro, Vermont, is the holder of a second class liquor license, a tobacco license, and an Agency contract between itself and the Vermont Liquor Control Board, by which it is permitted to sell alcoholic beverages and tobacco products for off premise consumption, and to sell spirituous liquors as an agent of the State of Vermont, for off premise consumption.

2. General Regulation Number 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. General Regulation Number 36 states:

It shall be the duty of all licensees to control the conduct of their patrons at all times. No disturbances, brawls, fighting or illegal activity shall be permitted or suffered upon any licensed premises; nor shall such premises be conducted in such a manner as to render said premises or the street, sidewalks, parking lots, or highways adjacent thereto a public nuisance.

4. Acting on confidential information, Terry R. Edwards, a Tax Examiner for the Tax Department of the State of Vermont charged with tobacco tax enforcement on November 18, 2011, entered the premises of Irfan Corp., d/b/a Brattleboro Discount Beverage & Bottle Redemption at 157 Marlboro Road, Brattleboro, Vermont (hereinafter "Agency 2055"), sometime before noon, and while it was open for business. Edwards was accompanied into Agency 2055 by DLC Investigator William Manch. (Taken from the testimony of Edwards and Manch).

5. The inquiry/investigation of Agency 2055 was arranged by William Goggins, Director of the Enforcement Division of the DLC as a joint Tax Department and DLC effort, for the purpose of determining whether tobacco products being sold by Agency 2055 had been taxed as necessary under Vermont law. Confidential information was received by Edwards that the tobacco products were being sold at Agency 2055 significantly under the average retail price. (Taken from the testimony of Edwards and Goggins).

6. Edwards and Manch upon entering Agency 2055 were directed by the cashier "Jeff" to the store manager, Nabeel Butt, aka "Joe". Edwards explained to Butt, while pointing at certain loose tobacco products on the shelves, that they were there to see the invoices for those tobacco products on the shelves. Butt responded by saying "No problem" and then led the way to a back room where he proceeded to produce a quantity of invoices for Edwards and Manch to examine (underlining for emphasis). (Taken from the testimony of Edwards and Butt).

7. Goggins, in plain clothes, entered Agency 2055 shortly after Manch and Edwards and, acting like a customer, observed Butt, Manch and Edwards as they left the front room to go to the back room. (Taken from the testimony of Goggins).

8. After Butt returned to the front or sales room, Goggins continued to observe him. (Taken from the testimony of Edwards, Manch and Goggins).

9. When Butt returned to the sales room, he picked up from the top of a stack of three (3) boxes on the floor, a large Kellogg's Apple Jacks cereal box. He opened it, looked at its contents and then placed that box on the bottom of the stack of boxes.

Butt then went to the desk and took a piece of paper from the top and placed it in the drawer of the desk while covering it with other sheets of paper. He then closed the drawer.

The Apple Jacks box had been delivered to Agency 2055 that morning while Butt was at the bank. (Taken from the testimony of Goggins and Butt).

10. The paper that Butt took from the desktop and placed in the drawer was the invoice for the tobacco in the Kellogg's box. Butt had been comparing the invoice with the tobacco in the Kellogg's box when the Investigators first entered. (Taken from the testimony of Goggins and Butt).

11. During this time, Edwards and Manch in the back room realized that the invoices handed to them by Butt were old invoices and were not the invoices for the tobacco product pointed to on the shelves of Agency 2055. (Taken from the testimony of Edwards).

12. Goggins signaled to Manch in the back room to come to him and when he did Goggins pointed to the Kellogg's box now at the bottom of the pile and explained to Manch what he had seen. (Taken from the testimony of Goggins and Manch).

13. Goggins and Manch then approached Butt and asked him what was in the Kellogg's cereal box? Butt said that he did not know. Goggins questioned that response and stated that he had just seen Butt look into the box and then saw him put the box down beneath the other two. Butt was silent. Goggins instructed Butt to open the box, which he did, at which time Goggins, Manch and now Edwards saw that it was full of loose tobacco product. (Taken from the testimony of Goggins and Manch).

14. At that point, Goggins opened the desk drawer and quickly found an Ace Distributing Co. ("Ace") invoice that Butt had covered with other papers just before. Goggins asked Butt what that paper was. Butt was silent. Butt was asked several times for all of the Ace invoices. Butt responded that there are no more, or words to the same effect. (Taken from the testimony of Goggins).

15. The Kellogg's cereal box had a label on it with shipping information and a tracking number which was noted by Edwards. (Taken from the testimony of Goggins and Edwards).

16. Sometime after this exchange, Butt walked outside to the parking lot where he made a cell phone call to someone. When he returned, he was asked by Goggins who he was speaking with and he said his girlfriend. He was then asked again by Edwards to produce the invoices for the tobacco product then on the shelves of Agency 2055. He said there were no more invoices. Goggins with assertion in his voice told Butt to cooperate or otherwise he would be in big trouble. (Taken from the testimony of Goggins and Butt).

17. Edwards in the presence of Goggins and Manch again stated to Butt that he wished to see the invoices for the "loose" tobacco products then being displayed for sale on the shelves of Agency 2055. (Taken from the testimony of Edwards).

