

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

**VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE**

SUPREME COURT DOCKET NO. 2006-265

FEB 28 2007

FEBRUARY TERM, 2007

In re Appeal of Jolley Associates d/b/a	}	APPEALED FROM:
Short Stop # 124	}	
	}	
v.	}	Liquor Control Board
	}	
State of Vermont	}	
	}	

In the above-entitled cause, the Clerk will enter:

Licensee appeals a decision of the Vermont Liquor Control Board denying licensee's request for a continuance to present additional evidence concerning the alleged violations of the Board's General Regulations Nos. 12 and 13. We affirm.

The relevant facts are not disputed. Licensee holds a "second class" liquor license permitting sale of beer and wine to the public for off-site consumption. On February 17, 2006, seventeen-year-old H.M. purchased four cases of beer from licensee's store. A police officer who was in the store parking lot observed H.M.'s companion—also seventeen years of age—loading the cases into a car. The police officer stopped the car after it had left the store parking lot and confirmed that the purchasers were underage. The officer later returned to the store and interviewed the clerk about the transaction. The officer also took the store's security camera videotape to review as evidence.

Licensee received notice on March 30, 2006, alleging violation of two regulations of the Department of Liquor Control:

[General Regulation No. 12:] No alcoholic liquor shall be sold or furnished by a licensee to a person under twenty-one years of age, nor shall a licensee permit alcoholic liquor to be consumed upon his licensed premises by a person under twenty-one years of age.

[General Regulation No. 13:] For persons of questionable age, licensees shall demand such person to exhibit an adult identification card issued by the Liquor Control Board bearing such person's photograph and signature, or a photographic operator's license issued

by the Vermont Department of Motor Vehicles bearing such person's photograph and signature.

It is uncontested that the store sold beer to an individual who was, in fact, under twenty-one years of age (i.e., violation of General Regulation No. 12). The issue in this appeal relates to whether it was reasonable for the clerk to believe that the person was over twenty-one years of age.

The Board held a hearing on the alleged violations on May 3, 2006. H.M. and the police officer testified; the store clerk did not. The evidence established that H.M. wore a full beard and a hat on the night he purchased beer. H.M. no longer wore a full beard at the time he testified before the Board. The store clerk told the police officer that it was because of H.M.'s beard that he believed H.M. was over twenty-one. The evidence also established, however, that the store clerk asked for H.M.'s identification at the time of purchase, to which H.M. responded that he had left his identification at home. The clerk then asked H.M. for his birth date, which H.M. stated falsely to be January 31, 1983.

At the hearing, licensee's representative indicated that he wanted to present the security camera videotape as evidence of H.M.'s appearance on the night of the purchase. Licensee did not have the videotape on the date of the hearing, however, because until that day, licensee had believed the videotape to be in the possession of the police. More accurately, when licensee asked the police for the videotape, he was told that the videotape could not be located. Ultimately, licensee learned that the videotape had in fact been returned to the store, but licensee's representative asserted that he did not discover this in time to locate the tape for the hearing. Licensee's representative told the Board that the tape was relevant and that he felt it was unfair that he be required to go forward without it. The Board faulted licensee for failing to have the evidence available, and went on to conclude that licensee had violated General Regulations Nos. 12 and 13 based on the evidence presented at the hearing. The Board imposed a fifteen-day license suspension for the violations.

On appeal, licensee argues that the board committed prejudicial error by denying the request for a continuance.¹ We will uphold a decision of the Board so long as there is a reasonable basis for the action. See *In re Odessa Corp.*, 2006 VT 35, ¶ 7. Further, granting or denying a continuance is a discretionary decision. See *Kohut v. Kohut*, 164 Vt. 40, 45 (1995).


Here, the Board gave two reasons for denying the continuance. First, the Board faulted licensee for failing to have the evidence available on the date of the hearing—either in the form of the security camera videotape or testimony from the store clerk. Second, the Board explained that the videotape evidence was not relevant because the very fact that the store clerk asked H.M. for identification demonstrated that H.M. was a “person[] of questionable age” such that valid identification was required before the sale. But the store clerk allowed H.M. to purchase the beer without the required identification.

¹ In fact, licensee's agent never formally requested a continuance, but only stated that being asked to go forward without the videotape was unfair.

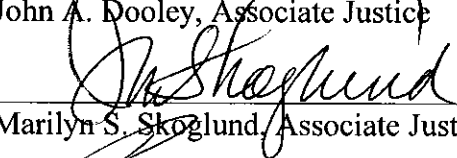
Both of these reasons support the Board's decision not to grant a continuance to obtain the videotape evidence.

Affirmed.

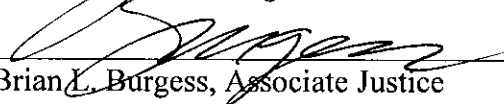
BY THE COURT:



John A. Dooley, Associate Justice



Marilyn S. Skoglund, Associate Justice



Brian L. Burgess, Associate Justice