



DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENCING BRANCH
IN THE MATTER OF
A hearing pursuant to Section 20 of
The Liquor Control and Licensing Act RSBC c. 267

Licensee: Sentinel Peak Holdings Ltd.
dba No. 5 Orange Street Hotel
203 – 205 Main Street
Vancouver, B.C.

Case: EH02-109

Appearances:

For the Licensee David Houston, Legal Counsel

For the Branch Peter K. Jones

Enforcement Hearing Adjudicator Edward W. Owsianski

Date of Hearing April 22, 23 & 24, 2003

Place of Hearing Vancouver, B.C.

Date of Decision June 16, 2003

INTRODUCTION

The licensee, Sentinel Peak Holdings Ltd. operates the No. 5 Orange Street Hotel under Class "A" Pub Liquor Licence No. 21660, located at 203 – 205 Main Street in the City of Vancouver. The licence permits the sale and consumption of all types of liquor and for off-premises sales. The licensed hours for the sale of liquor are 11:00 A.M. – 1:00 A.M. on Monday through Saturday and 11:00 A.M. – 12:00 Midnight on Sunday. The licence permits 180 patrons in the licensed area. The establishment is well known for offering exotic dancer entertainment to its patrons.

ALLEGED CONTRAVENTION AND RECOMMENDED ENFORCEMENT ACTION

The Liquor Control and Licensing Branch has alleged:

- (1) on or about **May 24, 2002**, licensee or employee consume liquor in premises, contrary to Sec. 10 of the Regulations to the Liquor Control and Licensing Act, for which a monetary penalty of **one thousand dollars (\$1000.00)** is recommended, (this allegation was not contested by the licensee and a Waiver was signed accepting the proposed penalty),
 - (2) on or about **May 25, 2002**, licensee or employee consume liquor in premises, contrary to Sec. 10 of the Regulations to the Liquor Control and Licensing Act, for which a suspension penalty of one **(1) day**, to be served on a Saturday, is recommended,
 - (3) on or about **May 25, 2002**, dancer prohibited acts, contrary to Sec. 50 of the Liquor Control and Licensing Act, for which a suspension penalty of **four (4) days**, to be served starting on a Saturday and continuing on successive business days until completed, is recommended,
 - (4) on or about **May 31, 2002**, dancer prohibited acts, contrary to Sec. 50 of the Liquor Control and Licensing Act, for which a suspension penalty of **four (4) days**, to be
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served starting on a Friday and continuing on successive business days until completed, is recommended,

- (5) on or about **June 10, 2002**, licensee or employee consume liquor in premises, contrary to Sec. 10 of the Regulations to the liquor Control and Licensing Act, for which a suspension penalty of **one (1) day**, to be served on a Monday, is recommended.

Section 50 of the Act states as follows:

Entertainment

50 (1) If entertainment is permitted under the regulations or the terms and conditions of a licence, a municipality or regional district may restrict or prohibit any or all of the types of entertainment permitted.

(2) Without limiting section 12, the general manager may, at the time of the issue of a licence or at any time during the term of the licence, impose as a condition of it the restrictions and limitations that the general manager considers necessary on any type or form of entertainment performed or carried on in the establishment for which the licence is issued.

Section 10 of the Regulations states as follows:

Employees

10(2) No employee of a licensee shall consume liquor while working on the licensed premises.

ISSUES

1. Whether the delay between the alleged contraventions occurring May 25 & 31 and June 10, 2002, and the notifications to the licensee on July 9, October 16 and November 5, 2002, unduly prejudiced the licensee.
 2. Whether the licensee contravened Section 50 of the Act and/or Section 10 of the Regulations as alleged by the Branch.
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3. If so, are the recommended penalties appropriate in the circumstances?