18. Butt then voluntarily stated "Would you like to search my office?" or words to that effect. Goggins immediately and enthusiastically said yes, and that it would be a good idea. Butt led them to a filing cabinet in the office. Goggins asked what was in the filing cabinet and Butt said "files". Butt then opened a drawer in the filing cabinet, but upon a quick perusal it could be seen that there were no invoices in that drawer. Butt

was asked by Goggins to open the bottom drawer, which he did. Goggins and Edwards quickly saw in plain view a file marked "Ace" which was full of "Ace" invoices. That file folder was brought to the front office. (Taken from the testimony of Goggins, Manch and Butt).

19. Goggins was shown a sheet of paper marked State's 1 for identification, which he identified as a copy of the invoice from "Ace" to "BDB&L" which was dated November 16, 2011. The tobacco product for the invoice was delivered at 10:35 a.m. on November 18, 2011 according to the FedEx shipping label on the box. State's 1 is the invoice for the loose tobacco product in the Kellogg's box and had an invoice value of \$1,401.20. State's 1 was taken from the desk drawer by Goggins in the presence of Butt. (Taken from the testimony of Goggins and from State's 1).

20. Goggins was then shown State's 2 for identification, which he identified as copies of those invoices from Ace to BDB&L ("Agency 2055") that were contained in the file folder marked Ace that was removed from the drawer in the file cabinet in the back room of Agency 2055 on November 18, 2011 in the presence of Butt, himself, Manch and Edwards. The State's 2 invoices, 23 in number, covered the period beginning December 8, 2010 through and including October 27, 2011. The total cost to Agency 2055 for tobacco products on the 23 invoices was \$25,005.00. The average purchase by BDB&L from Ace was \$1,087.00 per invoice. State's 1 and 2 contain a total of 24 invoices for a total of \$26,406.20 invoice cost to BDB&L for an average cost per invoice of \$1,100.00. (Taken from the testimony of Goggins and State's 1 and 2).

21. The invoices which are State's 1 and 2 do not reveal that any Vermont tax was imposed by Ace in its sales to BDB&L. Upon the recommendation of Goggins, the

loose tobacco product on the shelves was inventoried and seized. (States 1 and 2 and taken from the testimony of Goggins and Edwards).

22. State's 1 and 2 were admitted into evidence without objection.

23. Edwards determined after searching the Vermont Tax Department records in Montpelier, Vermont, upon his return there that day, that there was no record of Ace either previously or currently being licensed to do business in Vermont as a tobacco wholesaler. A further records check at the Tax Department revealed that Irfan Corp., d/b/a Brattleboro Discount Beverage & Bottle Redemption was not licensed as a distributor of tobacco products in the State of Vermont. (Taken from the testimony of Edwards).

24. The advantage to Agency 2055 in having purchased untaxed tobacco from Ace was that it would pocket 92% of the wholesale cost of the tobacco product. The tax is 92% of the wholesale cost. This resulted in a substantial profit to Agency 2055. (Taken from the testimony of Edwards).

25. While it is not unlawful for a retailer such as Agency 2055 to purchase from a wholesaler untaxed tobacco product, however, it must then impose upon that tobacco product, when sold, the requisite Vermont state tax. The retailer who acts as a tobacco distributor by adding the tax to his sales price, must thereby collect that tax from the buyer. That retailer must then disclose to the Vermont Tax Department the financial details of the transaction, i.e., the cost of the tobacco to the retailer, the tax imposed and the tax collected. Then a check for the tax collected must accompany a form which is due at the Tax Department on the 15th of the month following the month for which the report is made. (Taken from the testimony of Edwards).

26. If, on the other hand, a wholesaler of tobacco product is registered with the taxing authority of the State of Vermont, that wholesaler is obligated to impose the requisite tax on the tobacco product sold to the retailer, and then send a form with similar revelations and the tax collected to the Tax Department on the 15th of the month following the month of reporting. (Taken from the testimony of Edwards).

27. If a tobacco wholesaler does not register to do business in Vermont and thereby is not licensed as a tobacco wholesaler/distributor in the State of Vermont, but nevertheless tobacco comes into Vermont through the wholesaler selling to a retailer, and that retailer does not add the requisite tax to the tobacco product that he sells, that transaction does not come to the attention of the Tax Department unless someone reports it, as here, or complains about the tobacco product being sold at a price noticeably below what other retailers are asking.

However, if a wholesaler is a Vermont licensed distributor of tobacco product, when he sells to a retailer, the tax is built into the price that the retailer pays for the tobacco and the retailer has no further responsibility for that tax as it is then the wholesaler's responsibility to pay that tax over to the State of Vermont. (Taken from the testimony of Edwards).

28. A tobacco retailer can find out if his tobacco supplier or wholesaler is registered in the State of Vermont and consequently find out if the requisite tax has already been imposed by the wholesaler upon the product. He can call the Tax Department and ask for that information or check with the Tax Department's website. In addition, there are Grocers Associations in the State that will provide this fact when requested. (Taken from the testimony of Edwards).

29. At Agency 2055, before the tobacco product was seized, the loose tobacco products on the shelves was matched with the tobacco product shown on the Ace invoices which constitute State's 2. The invoice which is State's 1 was the invoice for the tobacco product in the Kellogg's cereal box in question. (Taken from the testimony of Goggins).

30. Goggins was of the opinion that Butt knew the answers to the simple questions put to him on November 18, 2011 by the investigating officers. By his silence and/or claimed lack of knowledge, and his lie that there were no more Ace invoices, he provided false and misleading information to DLC and Tax Department Investigators while in the performance of their duties, thereby interfering with and failing to cooperate with the Investigators.

