



**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: Amy Woods,
Foundation Eatery
2301 Main Street,
Vancouver, BC

APPEARANCES

For the Licensee: Amy Woods
For the Branch: Shahid Noorani, Advocate
Enforcement Hearing Adjudicator: M. G. Taylor
File No. EH03-119
Dates of Hearing: October 22, 2003
Date of Decision: November 4, 2003
Place of Hearing: Vancouver, B.C.

Introduction

The licensee operates a vegetarian restaurant, Foundation Eatery, with a Food Primary Liquor licence, No. 216763. The licence permits hours of operation from noon until 1:00 A.M. Monday to Saturday and until Midnight on Sunday. The licenced capacity is 50 patrons.

Foundation Eatery is located on the corner of a busy street, with good visibility from the street. The area is mixed residential and commercial. There are a number of food primary licensees and some liquor primary licensees in the area.

Alleged Contraventions and Recommended Enforcement Action

By Notice of Enforcement Action dated August 25, 2003, the branch alleged that on June 15, 2003 (business day June 14, 2003) the licensee permitted liquor purchased in the establishment to be removed, contrary to section 42(4) of the *Regulations*. The branch recommended an enforcement penalty of \$1,000 monetary penalty.

Schedule 4 of the *Liquor Control and Licensing Regulations, BC Reg. 608/76, Enforcement Actions*, provides a range of licence suspensions and monetary penalties for each contravention. The range for a first contravention for this alleged contravention, item 29, is a licence suspension of 1 to 3 days, or a monetary penalty of \$1,000 to \$3,000.

Compliance History

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

The Foundation Eatery opened in June 2002. Since then, the branch has had concerns of possible contraventions related to liquor being removed from the premises, liquor being consumed outside the licensed (red-lined) area, after hours service, and the licensee consuming liquor. The branch issued two Contravention Notices in August 2002, and one in April 2003. The branch had compliance meetings with the licensee in August 2002 and April 2003. The branch did not pursue enforcement action for those alleged contraventions.

Issues

The licensee admitted that patrons had taken liquor out the back door of the restaurant. The issue is whether the branch's recommended penalty is appropriate.

Exhibits

Exhibit No. 1 Book of Documents

Applicable Statutory Provisions

Liquor Control and Licensing Regulation, B.C. Reg. 244/2002

Consumption of liquor in licensed establishments

42 (1) A person must not consume liquor in a licensed establishment unless that liquor has been purchased from or served by the licensee of that licensed establishment.

(2) A licensee must not allow consumption in the licensed establishment of liquor that was not purchased from or served by the licensee.

(3) A licensee, and the employees of the licensee, must not consume liquor while working in the licensed establishment.

(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 sold for consumption off premises in accordance with the Act, this regulation and the terms and conditions of the licence.

(5) A licensee who seals an unfinished bottle of wine in accordance with subsection (4) (a) must inform the patron of the requirements of section 44 of the Act.

(6) This section does not apply to a U-Brew or U-Vin.

Evidence and Submissions

The branch called as a witness the liquor inspector who observed the contravention and wrote the Contravention Notice. The licensee also gave evidence and made submissions on penalty.

The contravention occurred on the occasion of the licensee's one year anniversary party. The licensee admitted that patrons took liquor out the back door when they went to smoke. There were approximately 8 patrons outside with their drinks when the licensed inspection team (fire services inspectors, police officers, city inspector, and liquor inspector) arrived at approximately 1:30 A.M. The back door empties onto a parking lot, which is open to the street. The restaurant was still busy and patrons were milling about with drinks.

The liquor inspector wrote a Contravention Notice indicating a number of possible contraventions, including after hours service, but only proceeded with enforcement action on the one contravention.

The licensee submitted that the branch's recitation of the history sounds worse than the circumstances. She testified that the branch's concerns mainly related to parties for the grand opening in August 2002 and the first anniversary, this incident. The branch's other concerns related to minor incidents. She noted that her restaurant operates as a restaurant – it does not normally operate as stand up - and that since these incidents she has begun closing 15 minutes earlier to ensure that customers are well away by 1:30 A.M.

She submitted that a penalty of \$1,000 is considerable for a small vegetarian restaurant and asked me to consider a lesser penalty, or not issuing a penalty. She submitted that if I found a penalty was warranted, the monetary penalty would be preferable to a licence suspension.

The branch submitted that there are no extenuating circumstances to warrant not imposing a penalty. This licensee had had been educated by the branch about this activity but had not taken steps to ensure it did not occur. The branch has public policy concerns about licensees allowing patrons to remove liquor. A licensee is responsible for maintaining care and control of the establishment but loses that when patrons leave the premises with liquor. The licensee has a duty to the community to maintain control, ensure there is no liquor related conduct that disturbs residents and other commercial operators. The licensee also has duty to protect the safety of patrons from the ill-effects of over consumption, but cannot monitor consumption when patrons are drinking outside the establishment.

Penalty

Pursuant to ss. 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*.

I have taken into consideration that this is the first proven contravention since this establishment opened and that the licensee was cooperative with the Liquor Inspector. I have given weight to the compliance history only to the extent that it demonstrates the branch has told the licensee in the past of concerns about

patrons removing liquor from the premises. The range for first contraventions is 1 to 3 days, or \$1,000 to \$3,000 fine.

I agree with the branch advocate that there are no extenuating circumstances here to warrant not imposing a penalty. The licensee submitted that this was a special occasion – regardless, the terms of the liquor licence continue and the licensee has a responsibility to the surrounding neighbourhood and to her patrons. Arguably, there is need for even greater caution when there is a special event because patrons are ‘partying’ not just eating.

The licensee submitted that the previous incidents were minor. Even if I accepted that, I find it would not be reason to treat this occasion as needing only a warning. The licensee has been told what is, and is not, permissible. The licensee has not yet demonstrated that she can operate within those parameters. It is clear to me that this case does require a penalty to bring home to the licensee the importance of voluntary compliance with the regulations.

I find that a monetary penalty of \$1,000 is appropriate.

Order

Pursuant to section 20(2) of the *Act*, concerning Food Primary Licence No. 216763, for the contravention of permitting liquor purchased in the establishment to be removed, contrary to section 42(4) of the *Regulations*, I order Amy Woods to pay a monetary penalty of \$1,000, to be paid no later than December 12, 2003.

Original signed by

DATE: November 4, 2003

M. G. Taylor

Enforcement Hearing Adjudicator

cc: Vancouver Police Department

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

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