EXHIBITS

The following exhibits were presented:

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| Exhibit A | Book of Documents |
| Tab 1 | Notice of Enforcement Action (NOEA) letter of November 5, 2002 with appendices, regarding the alleged contraventions of section 50 of the Act and section 10 of the Regulations. |
| Tab 2 | Licensed Premises Check Reports and Contravention Notices regarding the alleged contraventions. |
| Tab 3 | Documentation referred to in the NOEA under the heading "Additional Documentation" on page 9. |
| Tab 4 | Documents disclosed to legal counsel for the licensee by the Branch. |
| Tab 5 | Facsimile of March 7, 2003 to legal counsel for the licensee from the branch advocate. |
| Tab 6 | Liquor Licence 21660 issued to the licensee. |
| Tab 7 | Floor Plan of the establishment. |
| EXHIBIT B | Written Preliminary Statement, prepared by Peter K. Jones, Advocate. |
| EXHIBIT C | Floor plan of the establishment as marked by witness. |
| EXHIBIT D | Vancouver Police Department report. |
| EXHIBITS E, F & G | Floor plans of the establishment as marked by witnesses. |
| EXHIBIT H | Email, 12/6/02, Lee Murphy to David Houston. |
| EXHIBIT I | Excerpt from "A Guide for Liquor Licensees in British Columbia". |
| EXHIBIT J | Floor plan of the establishment as marked by witness. |
| EXHIBIT K | Vancouver Police Department report |
| EXHIBITS L & M | Floor plans of the establishment as marked by witnesses. |
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EVIDENCE - THE LIQUOR CONTROL AND LICENSING BRANCH**Alleged Contraventions (2) and (3)**

A Detective-Constable (D-Cst) of the Vancouver Police Department testified that on May 25, 2002, he and another police officer were engaged in an undercover investigation at the No. 5 Orange Street Hotel from approximately 9:40 P.M. to 11:45 P.M. They were dressed in plainclothes and seated at a table, approximately 25 feet from the stage area, as marked on exhibit G. They reported to a supervisor every half hour via a cellular (cell) phone.

The D-Cst stated that following the 10:00 P.M. report he observed a nude female exotic dancer, identified by the disc-jockey as 1st dancer taking bills from patrons sitting around the stage during her performance. The patrons would put the bills into their mouth and the dancer would take the bills from the customer by pressing her breasts into the customer's face and squeezing the bills between her breasts. Following the 10:30 P.M. report a second nude female exotic dancer, identified by the disc-jockey as 2nd dancer, was performing on stage. She was observed using her breasts to take money from a patron seated in the front row. The patron held the money in his mouth and leaned over the stage. The dancer took the money from the patron by squeezing her breasts together. This activity drew a reaction of "hoots and hollers" from the crowd.

Following the 11:00 P.M. report he observed the shooter server drink a shooter from her tray, as a customer drank his. She later gave a shooter from her tray to the 3rd dancer (name unknown) then performing on stage. He then observed the 1st dancer join the 2nd dancer on stage and commence a lesbian performance consisting of kissing, feeling each other's breasts and simulating (no actual contact) oral sex. He testified that this made the crowd "very vocal to say the least".

The D-Cst. was unable to provide a description of any of the dancers or the patrons or their identities, other than the stage names of two of the dancers as announced by the disc-jockey. He did not contact staff within the establishment concerning the alleged

contraventions or request that a uniformed police officer attend as it was felt that to do so would compromise the undercover operation. He did not do any investigation concerning the identity of the dancers or the contents of the shooters consumed by the server or the 3rd dancer. The D-Cst. made notes of his observations following departure from the establishment.

Counsel for the licensee objected to the hearing receiving the D-Cst's. evidence regarding the 3rd dancer's consuming liquor or the lesbian performance involving simulated sex on the grounds that the licensee had not received notice or disclosure in the NOEA. I made a decision at that time that I was satisfied that Appendix 'A' to the NOEA (Exhibit 'A', Tab 1) was sufficient to provide notice that the activities of the two dancers on the stage formed part of the alleged contravention of section 50 of the Act. I was not satisfied, however, that sufficient notice was provided of the D-Cst's. evidence regarding the 3rd dancer's consuming liquor, accordingly that evidence is not being considered.

Alleged Contravention (4)

Two Constables from the Vancouver Police Department (VPD) testified that on May 31st, 2002, they were engaged in an undercover investigation at the No. 5 Orange Street Hotel with a third VPD Cst. They were all dressed in plainclothes and did not identify themselves as police officers. They entered at approximately 12:14 A.M., took a seat approximately 20 – 30 feet from the stage, as identified in exhibits C and E, while making their observations, and left the establishment at approximately 1:08 A.M. Inside they noted a group of six young looking male patrons. One of the police officers used a cellular phone to request attendance by a uniformed police officer to check the age of the males and they were subsequently found to be of age.