31. The Board asked Goggins to state what was done or not done by Butt and/or said or not said by Butt in support of the statements he just made.

32. Goggins responded as follows:

(a) When Goggins first entered Agency 2055 and had not yet identified himself and while he was acting as a customer, he nevertheless had Butt in view all the time and watched everything he did. Butt picked a Kellogg's cereal box off the top of other boxes on the floor, opened it, looked inside, closed it and put it on the bottom of the other two boxes. He intended to hide that box and its contents from the Investigators.

(b) He then went to the desk and took a paper which was laying on top and placed it beneath some other papers in the drawer and then shut the drawer. That paper became State's 1, i.e., the invoice covering the tobacco products in the Kellogg's cereal box. He intended to hide that invoice as well.

(c) It was Butt's responsibility to check the content of a shipment from Ace against the invoice to insure that they coincided. So he had the Ace invoice in hand for the shipment from Ace in the cereal box on the floor. He had just examined them both and knew what they were. His claimed lack of knowledge and silence was a falsehood and a failure to cooperate.

(d) Wien and Butt certainly knew the difference between taxed and untaxed tobacco product. The cigarettes, for example, found on the premises all carried a tax stamp on them.

(e) The main focus of the inquiry/investigation at Agency 2055 on November 18, 2011 once they were acquainted with the situation there, was to find the invoices from Ace Distributing that accounted for the loose tobacco product on the shelves. Each time Butt was asked where the invoices for those products were, Butt responded that there aren't any or weren't any or words to that affect. Once again, based upon what was discovered and produced later by Butt, Butt's earlier response was a lie.

(f) Butt understood the questions asked of him by the Investigating Officers on November 18, 2011, and knew the answers to the questions asked of him. And so he could and should have given direct and correct answers to the questions. He did not do that however, but instead responded with silence and/or misleading and false statements. At no time did Butt ever say that he could not or did not understand what was being said to him. His actions indicated that he was aware of the specific nature of the Investigators questions. (Taken from the testimony of Goggins).

(g) When Butt came back from his cell phone conversation while in the parking lot, he once again faced often repeated questions by the Investigators who

were looking for the invoices for the loose tobacco products on the shelves. Butt then made an abrupt and surprising statement, i.e., "Would you like to search my office?" or words to that affect. Goggins expressed an enthusiastic "yes, that would be a good idea". When they followed Butt to the back office, and after Butt opened the second or lower drawer in that filing cabinet at Goggins' request, there was an obvious file very near the front that was clearly marked with the word "Ace". The content of that file became State's 2.

Looking back on that transaction, it is apparent that Butt knew that the Ace file with Ace invoices was in that filing cabinet. Butt's failure to respond clearly in simple English words to the effect, yes I know where they are, or yes I think I know where they are, constituted deception, was a lie, and a failure to cooperate at the very least. Furthermore, his prior statements to the effect that there weren't any more Ace files was then a lie and provided false information. (The Board finds the statement of fact in foregoing Paragraph No. 32 credible).

33. As a result of the foregoing, Agency 2055 by and through the actions of Butt, its manager and authorized employee, provided false information verbally to, and failed to cooperate with, liquor and tax investigators in the performance of their duties in violation of General Regulation No. 7(a). (Taken from the testimony of Goggins).

34. Wien made all the Agency 2055 tobacco purchases. The entire Agency 2055 business at least as far as its tobacco business was concerned was managed by Butt. Butt had good and sufficient knowledge that Ace tobacco products were taxed and that the failure to pay a tax imposed by law is conduct which is unlawful. Unlawful conduct

engaged in on licensed premises is in violation of General Regulation No. 36. (Taken from the testimony of Goggins).

35. Humbert addressed the Board with State's 3 so marked for identification in hand, which he identified as a Vermont Department of Liquor Control Agency Contract between the LCB and Irfan Corp. ("Agent"). The contract is 11 pages in length and was signed by its principals on February 19, 2009 and February 26, 2009. The contract grants to Irfan Corp. an agency liquor license to sell spirituous liquors on behalf of the State of Vermont. Humbert requested that the Board take judicial notice of State's 3. Without objection, judicial notice was taken of State's 3.

36. Under Article 3 of State's 3, the contract may be terminated by either party on 60 days advance notice in writing. In addition, the Board may terminate the contract without giving advance notice in the event agent "... in any manner violates the laws and regulations pertaining to the sale of spirituous liquors, the policies and procedures of the Board or the Department of Liquor Control." State's 3 was also admitted into evidence without objection. (Taken from State's 3).

37. During the hearing, Agency 2055's attorney argued that the Investigators should have given the Miranda warning to Butt, and should have not searched the licensed premises without a search warrant. Since this matter will be addressed in the conclusions, suffice it to say here that the State responded saying that in neither case was it necessary to do so. No "search" requiring a search warrant was conducted.

38. As Goggins and the other Investigators were leaving Agency 2055, Butt said "What is this all about?" or words to that effect. A statement of that sort and/or to

that effect, is not uncommon in a DLC inspection or investigation of licensed premises.

It is a statement made to claim innocence. (Taken from the testimony of Goggins).

39. The Board asked Goggins whether in his opinion Butt was aware that illegal activity concerning the loose tobacco products from Ace had taken place.

