

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:

Mountain Trading Company, Inc.
d/b/a Bentley's Restaurant
3 Elm Street
Woodstock, Vermont

DECISION

The Liquor Control Board (LCB) held proceedings on December 7, 2012, at Montpelier, Vermont, to consider the suspension or revocation of the first and third class liquor licenses granted to Mountain Trading Company, Inc., d/b/a Bentley's Restaurant, 3 Elm Street, Woodstock, Vermont. The Licensee was present by and through Robert Crowe, one of three owners of the Licensee corporation. The Licensee was not represented by counsel. The Department of Liquor Control (DLC) was represented by Assistant Attorney General Jacob A. Humbert.

A Notice of Hearing dated November 6, 2012 was sent to the Licensee, with a letter from Tracy Phillips, Director of the Unemployment Insurance Division of the Vermont Department of Labor dated October 11, 2012 addressed to the Commissioner, Department of Liquor Control, attached. It stated that the Licensee was delinquent in the payment of contributions owed to the Department of Labor in excess of \$50,509.43 and that the liability for the contributions was not under appeal nor was the Licensee in compliance with any payment plan approved by the Commissioner of Labor.

The Notice of Hearing alleged that as of October 11, 2012, the Licensee failed to make payments and contributions to the Vermont Department of Labor in violation of General Regulation No. 33. General Regulation No. 33 was duly adopted by the Liquor Control Board.

FINDINGS OF FACT

1. The Licensee, Mountain Trading Company, Inc., d/b/a Bentley's Restaurant, 3 Elm Street, Woodstock, 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. 33 states:

Licensees must comply with the Vermont Department of Labor, and the Vermont Department of Public Safety rules and regulations.
3. Steve Freihofer, Associate Counsel for the Vermont Department of Labor, identified State's 1 for identification as an "Affidavit of Amount Due" stating that there was due and owing to the Department of Labor of the State of Vermont from the Licensee the sum of \$50,509.43 for required contributions in the categories clearly identified on State's 1. The obligation to make those payments is imposed by 21 V.S.A. § 1378. State's 1 was admitted without objection.
4. Freihofer acknowledged that the amount of \$50,509.43 was outstanding as of yesterday, and as of the date of this hearing, but that he was in receipt of some amended reports filed by the Licensee within the last two days which have not yet been processed, studied and accepted by the Department of Labor.
5. Freihofer requested that the LCB for purposes of this hearing on this day consider the outstanding balance of the Licensee to the Department of Labor to be \$50,509.43, understanding however that the Department and the Licensee will likely confer concerning the tardy reports just filed and on that basis if justified the Department of Labor will make an amendment to the outstanding balance as here stated.
6. Having informally reviewed the recently filed reports submitted by the Licensee to the Department, even if the tardy reports are correct, the outstanding balance owed to the Department of Labor by the Licensee still is in excess of \$44,000.00.
7. Freihofer, on behalf of the Department of Labor of the State of Vermont, requested that the LCB revoke or suspend the liquor licenses of the Licensee as it deems appropriate, unless by a date certain determined by the LCB, the outstanding obligation of the

Licensee is paid in full, and the Department of Liquor Control receives a letter from the Department of Labor stating that the Licensee is as of that date then in good standing. (Taken from the testimony of Steve Freihofer).

8. At that point, the State rested.

9. Robert Crowe, one of three owners of the Licensee, complained that the economic situation in Vermont as it affects the restaurant business in the geographic area in which the Licensee is situated is bad because of the economy in general and because of Hurricane Irene and its added negative effect upon the local economy as well as its destruction of roads and bridges, some of which are still undergoing repair. Gross receipts of Fire Stones Restaurant is down a substantial amount for the year.

10. On behalf of the Licensee, Fire Stones Restaurant was prepared to tender at this hearing the sum of \$44,000.00, more or less, to the Department of Labor, but the Licensee was told by the Department of Labor not to do so because the exact amount of the liability needs to be more formally determined. (Taken from the testimony of Robert Crowe).

11. At this point by discussion on the record between the Board and the parties, it was stated as fact and the Board so accepts as fact, that by the end of December 14, 2012, the Licensee and the Department will have recalculated the liability of the Licensee based upon the tardy filing of quarterly reports, and the stated liability will have been paid in full, so that by the close of business on December 17, 2012, the DLC will be in possession from the Department of Labor a letter declaring that the Licensee is in good standing with the Department. However, if the Licensee's payment requirement by the end of December 14, 2012 does not take place and so the DLC has not received by the end of business on December 17, 2012 the good standing letter from the Department of Labor, then on December 18, 2012, the Licensee's liquor licenses shall be suspended and will remain suspended unless and until the Licensee is once again in good standing with the Department of Labor and the Department of Liquor Control has received a letter to that effect from the Department of Labor.

12. The foregoing performance dates were agreed upon by the parties and the LCB so finds.

13. At this point, the Licensee rested.

CONCLUSIONS

1. The Licensee, Mountain Trading Company, Inc., d/b/a Bentley's Restaurant, 3 Elm Street, Woodstock, 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. 33, which is set forth in full in the Findings of Fact, is simple to understand and requires no further explanation.

3. Without question, as of the date of this hearing, based upon the unopposed testimony of Freihofer and the admission of the Affidavit of Amount Due (State's 1) without objection, the LCB concludes that there is due to the Department of Labor from the Licensee the sum of \$50,509.43.

4. Therefor, if by the end of business on December 14, 2012, the Licensee will have paid to the Department of Labor its liability as then determined by the Department of Labor, and the DLC by the end of business on December 17, 2012 has received from the Department of Labor a letter stating that the Licensee is in good standing with the Department, then the suspension of liquor licenses, which this Decision will order, will not go into effect on December 18, 2012. If, however, the sum due to the Department of Labor has not been paid by the Licensee by the end of business on December 14, 2012, and the letter from the Department of Labor is not received by the DLC by the close of business on December 17, 2012, then the Licensee's liquor licenses shall be suspended as of the opening of business on December 18, 2012 and will stay suspended unless and until a letter is received by the DLC from the Department of Labor stating that the Licensee is in good standing with the Department.

5. This Board will not sit in judgment over and adjudicate the amount due, but will act upon the affidavit of amount due as submitted by the Department of Labor which for this hearing is \$50,509.43.

6. The Board finds that the Licensee has in fact failed to make necessary and lawful payments and contributions to the Vermont Department of Labor in violation of the Board's General Regulation No. 33 and that the Licensee's liquor licenses will be suspended as set forth further herein.

DECISION

It is the unanimous Decision of the Liquor Control Board that Bentley's of Quechee, Inc., d/b/a Fire Stones Restaurant, Route 4, Quechee, Vermont, is delinquent in its statutory monetary obligations to the Vermont Department of Labor as stated on State's 2 or as modified by the Department of Labor on or before the close of business on December 14, 2012, and if said sum is not paid in full at the close of business on December 14, 2012, and a letter stating that the Licensee is in good standing with the Department of Labor has not been received by the Department of Liquor Control by the close of business on December 17, 2012, then the liquor licenses of the Licensee shall be suspended as of the opening of business on December 18, 2012 and shall remain suspended unless and until a letter is received by the Department of Liquor Control from the Department of Labor stating that the Licensee's monetary obligations to the Department of Labor have been paid and that the Licensee is of that date in good standing.

Dated at So. Burlington, Vermont, this 13th day of December, 2012.

VERMONT LIQUOR CONTROL BOARD

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