



**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**

<b>Licensee:</b>	Manhattan Karaoke Restaurant Inc. 2168 – 3779 Sexsmith Road Richmond, BC
Case Number:	EH03 - 105
<b>Appearances:</b>	
For the Licensee	Dennis Coates, Q.C.
For the Branch	Shahid Noorani
Enforcement Hearing Adjudicator	Suzan Beattie
Date of Hearing	October 10, 2003
Place of Hearing	Teleconference
Date of Decision	December 9, 2003

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**Ministry of Public  
Safety and Solicitor  
General**

Liquor Control and  
Licensing Branch

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## **INTRODUCTION**

The licensee, Manhattan Karaoke Restaurant is located at 2168 Sexsmith Road, Richmond, B.C. It holds Food Primary Licence No. 201123 with hours of operation in which liquor may be sold, purchased and consumed within the areas outlined in red on the official plan, being 10:00 A.M. to Midnight on Monday through Sunday.

It has a capacity of 100 patrons in area 1 and 10 patrons in each of its Karaoke rooms identified as areas 2, 3, and 4. The licence provides for patron participation entertainment including "karaoke boxes" but not including entertainment other than games within the premises.

## **ALLEGED CONTRAVENTION AND RECOMMENDED PENALTIES**

The Liquor Control and Licensing Branch alleges that on May 2, 2003, the licensee contravened section 43 of the *Liquor Control and Licensing Regulations* by failing to have a Registered Beverage Service – Serving it Right (RBS) Server Level certificate available for inspection by a liquor inspector.

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 43, the penalty range is a one (1) to three (3) day licence suspension or one thousand (\$1,000) to five thousand (\$5,000) monetary penalty for the first contravention. In this case, the branch is recommending a \$1,000 (one thousand dollar) penalty.

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

### **43 Beverage service training**

- (1) For the purposes of this regulation and section 13 of the Act. **"training program"** means one of the following programs delivered under the auspices of a person or organization approved by the general manager.
  - (a) The training program entitled "Serving It Right: The Responsible Beverage Service Program" Licensee Manual ISBN 0-77261063-3
  - (b) the training program entitled "Serving It Right: The Responsible Beverage Service Program" Server Manual ISBN 0-7726-1035-5

### **13 Training**

- (3) A person must not manage a licensed establishment unless the person has successfully completed a prescribed training program.
- (4) A person must not serve liquor in a licensed establishment unless the person has successfully completed a prescribed training program.

### **ISSUE**

The licensee conceded that the contravention occurred but disputed the proposed monetary penalty of one thousand dollars (\$1,000.00).

### **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, this contravention, if proved, would be considered a first contravention for the purposes of the Penalty Schedule.

On May 2, 2003, the branch issued a Contravention Notice for contravening section 12, by exceeding the maximum drink size and recommended a minimum monetary penalty of \$1,000.00. The licensee signed a waiver notice and accepted the enforcement action of a \$1,000.00 monetary penalty.

On March 23, 2002, the branch issued Contravention Notice No. A012630 for, amongst other allegations, failure to comply with the beverage service training. The branch did not pursue enforcement action on the allegation of failing to comply with the beverage service training.

## **Exhibits**

The branch presented the following exhibit:

### **Exhibit 1**

#### **Book of Documents**

- Tab 1 Notice of Enforcement Action Letter dated July 28, 2003
- Tab 2 Contravention Notice B004080
- Tab 3 Handwritten notes of Insp. Lowden
- Tab 4 Food Primary License 201123
- Tab 5 Red Line Floor Plan for Establishment
- Tab 6 Compliance Meeting Form C000747 with Addendum
- Tab 7 Contravention Notice A012630
- Tab 8 Inspection and Interview Report dated December 20, 1997
- Tab 9 Register of Members of Manhattan Karaoke Ltd.
- Tab 10 Guide for Liquor Licensees in B.C. ( 1988) Pages 1,9,10 & 16
- Tab 11 Food Primary License Terms and Conditions, A Guide for Liquor Licensees in B.C., Pages 1-4,11 & 13
- Tab 12 Serving it Right Licensee Program Manual, Pages 27 - 30

## **EVIDENCE, PENALTY SUBMISSIONS AND DECISION**

### **Evidence**

The branch's evidence is contained in the narrative to the Notice of Enforcement. On May 2, 2003, there was a multi-agency inspection involving representatives of the Richmond R.C.M. Police, the City of Richmond, Business Licence Department, Richmond Health Services, Richmond Securities Programs Division, City of Richmond Fire Inspector and a Liquor Inspector. The inspection team arrived at the establishment at 10:03 P.M. The liquor inspector initially spoke with two of the partners in the establishment.

In speaking with one of the individuals who identified himself as a partner in a subsequent compliance meeting in June 2003, the Inspector determined that he did not have the server component of the Responsible Beverage Service Program. This was the same individual who was served with Contravention Notice No. A012630 on March 23, 2002, for failing to comply with the Responsible Beverage Service Training.

### **Submission**

The licensee argues that I should utilize my discretion and not order any penalty for the contravention of failing to comply with the Serving it Right: The Responsible Beverage Service Program. It pointed out that it has acknowledged that on May 2, 2003, it contravened section 12 of the *Liquor Control and Licensing Act* by exceeding the maximum drink size and also contravened section 43 of the *Regulations* by failing to comply with the Responsible Beverage Service Program.

The licensee submits that, as it has signed a waiver and agreed to pay a monetary penalty with respect to the contravention of Section 12 of the *Act*, it ought not to also be penalized by having to pay a monetary penalty for the contravention of Section 43 of the *Regulations*. It argues that, as of July 2003, their entire staff now has the appropriate Serving It Right: Responsible Beverage Service Program training.

The licensee says that its non-compliance with Section 43 of the Regulations was minimal, a language barrier complicated its compliance with the *Act* and *Regulations* and it is now in compliance. It suggests I exercise my discretion and refuse to impose a penalty.

## 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
- 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, there was a previous contravention issued in March 2002 for failing to comply with Section 43 of the Regulations. The branch did not recommend enforcement action with respect to the March 2002 contravention. I find the licensee had ample opportunity between March 2002 and May 2003 to comply with the Serving It Right: The Responsible Beverage Service Program.

I also note that neither the suggestion that the licensee has a language barrier nor the argument that the licensee is in compliance at the time of the hearing persuade me to exercise my discretion and not impose a penalty.

In the circumstances of this case I find a minimum monetary penalty is appropriate.

#### **ORDER**

Pursuant to section 20(2) of the *Act*, concerning the LP Licence #022485, I order as follows:

For the contravention of Section 43 of the *Liquor Control and Licensing Regulation* on May 2, 2003, I order the licensee, Manhattan Karaoke Restaurant Inc. to pay a monetary penalty of one thousand (\$1,000) dollars to be paid no later than January 8, 2004.



Suzan Beattie  
Enforcement Hearing Adjudicator

Date: December 9, 2003

cc:

R.C.M.Police Richmond Detachment

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

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