Two female exotic dancers were observed performing on stage, both allowed their breasts to be touched by male patrons. The first dancer was performing as they entered the establishment. She took money from patrons by squeezing the bills

between her breasts. The second dancer allowed patrons to put currency in a nipple ring she wore. One male patron sucked the breast of a dancer and put a bill into her nipple ring. This activity took about 30 seconds to complete. The dancers appeared to encourage this activity by patrons and at least three patrons were so engaged with the dancers. At no time did any staff member of the establishment take any action to stop or prevent the activity.

The police officers were unable to provide a description of the dancers, other than being "young, attractive, Caucasian", nor any stage names or identity of the dancers or patrons. The police officers did not advise the staff of their observations or request a uniform police officer to attend to deal with the dancer performance contraventions as this was part of an ongoing undercover investigation into licensed establishments located in the downtown eastside area of Vancouver and they did not wish to alert other establishments of the investigation. The police officers made notes of their observations the following day.

Alleged Contravention (5)

Four Constables of the Vancouver Police Department testified that on June 10th, 2002, they were engaged in an undercover investigation at the No. 5 Orange Street Hotel, the purpose of which was to observe for Liquor Control and Licensing Act or Criminal Code violations. They were all dressed in plainclothes and did not identify themselves as police officers. They entered the establishment in pairs at approximately 9:30 P.M., sat together at one table as noted in exhibits F, J, L and M, leaving at approximately 11:35 P.M.

The Csts. observed two female servers drinking what appeared to be alcoholic beverages whilst engaged in their serving duties. The first server, described as early 30's, shoulder length brown hair and wearing a red top and black pants, was observed to be drinking from a green bottle with a white label and placed in a container of ice located near the front door (marked as #1 on exhibits F, J, L and M) approximately 15 to

20 feet from their table. None of the police officers were in position to read the label on the bottle, however believed it to be a Heineken beer bottle by its shape, colour and the colour and shape of its label. None of the police officers approached the container of ice to verify the identity of the bottle.

A second female server, described as mid 20's, shoulder length brown hair and wearing a white top and black pants, was observed to be drinking from a brown bottle and a clear glass containing an amber coloured liquid in a location approximately 25 to 30 feet from their table and marked as #2 on exhibits F, J, L and M. The police officers described the bottle as being brown in colour and similar to common domestic beer bottles. None of the police officers approached the area where the server was consuming to ascertain the identity of the bottle or of the liquid being consumed from the glass.

The police officers did not bring their observations to the attention of staff on duty or request the attendance of a uniform police officer as they did not wish to compromise the undercover investigation. A composite report of their observations was written following their departure from the establishment.

EVIDENCE - THE LICENSEE

One of the principals of the licensee (the licensee) testified that he has owned the establishment for the past 14 years. The interior and exterior is maintained on a regular basis and their large parking lot is kept clean and secure. They offer exotic dancer entertainment daily from 12:00 Noon to 12:57 A.M., with 28 – 30 performances a day at a cost of \$7500 to \$9000 per week. They have a respectable and well behaved clientele, the demographics of which vary dependant upon the time of day. On Friday and Saturday nights there are up to 10 employees on duty, consisting of a manager, head bartender, assistant bartender, a bar porter, 3 servers, 2 doormen and a disc-jockey. Most of the staff are long term employees with up to 14 years employment at the establishment.

The doormen are responsible for the safety of the patrons and the dancers. One is stationed at the entrance checking ID and one moves inside and outside the establishment checking for problems. The doormen are instructed that patrons are strictly prohibited from touching the dancers. Problem patrons are either warned or requested to leave the premises. Dancers getting out of line are reported to the manager. The manager or the head bartender is in charge and supervises the employees on duty.

The disc-jockey provides the music for the dancers, ensures that they are on time for their performances and conduct themselves properly. He is located so as to have a clear line of sight to the stage.

The establishment has a contract with an entertainment agency to provide 6 – 8 dancers per week to perform a total of up to 30 shows per day, less on Sundays. Most are repeat entertainers at the establishment, some are married, some are students. Each dancer signs a form acknowledging the rules which is kept on file for approximately 1 month. Those who do not conduct themselves properly or perform well are not invited back.