40. Goggins responded in the affirmative. Butt looked into the Kellogg's box and examined its content while the Tax Investigator and DLC Investigator were in the back office looking through invoices which Butt provided them knowing that they were not invoices for tobacco products on the shelves which the Investigators asked for. Butt believed he was unobserved in the front office, and so he quickly looked into and then sealed up the Kellogg's box and then put it on the bottom of two other boxes. He then went right to the desk and took what was later identified as the Ace Distributing invoice for that box of tobacco products (State's 1) and put it in the drawer underneath some other papers.

This was a sign of guilty knowledge on the part of Butt which when coupled with his other refusals to answer questions, and his lies, taken in the aggregate, constitute an attempt to hide, mislead and deceive concerning something about which the Investigators specifically expressed an interest, i.e., the untaxed tobacco products and the associated invoices.

41. In addition, it was determined during the inquiry/investigation at Agency 2055 that Butt had check writing authority and paid the bills of Agency 2055 purportedly that Wien authorized Butt to pay. In other words, he wrote checks to Ace Distributing with their invoices being paid in hand. (Taken from the testimony of Goggins).

42. Manch issued a criminal citation to Butt for violation of 13 V.S.A. §1754 for allegedly knowingly attempting to conceal knowledge of illegal tobacco products to law enforcement officers. (Manch)

43. Manch is the liquor inspector for the geographic area in which Agency #2055 is located. Compliance checks are done at each licensed premises several times a year and that included Agency #2055. Sometimes during the compliance checks at Agency 2055 Butt was not present and sometimes he was. At no time when Butt was there did Manch have any difficulty communicating with Butt. Butt understood what was asked of him and responded accordingly. Manch had conversations with Butt and there was never any difficulty in his verbal exchanges with Butt indicating that Butt had difficulty understanding him. Manch likewise had no difficulty understanding Butt. Butt never stated, directly or indirectly, that he had difficulty with the English language.

44. At no time on November 18, 2011 did Goggins yell at Butt. (Taken from the testimony of Manch).

45. During the questioning of Butt on November 18, 2011 when he was silent and simply did not respond, Butt never said that he did not understand. (Taken from the testimony of Goggins and Manch).

46. Farogh Wien, the owner of Agency 2055, a native of Pakistan, is now a United States citizen. He became the owner of Agency 2055 in July of 2008, more or less, and at that time hired Nabeel Butt as its manager. Butt is also a native of Pakistan. The native tongue to Wien and Butt is Urdu. Butt is locally known as "Joe". (Taken from the testimony of Wien).

47. Wien owns two stores in Claremont, New Hampshire, and a third in Montpelier, Vermont, besides Agency 2055, which all sell tobacco products. (Taken from the testimony of Wien).

48. Wien did not purchase tobacco from Ace Distributing Co. for any of the other three stores that he owns. He did not recall ever purchasing tobacco products from an unlicensed wholesaler at any other time in the past. In his tobacco purchases for his other stores from tobacco wholesalers other than Ace Distributing, the payment of the tax was clearly shown on the paperwork accompanying the purchase. It was a clear part of the purchase transaction. Wien buys tobacco products from several wholesalers. (Taken from the testimony of Wien).

49. Some three or four months before November 18, 2011, Wien's Montpelier store manager purchased some tobacco products from an entity going out of business, which apparently was also not properly taxed. He then received a letter from the Vermont Tax Department assessing a tax that he had to pay for that particular untaxed tobacco product purchase. (Taken from the testimony of Wien).

50. Wien has a tobacco competitor in New Hampshire approximately a block away from Agency 2055. They advertise that they sell tobacco at New Hampshire prices, which are much lower than Vermont prices. He could not compete with this New Hampshire tobacco vendor. (Taken from the testimony of Wien).

51. In the early winter of 2010 Wien was approached by a representative from Ace who stated that he would sell tobacco products to Wien at a very competitive price. Wien started to do business with Ace. Because of the beneficial price that he received on tobacco products from Ace, he was able to compete successfully with his New

Hampshire competition. Wien claimed that he did nothing, and made no inquiry into why he was able to purchase, for Agency 2055, tobacco so inexpensively. (Taken from the testimony of Wien).

52. Wien makes the purchases for products which are sold at Agency 2055. It is not unusual for tobacco products to be shipped to Agency 2055 in large cereal boxes or in whatever boxes are available to the shipper. (Taken from the testimony of Wien).

53. During the inspection of Agency 2055 on November 18, 2011, Butt called him on his cell phone and explained that the Investigators were there. Wien claimed that Butt was scared. Both Wien and Butt, he asserted, have some difficulty with the English language, but Butt more so than he. Butt graduated from high school in Pakistan with the equivalent of a 10th grade education and then had some college courses in Pakistan but never graduated. (Taken from the testimony of Wien),

54. At the time that Wien started doing business with Ace, he claimed he did not know the legal aspects of tobacco taxation. (Taken from the testimony of Wien),

55. Butt has a key to Wien's office at Agency 2055 where the filing cabinet is kept. That door can either be locked or left open during the day at the discretion of Butt. Butt also had the use of the store checkbook to pay those bills and invoices that he is directed to pay by Wien. (Taken from the testimony of Wien),

56. Butt immigrated to the United States over 20 years ago and is the store manager at Agency 2055. Wien does all the ordering of products and makes all the business decisions. Wien comes to Agency 2055 every two days or so to discuss business with him and to review business paperwork. (Taken from the testimony of Butt),

57. When tobacco product comes to Agency 2055, it is Butt's responsibility to check the product against the associated invoices and he marks upon the invoices that the product received matches the invoices or not. The invoice is then set aside for Wien to review when he comes to the store. Afterwards the invoice is placed in Wien's office in the filing cabinet. (Taken from the testimony of Butt),

58. On November 18, 2011, Agency 2055 was visited by two men who spoke to Jeff, his cashier. Jeff then said to Butt, addressing him as Joe, that these men need to speak to him. At that time, Butt alleged that he was engaged in checking an invoice against the receipt of product and before he talked with the two men, he said, he put the invoice in the drawer. (Taken from the testimony of Butt).

