



**DECISION OF THE  
GENERAL MANAGER  
LIQUOR CONTROL AND LICENSING BRANCH**

IN THE MATTER OF

A hearing pursuant to Section 20 of

**The Liquor Control and Licensing Act RSBC c. 267**

**Licensee:** Golden Road Consulting Ltd.  
dba Regal Beagle Grill  
2281 West Boardway  
Vancouver, BC

Case No. EH03-092

**Appearances:**

For the Licensee David Barnett

For the Branch Shahid Noorani, Advocate

Enforcement Hearing Adjudicator Suzan Beattie

Date of Hearing September 26, 2003

Place of Hearing Teleconference

Date of Decision December 17, 2003

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**Ministry of Public  
Safety and Solicitor  
General**

Liquor Control and  
Licensing Branch

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## **INTRODUCTION**

The licensee, Golden Road Consulting Ltd., doing business as Regal Beagle Grill, is located at 2281 West Broadway, Vancouver, BC. It holds Food Primary Liquor Licence No. 176595 with hours of operation Monday to Sunday from 12:00 Noon to 2:00 A.M.

The maximum licensed capacity is 38 patrons in Areas 1 and 2 and 12 patrons on the patio.

## **ALLEGED CONTRAVENTION AND RECOMMENDED PENALTIES**

The Liquor Control and Licensing Branch alleges that on May 24, 2003, the licensee contravened section 12 of the *Liquor Control and Licensing Act* by permitting overcrowding beyond patron capacity less than or equal to occupant load, contrary to the *Act*.

The Liquor Control and Licensing Branch further alleges that on May 24, 2003, the licensee contravened section 42(4) of the *Liquor Control and Licensing Regulations* by permitting liquor to be removed, contrary to the *Regulations*.

Schedule 4 of the *Liquor Control and Licensing Regulations*, provides a range of licence suspensions and monetary penalties for each contravention. For the contravention of section 12, the penalty range is a one (1) to three (3) day suspension or a one thousand (\$1,000.00) to three thousand (\$3,000.00) dollar monetary penalty for the first contravention. In this case, the branch is recommending a suspension of the liquor licence for one (1) day, to be served starting on a Saturday and continuing on successive business days until completed.

For the contravention of section 42(4), the penalty range is a one (1) to three (3) day suspension or a one thousand (\$1,000.00) to three thousand (\$3,000.00) dollar monetary penalty for the first contravention. In this case, the branch is recommending a

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suspension of the liquor licence for one (1) day, to be served starting on a Saturday and continuing on successive business days until completed.

In summary, the branch is recommending a total suspension penalty of two days.

The relevant statutory provisions of the *Liquor Control and Licensing Act and Regulations* state:

## **12 Licences**

- (1) The general manager may, having regard for the public interest, may, on application, issue a licence for the sale of liquor.
- (2) The general manager may, in respect of any licence that is being or has been issued, impose, in the public interest, terms and conditions
  - (a) that vary the terms and conditions to which the licence is subject under the regulations, or
  - (b) that are in addition to those referred to in paragraph (a).
- (3) Without limiting subsection (2), the terms and conditions referred to in that subsection may:
  - (a) limit the type of liquor to be offered for sale,
  - (b) designate the areas of an establishment, both indoor and outdoor, where liquor may be sold and served

## **42 Consumption of liquor in licensed establishments**

- (4) All liquor sold or served in a licensed establishment must be consumed there, and the licensee must not allow liquor, other than the following, to be taken from the licensed establishment.
  - (a) a bottle of wine that is unfinished by a patron and sealed by the licensee before being taken by that patron from the licensed establishment;
  - (b) liquor that is sole for consumption off premises in accordance with the Act, this regulation and the terms and conditions of the licence.

## **ISSUE**

The licensee concedes that the contraventions occurred but disputes the proposed total two day license suspension penalty.

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**COMPLIANCE HISTORY**

There is no record of prior contraventions, offences or enforcement actions of this type for this licensee or this establishment within the year preceding this incident ("compliance history"). Therefore, these contraventions, if proved, would be considered first contraventions for the purposes of the Penalty Schedule.