The licensee testified that he first became aware of the allegations on July 9, 2002, when a copy of the five Licensed Premises Check forms were served to the bar manager. He immediately contacted all of the employees involved in the incidents. One employee advised him that he may have had a beer on duty as alleged in the incident of May 24, 2003, (alleged contravention 1). He was warned that next time he would be fired. The licensee advised that he was shocked by the allegations that the shooter server was consuming liquor on duty (alleged contravention 2) as she does not drink alcoholic beverages. She will sometimes put non-alcoholic juices into glasses on her shooter tray and drink those if a customer buys her a drink. She was subsequently fired for selling pre-mixed shooters which is not allowed by the Branch and as such was not willing to appear as a witness.

The licensee testified that he tried to contact several liquor inspectors and the regional manager of the Branch without success. Messages were left but his calls were not returned. On October 16, 2002, five Contravention Notices were served to the bartender on duty at the establishment outlining the current allegations. He subsequently attended a Compliance Meeting at the Branch Office on October 23, 2002. The meeting was chaired by the regional manager who said he could take a five day closure right now to settle the matter. He declined the offer but agreed to take action to prevent the alleged activities from occurring (see 'Compliance Meeting' form at Tab 3).

The meeting was followed by receipt of the NOEA of November 5, 2002. He contacted the entertainment agency and obtained the names of the dancers performing on May 25 and 31, 2002, (alleged contraventions 3 and 4) and provided them to the regional manager. He contacted several of the dancers who denied the allegations. He was unable to identify the 1st dancer. He contacted the 2nd dancer who is known to perform wearing a nipple ring. She denied the allegations and agreed to appear as a witness. He was unable to identify the two servers involved in alleged contravention 5 as the description provided does not fit any of the servers. He testified that he was at a loss as how to obtain witnesses to the alleged contraventions.

The Bar Manager testified that he has been employed at No. 5 Orange Street Hotel for 13 and a half years. His duties include ordering the liquor, hiring/firing staff and control of the dancers performing at the establishment. He meets with the entertainment agency on Tuesdays and determines which dancers will be performing the following week and meets with the dancers for the week on Mondays. When on duty he monitors their performances as do the doormen and the bartender. He was not working on May 31, 2002, nor the evening of June 10th, 2002.

He was working the night of May 25, 2002, a Saturday, when it was reported that the 2nd dancer was accepting money with her breasts. He does not recall seeing this take place, if he had done so would have warned both the patrons and the dancer, if a patron

persisted he would be asked to leave. He conceded that on busy nights his first priority would be on liquor service and activities by dancers and patrons could take place within a few seconds and may not always be noticed by him. However, the doormen and the disc-jockey are monitoring the dancers as well. He advised that the 2nd dancer does not have large breasts and may not be able to physically perform this activity. All dancers are made aware of the rules that there is to be no contact with the patrons, no "titty-tips" and no taking tips from a patron's mouth. Tips from patrons are to be left on the floor of the stage by the patron and picked-up by the dancer at the end of her performance.

The bar manager testified that he was familiar with the shooter server as described by the police witnesses. She had a practice of putting a few non-alcoholic drinks on her tray, similar in appearance to the alcoholic shooter which she sold to customers. If a customer wished to buy her a drink she would consume the non-alcoholic beverage.

He was not present the evening of June 10, 2002, and was unable to identify the servers described by the police as consuming liquor. He advised that the establishment does keep a bucket of beer on ice near the entrance for sale to patrons as they enter. It is a common practice for employees to keep non-alcoholic beverages in the bucket which they consume during the course of their duties. Some non-alcoholic beverages do come in green bottles with a white label. Servers will also consume coffee or other non-alcoholic drinks from glasses or beer mugs while they are working.

A doorman/part-time bartender testified that he has been employed at the establishment since 1990. His duties include serving liquor and monitoring the activities of patron, dancers and staff. He ensures that the dancers are not touched by the patrons. He advised that he was probably working the night of May 25, 2002. He is familiar with the 2nd dancer. She does not have large breasts sufficient to take bills from patrons. Also she is very strict about not letting patrons touch her and would have screamed had it occurred. Neither did he see two dancers performing together on stage. That is not permitted and if it had taken place the dancers would be dismissed.

He testified that it is common for the shooter server to carry non-alcoholic drinks on her tray which she keeps separated from liquor sold to patrons. He has often prepared the non-alcoholic drinks for her.

He was working the night of May 31, 2002, as the doorman at the front door. That location allows for a clear view of the stage when it was alleged that a dancer permitted a patron to put a bill in her nipple ring with his teeth. He saw no such activity and if it had taken up to 30 seconds as alleged he would have seen it.