59. After handing a stack of invoices to the two men in the back offices, Butt returned to the front of the store by the cash register and saw a man that looked like a customer. At one point, the man said to Butt after showing him his badge words to the effect "you need to help us, otherwise you're in big trouble". When the gentleman told him what they were looking for, he said several times "I'm sorry". (Taken from the testimony of Butt).

60. Butt alleged that the man with the badge, in a loud voice asked him questions such as "what is in here", "what is in there", "open this up" or words to that effect. Butt maintained that he was nervous and scared. (Taken from the testimony of Butt).

61. At that point, Butt went outside to the parking lot with his cell phone and placed a call to Wien explaining what he was experiencing at the store. When he

returned to the store, the gentleman with the badge asked him "who were you talking to?" and he answered "my girlfriend". (Taken from the testimony of Butt).

62. Wien required Butt to check tobacco received against the invoice and in order to do that, Butt reads the invoice and looks at the product to determine that they received what they were invoiced for. (Taken from the testimony of Butt).

63. Member Freed requested that the hearing be recessed for him to confer with Board counsel privately. Member Freed and Board counsel left the room for a few minutes.

Upon their return, Member Freed announced that he held a tobacco license in this State but that he did not hold any liquor licenses, and wished the parties to know that fact in the event that they considered him having a conflict of interest on that basis in the hearing of this case.

64. Both Agency 2055 by and through its attorney and the State by and through its attorney announced that there was no concern on the parties part about Member Freed continuing to hear this case notwithstanding that he holds a tobacco license in Vermont.

65. The Board asked Goggins in light of Agency 2055 statements to the effect that since Butt's native language was not English and that he asserted that he had difficulty understanding what was being asked of him, whether there was a violation of General Regulation No. 29 in this case.

66. General Regulation No. 29 requires that every licensee and employee involved in the sale or service of alcoholic beverages or tobacco product must be able to

read, write and speak the English language with sufficient facility to be able to understand and comply with Vermont's liquor and tobacco laws and regulations.

67. Goggins stated that General Regulation No. 29 was not a factor in this case because at no time in his interaction with Butt and while observing and overhearing the interaction of other Investigators with Butt was there any indication that Butt had difficulty understanding what was asked of him. Butt's silence to a simple question for example "What is in the box?" after he was seen looking in the box and working with the contents of the box against the invoice was nothing more than a refusal to answer the question and tell the truth. It had nothing to do with his inability to understand the simple question "What is in the box?". (Taken from the testimony of Goggins).

68. At this point, the hearing ended. The parties will submit Requests to Find.

CONCLUSIONS

1. The Licensee, Irfan Corp., d/b/a Brattleboro Discount Beverage & Bottle Redemption; Agency #2055, 157 Marlboro Road, Brattleboro, Vermont, is the holder of a second class liquor license, a tobacco license and an agency contract with the DLC.

2. The Notice of Hearing asserts that on November 18, 2011, the Licensee's manager, one Nabeel Butt, knowingly provided false information to DLC Investigators and to a Tax Examiner with the Vermont Department of Taxes in violation of General Regulation No. 7(a).

3. General Regulation No. 7(a), which is set forth in full in the Findings, is clear on its face and requires simply that DLC Investigators and other law enforcement officers who are engaged in the performance of their duties not be interfered with by the licensee or its employees, and that no false written or verbal information be provided to

such Investigators and law enforcement officers, and that such licensee and its employees must not fail to cooperate with the DLC Investigators or other law enforcement officers in the performance of their duties.

4. The Notice of Hearing in this case in addition alleges that the Licensee had been knowingly purchasing tobacco products from an entity not licensed in Vermont to sell tobacco products all in violation of General Regulation No. 36.

5. General Regulations No. 36, which is set forth in full in the Findings, as it applies to this case, mandates that the Licensee neither permit nor suffer on the licensed premises any illegal activity.

6. The licensed premises which we have identified as Agency 2055 is formally known as Brattleboro Discount Beverage & Bottle Redemption and is located at 157 Marlboro Road in Brattleboro, Vermont. Agency 2055 is also invoiced by Ace for tobacco products as "BDB&L".

7. Agency 2055, by virtue of its contract with the LCB and by virtue of its second class liquor license, may sell alcohol products for off premise consumption and as a result of its tobacco license may also sell tobacco products.

8. Agency 2055 is owned by Farogh Wien, a native of Pakistan, who is now a United States citizen. He has been the owner of Agency 2055 since July of 2008. At that time, he hired as his store manager, one Nabeel Butt, who is also a native of Pakistan. Butt has been in the United States for approximately 20 years. The native language for Butt and Wien is Urdu. Butt is known locally as "Joe". Wien owns two stores in Claremont, New Hampshire, and a third in Montpelier, Vermont, besides Agency 2055. Wien sells tobacco products at all of the four stores that he owns.