The branch's file indicates the following:

- On May 28, 2003, a compliance meeting was held to discuss the totality of the circumstances arising out of the incident of May 24, 2003.
  - On February 16, 2003, a Contravention Notice was issued for three allegations: failure to clear liquor within ½ hour after liquor service hours; allowing to consume beyond ½ hours after liquor service; and failure to comply with the responsible beverage service program. No enforcement action was recommended.
  - On June 13, 2002, a licence premise check complaint was filed. No Contravention Notice was issued with respect to this complaint.
  - On June 8, 2002, two Contravention Notices were issued. The first was for failing to comply with the responsible beverage service program. No enforcement action was recommended.
  - On June 8, 2002, the second Contravention Notice was issued for overcrowding beyond the licence capacity as well as for liquor being removed from the establishment. This contravention notice did not result in enforcement action.
  - In 2001, three Contravention Notices were issued. Two of the Contravention notices related to advertising and the third was with respect to the service of liquor without food. These Contravention Notices did not result in enforcement action.
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**WITNESSES**

The branch called a liquor inspector as its witness. The licensee did not call witnesses.

**EXHIBITS**

The branch and the licensee presented the following exhibits:

**Exhibit 1****Book of Documents**

- Tab 1 Notice of Enforcement Action letter dated July 8, 2003
  - Tab 2 Enforcement Action Recommended Report dated June 2, 2003
  - Tab 3 Contravention Notice B004743 dated March 25, 2003
  - Tab 4 Handwritten notes of Inspector One.
  - Tab 5 Handwritten notes of Inspector Two.
  - Tab 6 Handwritten notes of Inspector Three.
  - Tab 7 Food Primary Licence 176595
  - Tab 8 Red-line floor plan for establishment
  - Tab 9 Application for a Liquor Licence dated April 3, 1997
  - Tab 10 Inspection and Interview Report dated March 21, 1997
  - Tab 11 Contravention Notice A000517 dated June 9, 2001
  - Tab 12 Contravention Notice A002386 dated October 4, 2001
  - Tab 13 Police LPC A137001 dated May 11, 2002
  - Tab 14 Contravention Notice A013550 dated June 8, 2002
  - Tab 15 Contravention Notice A013583 dated June 3, 2003
  - Tab 16 Police LPC A072305 dated June 13, 2002
  - Tab 17 Contravention Notice A014033 dated February 16, 2003
  - Tab 18 Contravention Notice B004743 dated May 25, 2003
  - Tab 19 Contravention Notice B004744 dated May 28, 2003
  - Tab 20 Compliance Meeting Form C002041 dated May 28, 2003
  - Tab 21 Section 4.10.8 from the Compliance and Enforcement Policy and Procedures Manual re: permitting liquor to be removed
  - Tab 22 Section 4.8.1 from the Compliance and Enforcement Policy and Procedures Manual re: overcrowding
  - Tab 23 Pages 1,2,3,10, 12, 13 from the Food Primary License Terms and Conditions A Guide for Liquor Licensees in B.C.
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**Exhibit 2**                      The Regal Beagle's Management Duties and Responsibilities  
Waiver Form

**EVIDENCE, PENALTY SUBMISSIONS AND DECISION**

**Evidence**

The branch's evidence is contained in a Schedule to the Notice of Enforcement Action and in the documentation in Exhibit 1. As explained by the liquor inspector, the regional manager had driven by the establishment and observed a crowd of people outside the premises, standing on the sidewalk and holding glasses and bottles of beer. The regional manager parked across the street and could hear music and noise from the establishment. The regional manager contacted two liquor inspectors on duty and requested their attendance at the premises.

The liquor inspectors arrived and observed patrons standing with drinks outside the establishment and walking from the establishment's patio to the patio of the restaurant next door. The same licensee owns the restaurant next door.

The region manager and a second liquor inspector conducted counts of 76 patrons, 71 patrons and 79 patrons. The patron capacity for this license is 38 patrons. The liquor inspector spoke with the manager who advised he tried to get the patrons back inside the establishment but was unable to do so.

Under questioning from the licensee, the inspector noted that, in June 2002 the licensee received a contravention notice for overcrowding beyond the licence capacity as well as for liquor being removed from the establishment. This contravention notice did not result in enforcement action. The current contraventions are the second contraventions within a twelve (12) month period and warranted the recommendation of enforcement action. It was the inspector's opinion that the licensee should receive the lowest penalty for a first contravention.