He believes that he was working June 10, 2002. It is common for staff to put non-alcoholic drinks in the beer barrel kept at the front entrance. He did not see a server drinking from a Heineken bottle, had he done so he would have advised the manager and the server would be fired.

A doorman for the establishment testified that he has been employed there for the past six years. His duties include checking ID at the door, moving throughout the establishment to observe the behaviour of patrons and ensuring the security of the dancers by watching for and dealing with improper behaviour by patrons. Dancers are prohibited from having contact with patrons, can't leave the stage during their performance and can't physically accept tips from patrons. Tips are to be left on the floor of the stage by the patrons and picked-up by the dancer at the end of her performance. Some dancers will take the bills left by the patrons and attach them to their bodies either by wetting them and pressing them to their body or by making a small tear in the bill and attaching it to their nipple. He estimated that a dancer would receive approximately \$20 - \$25 in tips per night dependent upon the nature of the crowd and their performances. These tips may be shared with the disc-jockey as he announces their shows and puts on their music. The disc-jockey also observes the performances and deals with any problems noted.

He advised that he was working the night of May 25, 2002, when it was alleged that the 2nd dancer was taking tips from customers by squeezing bills between her breasts. He

did not see this occurring, had he done so he would have prevented it. The stage area is elevated from the area occupied by the patrons sitting in the surrounding seats making it difficult for a dancer's breasts to be at the same level as the patron's face.

He testified that he was also working the night of May 31, 2002. He did not see two dancers performing together on stage or hear the crowd wildly responding. This would not have escaped his attention and he would have dealt with it. He did not see a patron taking 30 seconds to put a bill into a dancer's nipple ring. It would have involved the patron standing up which would have been noted and dealt with.

Regarding the allegations of employees consuming liquor he testified that he is familiar with the shooter server's practice of having non-alcoholic shooters prepared for her consumption. These are prepared to appear similar to regular shooters containing liquor. She separates them on her tray. He advised that there is a tub of bottled beer at the front door which is offered for sale by a server to patrons as they enter the establishment. The doorman on duty stands approximately 6 – 7 feet from the tub. It was the practice of staff, since discontinued, to put their own non-alcoholic beverages into the tub. Should staff be noted consuming an alcoholic beverage from the tub this would be brought to the attention of the manager. He testified that he did not see servers consuming liquor from a glass or a brown bottle, had he done so he would have reported it to the manager.

An exotic dancer, the 2nd dancer testified that she has performed at the establishment for several years and was performing during the week of May 25, 2002. She advised that she could not recall accepting bill from patrons mouths and making physical contact with patrons during that time. She stated that if a patron were to touch her she would probably react by kicking him and advising the bouncers. She could not recall being touched by a patron at the establishment at any time during her performances at the establishment during the five years that she has appeared there. Patrons do on occasion leave tips for the dancer on the floor of the stage. She will often pick-up the bills and attach them to her body. She is not sufficiently endowed to grasp bills between

her breasts. She advised that the stage is raised putting the dancers above the head levels of seated patrons. A standing patron would have his head level at about the dancer's waist. Dancers during their performances are in various positions from standing, kneeling to being on their stomach. She is familiar with the rules for exotic dancer performances which prohibits contact between the dancer and patrons and does not allow audience participation. Duo acts once permitted are now not allowed as simulated sex act are prohibited. She has not seen such performances during the past year.

SUBMISSIONS

Liquor Control and Licensing Branch

The branch advocate made both a written (Exhibit B) and an oral submission. With regard to the allegations involving the dancer prohibited acts he submitted that such performances can adversely affect the behaviour of patrons in the establishment and the ability of the licensee to control that behaviour. The performances of the dancers were observed by two different groups of police officers on two separate occasions. They were seated in the establishment so as to have a clear line of site of the performances. Reports were made out shortly following their observations. There is no motive or agenda on the part of the officers other than to accurately report what they observed. That the officers could not provide the identities or descriptions of the dancers does not prevent the licensee from making a defence to the allegations. The officers provided the dates and times of the performances thus allowing the licensee to check their records to identify the dancers involved and present them as witnesses.

With regard to the allegations of employees consuming liquor he submitted that this could have the effect of impairing the judgement of the employees and the manner in which they carried out their duties. The police officers could not say with certainty that the beverages the employees were consuming was liquor. They made assumptions.