9. Agency 2055 is situated approximately a block away from his New Hampshire competitor, who sells tobacco at New Hampshire prices.

10. The taxation of tobacco products in New Hampshire is substantially lower than it is in Vermont. In Vermont, the tax upon tobacco products is 92% of its wholesale cost. As a result, Wien's tobacco sales suffered at his Agency 2055 store.

11. In December of 2010, Wien formed a relationship with a tobacco supplier from New Hampshire entitled Ace Distributing Company ("Ace"). Ace sold to Agency 2055 through Wien, and Wien for Agency 2055 purchased from Ace, loose tobacco products upon which the 92% Vermont tobacco tax was not imposed. Under the circumstances, Agency 2055 competed very well against New Hampshire tobacco retailers. Theoretically, Agency 2055 made a profit of 92% of the wholesale cost of the tobacco product. This inquiry however does not concern the profit, if any, made by Agency 2055 but rather that Agency 2055 purchased tobacco products from a business entity not licensed to sell tobacco product in Vermont knowing also that the tobacco which they were buying so cheaply was free of the requisite Vermont tax. Furthermore, Agency 2055 could have, but did not add the requisite Vermont tax to the tobacco when it was sold.

12. As the result of confidential information being received by either the DLC or the Vermont Tax Department, it became necessary to do an inquiry/investigation of Agency 2055 while it was open for business to determine if in fact untaxed tobacco products were being sold there or not. Since untaxed tobacco was in fact being sold, the inquiry became an investigation.

13. On November 18, 2011, Vermont Tax Examiner Edwards and DLC Investigator Manch entered 2055 and were soon referred by the cashier to Butt a/k/a Joe as the manager. Butt, while standing near his desk, was examining an invoice, which he then put down and confronted the two officers.

14. After identifying themselves, they said that they wanted to see the invoices for those loose tobacco products on the shelves which were pointed at by Edwards. "No problem" said Butt or words to that effect and led them to an office in the back where he retrieved a file of invoices presumably from a filing cabinet and placed them in the Investigator's hands and then left to return to the front. The Board concludes that Butt knew that the invoices that were handed to the officers were not what they asked for, and he knew where the invoices they asked for were.

15. At this time, Butt was under observation by Goggins, Chief Enforcement Officer of the DLC, who was in the store in plain clothes acting like a customer.

16. Butt picked up from the top of a stack of three boxes on the floor a large Kellogg's cereal box, opened it at the top, looked inside, sealed it up and placed it on the bottom of the pile of three boxes and then went to the desk to retrieve the paper that he had been looking at when the Investigators entered and put it in the drawer in the desk underneath some other papers.

17. The actions of Butt as described in the foregoing paragraph occurred after he was told by the Investigators that they were interested in invoices for the loose tobacco products on the shelves which were specifically pointed to. This was knowing and deceptive behavior by Butt.

18. Butt was asked in the presence of Goggins, Manch and Edwards what was in the cereal box. Butt responded that he did not know. That statement was a lie because he saw what was in the box when he opened it up and saw that it was loose tobacco product and that is why he sealed it up quickly and put it on the bottom of a pile of boxes. The Board concludes that he had guilty knowledge and to complete his deception, he put the invoice in the desk under some papers, all of which was unnecessary if deception had not been his goal. Since Butt felt comfortable starting his examination of the Kellogg's box at the desk near the cash register adjacent to the area occupied by customers, and there he also started to examine the invoice against the tobacco product in the Kellogg's box, why all of a sudden did the box and the invoice have to disappear from view?

As we look back upon this incident based upon all that took place thereafter, it is clear that Butt knew that the tobacco in the Kellogg's box was from Ace, that it was untaxed, and that the Ace invoice for the tobacco in the Kellogg's box was on his desk. He intended to hide the tobacco and the invoice from the officers. He knew that the tobacco pointed to by Edwards came from Ace, that it was untaxed, and that it meant trouble for he and Wien.

19. After the remark by Butt to the effect that "he didn't know", or words to that effect about what was in the Kellogg's box, he was questioned by Goggins as to how he could say that, when he was seen looking into the box and then sealed it and in effect attempted to hide it from view. To this Butt was silent. His silence is not in any way the result of his language shortcomings, if any, with the English language nor was Butt's silence the result of fear. The Board concludes that Butt had a useful and functionally satisfactory use of the English language both with respect to understanding it verbally as

well as speaking it, although with an accent, but always sufficiently clear to be understood. Butt was able to read invoices and the description of the product which was invoiced as he compared it with the product received. That was part of his job at Agency 2055, and he did it regularly for all invoiced shipments.

20. State's 2 contains an invoice dated October 1, 2011 addressed to BDB&L showing a balance of \$3,438.85. It also contains a note personal to Butt at the top, i.e., "Joe, please mail check to". This suggests to the Board that some communication concerning their tobacco business took place between Butt and Ace.

21. Then Goggins opened the desk drawer and quickly found the invoice which subsequently became State's 1 and asked Butt what that paper was. Butt was silent. Once more, the Board concludes that his silence constituted a failure to cooperate with DLC Investigators and the Tax Examiner while in the pursuit of their official duties. His silence was definitely not a failure to understand. He simply did not know what to say as he had decided on deception, and he had been caught. He knew the paper was the Ace invoice for the loose tobacco in the Kellogg's box.