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The licensee does not dispute that it was overcrowded nor that liquor was removed from its establishment. Nor does the licensee dispute the fact that the overcrowding was a result of a private function booked for 50 people.

### **SUBMISSION**

The licensee submits that the two day suspension penalty does not "fit the crime". It agrees that the private function was booked between the two restaurants owned by the licensee.

As a result of the compliance meeting of May 28, 2003, the licensee and its staff have made a commitment to comply with the terms and conditions of the *Act* and *Regulations*. To this end, the licensee has revamped its staff manuals, revamped its operation plan and revamped its training procedures. The licensee has also incorporated a waiver to be signed by its manager that effectively states that any violation of the terms and conditions of the licence while on shift could result in their termination of employment.

The licensee also submitted that it puts the community standards of its neighbourhood and principles of public safety as a number one priority. Finally, the licensee argues that as a small establishment with a capacity of 38 patrons inside and 12 on the patio, a two day suspension would be financially devastating.

### **Decision**

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
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- impose terms and conditions to a licence or rescind or amend existing terms and conditions
- impose a monetary penalty
- order a licensee to transfer a licence

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 minimum set out in Schedule 4 of the *Regulations*.

The *Regulations* provide for a graduated scale of penalties for contraventions of the *Act*. The graduated nature of the penalties is necessary for the consistent and vigorous enforcement of the provisions in the *Act* and *Regulations*.

The branch's primary goal in determining the appropriate penalty along the scale is achieving voluntary compliance. Among the factors that are considered in determining the appropriate penalty is whether there is a past history of warnings by the branch and/or the police, the seriousness of the contravention, the threat to public safety and the well being of the community.

In the circumstances of this case, I find that a penalty is necessary to ensure the licensee's voluntary compliance. I note that, on June 8, 2002, there was a contravention notice issued for the exact same contraventions that are before me. In 2002 no enforcement action was recommended. I also note that in this case there was, due to the noise and overcrowding, a threat to the neighbourhood as well as a threat to public safety.

Having declined to exercise my discretion and impose no penalty, I turn to the question of whether the appropriate penalty in these circumstances is a suspension or a monetary penalty.

I begin by noting the inspector's evidence that the licensee should receive the lowest penalty for a first contravention. In this case the inspector recommended a one (1) day

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suspension penalty for each contravention resulting in a total of a two (2) day suspension penalty.

The licensee argues that a suspension penalty is extreme in these circumstances. In support, it points to the evidence of the size and nature of its operation and the fact that it has taken the compliance meeting of May 28, 2003, seriously and made changes to the management of its operation. Based on these facts I am prepared to impose a monetary penalty for each contravention.

The question remains as to the amount of the monetary penalty. In determining monetary penalties it is imperative that the penalty not simply amount to "the cost of doing business". Rather, a monetary penalty like a suspension penalty, is intended to secure voluntary compliance with the statutory and license requirements.

In the circumstances of this case I am convinced that the minimum monetary penalty for each contravention will signify to this licensee and others the seriousness of these contraventions. Therefore, for each contravention I impose the minimum monetary penalty for a first contravention is one thousand (\$1,000.00) dollars.

In summary, I exercise my discretion and impose a total two thousand (\$2,000) dollar monetary penalty for these first contraventions.

#### **ORDER**

Pursuant to section 20(2) of the *Act*, concerning Food-Primary Licence No. 176595, I order as follows:

For the contravention of section 12 of the *Liquor Control and Licensing Act* on May 24, 2003, I order the licensee to pay a monetary penalty of one thousand (\$1,000) dollars to be paid no later than January 28, 2004.

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For the contravention of section 42(4) of the *Liquor Control and Licensing Regulations* on May 24, 2003, I order the licensee to pay a monetary penalty of one thousand (\$1,000) dollars to be paid no later than January 28, 2004.

In summary, I order the licence to pay a total two thousand (\$2,000) dollar monetary penalty to be paid no later than January 28, 2004.

*Original signed by*

Suzan Beattie  
Enforcement Hearing Adjudicator

Date: December 17, 2003

cc: Vancouver Police Department

Liquor Control and Licensing Branch, Vancouver Regional Office  
Attention: Wendy Jones, A/Regional Manager

Liquor Control and Licensing Branch, Victoria Office  
Attention: Shahid Noorani, Branch Advocate

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