Assumptions based on their knowledge of the type of containers in which the beverages were observed.

The Licensee

Counsel for the licensee submitted that the adjudicator must not only assess the evidence to determine if on a balance of probabilities the contraventions occurred he must maintain the integrity of the process and provide a fair hearing. Here the police officers all had access to cell phones and could have summoned uniformed officers to deal with alleged contraventions. They did in fact on one occasion call upon uniformed officers to check the age of young appearing patrons. Counsel submitted that for the allegations forming this hearing the police officers deliberately withheld evidence in order to maintain the integrity of the undercover operation. The evidence is that the licensee was first advised of the allegations via LPCs on July 9, 2002, approximately one and a half months after the fact. The licensee immediately questioned his staff. Most said that they could not recall what had occurred after that period of time. One employee said that he may have consumed a beer. This led to the licensee accepting the proposed penalty for that allegation. On October 16, 2002, approximately five months following the events the licensee received Contravention Notices from the Branch. Neither the LPC's of July 9, 2002, nor the Contravention Notices of October 16, 2002, provided particulars of the allegations. Particulars were not received until receipt of the NOEA on November 5, 2002. Full particulars such as they were, were not received until the licensee met with the branch regional manager in December, 2002. Seven months following the event. Of the dancers involved in the allegations the licensee was only able to track down one and she was produced as a witness. He submitted that the licensee was clearly prejudiced from being able to meet the case through the delay of notification and the insufficient information provided as to the identities of the dancers and the employees consuming liquor.

In addressing the allegations on their merits counsel submitted that with regard to the allegations of employees consuming liquor there is no evidence that the beverages

consumed were liquor. The police officers made assumptions based on the type of container and colour of the label. Assumptions are not evidence and they made no effort to identify the type of beverages. With regard to the allegation concerning dancer prohibited acts the police officers may have heard the name "2nd dancer" during the nights in question but she was not responsible. The police officers could not provide descriptions of any of the dancers and testified that they would not be able to identify them from photographs if presented. The only evidence is that the police officers say it happened. There is no opportunity to present evidence to the contrary. In addressing the recommended penalties of a four (4) day suspension for each of the alleged contraventions he submitted that if the dancer prohibited acts did occur they were of short duration and the recommended penalty is too steep in the circumstances.

Counsel referred us an excerpt from Brown and Evans, "Judicial Review of Administrative Action in Canada" and the following cases:

Decision of Maczko, J in Greater Vancouver Professional Drivers' Association v. General Manager, Liquor Control and Licensing Branch, 2001 BCSC 1545.

Decisions of the General Manager Liquor Control and Licensing Branch concerning Kits Cabaret (EH01-58/59) and The Red Lion Inn (EH01-40/41/42).

Reasons and Decision

1. Delay

Counsel has argued that the delay by the police and the branch in notifying the licensee of the alleged contraventions and failing to provide full particulars including a description and identity of the dancers and the employees involved unduly prejudiced the licensee from identifying and presenting witnesses to make full defence to the allegations.

I cannot agree. The delay by the police in notifying the licensee was explained as being necessary to protect an undercover investigation involving several licensed establishments over a period of time. There is no evidence that the delay was any longer than was necessary. The delay by the branch in notifying the licensee and providing particulars of the alleged contraventions was not explained. It may have been longer than was necessary. It is not, however, fatal given the circumstances of this case. The licensee was provided with the date, time and location of all the alleged contraventions. All of the allegations involved persons either employed by the establishment or contracted through an agency to provide entertainment in the establishment. They are persons known to the licensee. The licensee has the opportunity and perhaps even the obligation to maintain a record of the dates and times of their employment or performances. The licensee has a responsibility to supervise the conduct of these persons during their employment or performance. Part of the supervision may involve the keeping of performance logs allowing the licensee to check on the standard of conduct of an employee or performer and present that log as evidence in addition to or in lieu of the evidence of the employee or the performer as a witness.

2. Findings of Fact

- (1) Contraventions (2) and (5), employees consuming liquor in premises on or about May 25 and June 10, 2002, contrary to Section 12 of the Regulations to the Act.

The evidence in its totality does not prove on a balance of probabilities that the beverages consumed by those employees involved in the incidents of May 25 and June 10, 2002, contained liquor.