22. During the time the Investigators were on Agency 2055 premises, Butt said nothing and did nothing to support his assertion at the hearing that some of the time he didn't understand what the Investigators were saying. He could have asked for the assistance of Jeff the cashier to explain or interpret for him anything he didn't understand. He did not ask for help in understanding because he didn't need to.

23. Butt, as general manager of Agency 2055, was the agent of his principal, Irfan Corporation, as was Wien his superior, and during the presence of the Investigators on the Agency premises, Butt was engaged in the performance of his duties. The

discussion about certain loose tobacco product and the invoices therefore and where they were, were all matters common to the routine work of Butt. Butt had the use of and access to all the rooms at Agency 2055 that he took the Investigators to, and all the cabinets, desks and the drawers, and their contents that he exposed to the Investigators.

24. After he returned from his cell phone conversation with Wien and reentered Agency 2055, he was once again confronted by the Investigators who persistently asked him for the invoices for the loose tobacco product on the shelves. Butt then abruptly changed his attitude. Apparently he now wanted to give the Investigators the invoices they wanted but since he originally told the Investigators that either there weren't any Ace invoices any more, or he didn't know where they were, he suggested that the Investigators "search" for them in his office. That effort quickly and without a "search" produced a file containing 23 invoices from Ace to BDB&L starting with the period December 8, 2010 through October 27, 2011. The total wholesale value of those invoices was \$25,005.00 or \$1,087.00 per order on average. The State's 2 invoices added to the single State's 1 invoice show a gross wholesale value of tobacco product purchased from Ace in the amount of \$26,046.20 or \$1,100.00 per order on average.

25. Wien portrayed himself as somewhat of a surprised and innocent merchant when he learned, through the investigation (he said), that he had been purchasing tobacco which was untaxed. Those statements are not credible.

26. Wien owned four businesses selling tobacco for a number of years. He stated that the only purchases he made from Ace was for his Agency 2055 store. This means that he for all his other stores was purchasing taxed tobacco product. The Board concludes that this intelligent and experienced businessman had actual and/or imputed

knowledge that he was buying untaxed tobacco product from a New Hampshire wholesaler and therefore could compete very favorably with his New Hampshire retail competitor only a block or two away.

That guilty knowledge by Wien, and shared by Butt, explains and supports Butt's attempts at hiding the Ace tobacco and invoices from the Investigators.

27. Wien's statement that he did not know that the reason for his singularly profitable purchase and sale of loose tobacco from Ace at Agency 2055 was that it was untaxed, is self serving and without credibility.

28. Some three to four months before the inspection of November 18, 2011 at Agency 2055, Wien discovered that he through his manager at his Montpelier, Vermont store had purchased tobacco product from a man going out of business which was also untaxed and therefore got a tax bill from the Vermont Tax Department. Yet, even with that knowledge, he made no effort to rectify the tax situation at Agency 2055 before the arrival of the Investigators.

29. General Regulation No. 36 is violated any time a licensee actively engages in, permits, or suffers illegal activity or conduct of any kind on the licensed premises.

30. Irfan Corporation (Agency 2055), through the knowing purchase of untaxed tobacco product from Ace in New Hampshire, by and through its principal agent Wien and its manager Butt, actively engaged in illegal activity on its licensed premises in violation of General Regulation No. 36 on at least twenty-four (24) separate occasions.. See State's 1 and 2. See also 32 V.S.A. §§ 7731, 7812 and 7821.

THE CLAIMED NEED FOR THE DLC TO HAVE FIRST OBTAINED A
"SEARCH WARRANT".

1. Irfan Corp., the Licensee, is the holder of an Agency contract with the LCB, by which it sells alcoholic liquor on behalf of the State of Vermont for off premise consumption. It is legally and factually a liquor licensee. It also holds a tobacco license by which it sells tobacco at retail.

2. When Irfan Corp. (Agency 2055) became the holder of its Vermont liquor and tobacco licenses, it also became subject to all applicable provisions of 7 V.S.A. and to the LCB's Regulations.

3. At the time of licensing, Agency 2055, through its representatives, received a copy of the Liquor Control Board's Laws and Regulations containing relative sections of V.S.A. Titles 3, 7, 13, 32 and 33, in part, included. General Regulation No. 7 of the LCB's Rules mandates that licensees of licensed establishments, "... shall allow at any time ... the LCB, the Commissioner of Taxes, or any of their assistants and investigators, to examine the premises as well ... as all records, papers, stock ... in reference to the licensee's business. Furthermore, the licensees shall keep on the licensed premises ... a complete record covering the operation of their license including invoices covering the purchase of alcohol and tobacco." (Underling for emphasis).

4. The arrival of the DLC and Tax Department Investigators occurred before noon on a work day while Agency 2055 was open and doing business. Agency 2055 had "Jeff", its cashier, as well as Butt, its general manager, present.

5. The loose tobacco product, which was on the shelves of Agency 2055, was pointed out to Butt by Edwards of the Tax Department as something for which he required invoices. General Regulation No. 8 mandates that the invoices be on the premises and that they be turned over to the Investigators when requested.

6 The liquor industry and now the tobacco industry have become closely controlled industries which the Board through Title 7 has the responsibility to regulate.

7. Warrantless inspections of liquor and tobacco licensed premises by DLC and tax personnel are part of the regulatory process under which Irfan Corp. holds its liquor and tobacco licenses. Such inspections are actually and/or imputably forewarned and foreseen.

8. As a matter of practical fact, the invoice which became State's 1 was seen in the hands of Butt before he put it into the desk drawer and was removed from the desk drawer by Goggins in the clear presence of Butt. All of State's 2 invoices were handed to the Investigators by Butt, who opened the drawer in the office for them to be "found". The so-called "search" for invoices was not a search, was not unreasonable and did not require a search warrant.

THE CLAIMED NEED FOR THE DLC TO HAVE FIRST GIVEN BUTT A
"MIRANDA" WARNING.

1. As we have said, the inspection/investigation of Agency 2055 took place while it was open for business. Its manager, Butt, was on the licensed premises as was its cashier Jeff. Butt was free to go where he wished throughout the time the Investigators were present, and he did. Butt was not touched or restrained. The questioning of Butt was not coercive, but assertive. Although there were three Investigators present, only two were DLC Investigators and the questioning of Butt was largely done by Goggins. The inspection/investigation of Agency 2055 was authorized under 7 V.S.A. and the Board's Regulations. It was an administrative inspection/investigation of a Vermont tobacco licensee, a liquor licensee and an agent under contract with the LCB.

2. *Miranda v. Arizona*, 384 U.S. 436 at 444 (1966) requires that criminal suspects must be advised of their right in part to remain silent and to have an attorney present for questioning before being subjected to a custodial interrogation. (Underlining for emphasis).

A custodial interrogation is an interrogation initiated by law enforcement officers after a criminal suspect is taken into custody or deprived of freedom of action in any significant way.

3. None of what happened on November 18, 2011 during the questioning of Butt required that the questioning of Butt be preceded by a Miranda warning, so-called.

4. Therefore, the entry into Agency 2055 on November 18, 2011 and the inspection/investigation that followed was not a "criminal investigation" and did not result in an "investigative detention" and was not a "custodial interrogation", as Butt was not in custody.

THE VIOLATIONS

1. As a consequence of the foregoing Findings and Conclusions, the Licensee, Irfan Corp., d/b/a Brattleboro Discount Beverage & Bottle Redemption, herein identified as Agency 2055, at its location at 157 Marlboro Road, Brattleboro, Vermont, by and through Nabeel Butt, its manager, and authorized agent, by his intentional acts and statements, deceived and attempted to further deceive; and by his intentionally false information and statements, and by his failure to cooperate with the DLC Investigators and the State of Vermont Tax Examiner, while in the performance of their duties, violated General Regulation No. 7(a) as alleged in the Notice of Hearing.

2. As a consequence of the foregoing Findings and Conclusions, in addition, the Licensee, Irfan Corp., d/b/a Brattleboro Discount Beverage & Bottle Redemption, herein identified as Agency 2055, at its location at 157 Marlboro Road, Brattleboro, Vermont, by and through Farogh Wien, its incorporated owner and principal agent, facilitated by and through Nabeel Butt, its manager and agent, with knowledge, purchased at wholesale, certain untaxed loose tobacco products from Ace Distributing Company, P.O. Box 522, Rindge, New Hampshire, and sold said tobacco product at retail without adding at the time of sale the requisite Vermont tax on tobacco.

The aforesaid purchase and sale of tobacco product between Agency 2055 and Ace Distributing took place between December, 2010 and November, 2011, inclusive, with a gross total inventory price to Agency 2055 of \$26,406.00, more or less, and the aforesaid purchase and sale of untaxed tobacco product took place no less than twenty-four (24) separate times, represented by twenty-four invoices, and each purchase and sale was illegal under Vermont law. Consequently there were twenty-four violations of General Regulation No. 36 as alleged and charged in the Notice of Hearing.

3. Insofar as the Board's Findings of Fact and Conclusions of Law herein are inconsistent with or differ from each of the parties' specific proposed Findings and Conclusions, those proposals were rejected. Where the Board's Findings of Fact and Conclusions of Law are the same or consistent with the parties' specific proposals, those proposals were accepted.

4. The LCB consisted of three (3) members on February 22, 2012, the date on which the Irfan Corp. hearing took place.

At the time the LCB made its final deliberations, which are incorporated in this Decision, the LCB was composed of two (2) of its original three (3) members due to the resignation of the third (3rd) member in June, 2012.

DECISION

It is the determination of the Liquor Control Board, that Irfan Corp., d/b/a Brattleboro Discount Beverage & Bottle Redemption, also herein identified as Agency 2055, Licensee, violated General Regulation No. 36 twenty-four times during a period of time from December, 2010 through and including November, 2011, the specifics of which are set forth and identified in the Findings and Conclusions, for which the Liquor Control Board imposes an administrative penalty of \$2,500.00 to be paid to the Department of Liquor Control on or before the tenth (10th) day after the date of service of this Decision upon Licensee.

It is the further determination of the Liquor Control Board, that Irfan Corp., d/b/a Brattleboro Discount Beverage & Bottle Redemption, also herein identified as Agency 2055, Licensee, violated General Regulation No. 7(a), the specifics of which are set forth and identified in the Findings and Conclusions, for which the Liquor Control Board imposes an administrative penalty of \$500.00 to be paid to the Department of Liquor Control on or before the tenth (10th) day after the date of service of this Decision upon Licensee.

Dated at So. Burlington, Vermont, this 12th day of November, 2012.

VERMONT LIQUOR CONTROL BOARD

By:


Stephanie O'Brien, Chair