- (2) Contravention (3), dancer prohibited acts on or about May 25, 2002, contrary to Section 50 of the Act.
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The evidence of the police officer was clear. He observed incidents of dancers using their breasts to accept money from the mouths of patrons seated in the row of chairs surrounding the stage. He also observed two dancers engage in a lesbian sex act. These activities are clearly prohibited by the branch's restrictions to exotic dancer entertainment. I find the officer's testimony to be reliable and credible. I prefer his evidence to that provided by the 2nd dancer. The staff on duty on that night testified that they did not observe those activities taking place. Each of the staff had other prime responsibilities which occupied the majority of their attention. We did not hear from the disc-jockey whose only responsibility is related to the dancers' performances nor were we provided with any logs that were kept of incidents or noted the lack thereof.

I find that the licensee permitted dancer prohibited acts and in so doing contravened Section 50 of the Act.

(3) Contravention (4), dancer prohibited acts on or about May 31, 2002, contrary to Section 50 of the Act.

Two police officers provided evidence of observing two dancers encouraging and allowing patrons to touch their breasts, one accepting money from patrons with her breasts and one allowing a patron to suck her breasts and put money into her nipple ring. These activities are clearly prohibited by the branch's restrictions. I find the officers' testimony to be reliable and credible. I prefer their evidence to that of the 2nd dancer. Staff on duty testified that they did not observe these activities. All those staff members testifying had other prime responsibilities that occupied the majority of their attention. We did not hear from the disc-jockey whose only responsibility is related to the dancers' performances nor were we provided with any logs that were kept of incidents or noted the lack thereof.

I find that the licensee permitted dancer prohibited activity and in so doing contravened Section 50 of the Act.

3. Penalty

Pursuant to section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulations* and/or the terms and conditions of the licence, I have discretion to order one or more of the following enforcement actions:

- impose a suspension of the liquor licence for a period of time
- cancel a liquor licence
- impose terms and conditions to a license or rescind or amend existing terms and conditions
- impose a monetary penalty
- order a licensee to transfer a license

Imposing any penalty is discretionary. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 4 of the *Regulations*.

In the circumstances, I find that a penalty is warranted. The establishment is operated by principals of the corporate licensee experienced in the industry. The restrictions surrounding exotic dancer performances are well known within the industry. The recommended penalties are the minimum set out in the Schedule to the *Regulations*.

A warning may be seen by some as condoning the contravention and a strictly monetary penalty may be seen as the cost of doing business. A suspension penalty will affect the licensee, its staff, the exotic dancers and its patrons and should encourage future voluntary compliance on the part of all parties. In the circumstances, however, I find that while a licence suspension penalty is appropriate the cumulative effect of the two minimum suspension penalties may be greater than is necessary to achieve voluntary compliance. Consequently I find that the minimum monetary penalty is appropriate for the first occurring contravention (contravention (3)) and the minimum licence suspension penalty appropriate for the subsequent contravention (contravention (4)).

ORDER

Pursuant to section 20(2) of the *Act*, concerning Liquor Licence number 21660:

I impose a monetary penalty of \$5,000.00 (Five Thousand Dollars) to be paid no later than July 24, 2003, and

I suspend the liquor licence for a total of four (4) days starting as of the close of business Thursday July 24, 2003, and continuing on successive business days until the suspension is completed. "Business Day" means a day on which the licensee's establishment would normally be open for business (section 54(1) of the Regulations to the Liquor Control and Licensing Act.)

Since I do not know whether the establishment would normally be open seven 7 days per week as of July 24, 2003, I do not know what the "business days" will be. To ensure that this order is effective, I direct that the liquor licence be held by the Branch or the Vancouver Police Department from the close of business Thursday July 24, 2003, until the licensee has demonstrated to the Branch's satisfaction that the licensed establishment has been closed for four (4) business days. A suspension sign notifying the public shall be placed in a prominent location by a Liquor Inspector or Police Officer.

A member of the Vancouver Police Department will be requested to attend the premises, take possession of the liquor license and hold it in safekeeping during the term of the suspension.

Yours truly,

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: June 16, 2003.

cc: Vancouver Police Department

Liquor Control and Licensing Branch, Vancouver Office
Attention: Lee Murphy, Regional Manager

Liquor Control and Licensing Branch, Victoria Office
Attention: Peter Jones, Branch Advocate
