



**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, R.S.B.C. 1996, c. 267

Licensee:	Palace Holdings Ltd. dba Palace Hotel 35 – 37 West Hastings Street Vancouver, BC
Case:	EH04-123/127/128
For the Licensee	Keeha Oh
For the Branch	Shahid Noorani
Enforcement Hearing Adjudicator	Sheldon M. Seigel
Date of Hearing	March 3, 2005
Place of Hearing	Vancouver, BC
Date of Decision	April 7, 2005

INTRODUCTION

The licensee, Palace Holdings Ltd, operates a bar in a facility known as the Palace Hotel, on West Hastings Street in Vancouver. The bar is known as Funky Winkerbeans. The bar is in an area known to have severe socio-economic issues.

The licence is identified as Liquor Primary Licence No. 004540.

ALLEGED CONTRAVENTIONS

EH04-123

1. The branch alleges that on May 3, 2004, the licensee contravened Section 36(2)(b) of the *Liquor Control and Licensing Act (Act)* by authorizing or permitting in the licensed establishment unlawful activities or conduct.

EH04-127

2. The branch alleges that on May 18, 2004, the licensee contravened Section 36(2)(b) of the *Liquor Control and Licensing Act* by authorizing or permitting in the licensed establishment unlawful activities or conduct.
3. The branch alleges that on May 18, 2004, the licensee contravened Section 43(2)(b) of the *Liquor Control and Licensing Act* by permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

EH04-128

4. The branch alleges that on May 7, 2004, the licensee contravened Section 36(2)(b) of the *Liquor Control and Licensing Act* by authorizing or permitting in the licensed establishment unlawful activities or conduct.
-

5. The branch alleges that on May 7, 2004, the licensee contravened Section 43(2)(b) of the *Liquor Control and Licensing Act* by permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

6. The branch alleges that on May 7, 2004, the licensee contravened Section 3(1) of the *Liquor Control and Licensing Act* by selling or giving liquor to an intoxicated person or a person apparently under the influence of liquor.

RELEVANT STATUTORY PROVISIONS

Section 20(1) In addition to any other powers the general manager has under this *Act*, the general manager may, on the general manager's own motion or on receiving a complaint, take action against a licensee for any of the following reasons:

- (a) the licensee's contravention of this *Act* or the *Regulation* or the licensee's failure to comply with a term or condition of the licence;

- (e) the suspension or cancellation of a municipally, regionally, provincially, or federally granted licence, permit or certificate that the licensee is required to hold in order to operate the licensed establishment.

ISSUES(S)

The licensee admitted that the contraventions occurred as alleged, but disputed the recommended penalties on the basis that:

- They are inappropriate in light of the licensee's successful efforts to improve the compliance of the bar, and
-

- They are redundant, as the licensee has already served a suspension for the contraventions.

EXHIBITS

1. Branch's Book of Documents
2. Letter from City of Vancouver re: suspension of Municipal Licence
3. No exhibit 3.
4. Newspaper clipping- Vancouver Courier- regarding Municipal suspension.

EVIDENCE

The branch produced the liquor Inspector. She testified that the Downtown East Side, where the bar is located, is a depressed socio-economic community with issue of public intoxication, drug abuse and crime.

There was a police initiative underway, at all relevant times to these enforcement actions, in the Downtown East Side. Undercover members of the Vancouver Police Department (VPD) were operating to identify and curtail matters specifically relating to the sale and distribution of stolen goods, and liquor and drug offences. The VPD provided information gathered during the initiative to both the Municipality and the branch.

The Municipality suspended the licensee's business licence for fourteen (14) days, from October 18, 2004, to November 1, 2004, as a result of those reports.

The branch suspended the licensee under Section 20 (1)(e) of the *Act* coinciding with the term of the Municipal suspension of the licensee's business licence.

The liquor inspector identified all of the documents in Exhibit 1 of the history, contraventions (alleged and confirmed), and enforcement actions relating to this licence.

The NOEA (EH04-123) of November 17, 2004, at tab 1 of Exhibit 1, states that on May 3, 2004, members of the VPD observed property and illicit drugs being openly sold inside the establishment in such a way that it was clear to staff and management that this was occurring.

The NOEA (EH04-127) of November 17, 2004, at tab 4 of Exhibit 1, states that on May 18, 2004, members of the VPD observed illicit drugs being openly sold inside the establishment with the knowledge of staff and management, and liquor being served to patrons who were obviously intoxicated.

The NOEA (EH04-128) of November 18, 2004, at tab 7 of Exhibit 1, states that on May 7, 2004, members of the VPD observed liquor being served to patrons who were obviously intoxicated, intoxicated patrons being allowed to remain in the establishment and illicit drugs being purchased in plain view of staff and management.

The licensee testified that he often ejects drug dealers from his bar, and that he frequently throws out patrons who are selling stolen goods. However, they all come back "ten minutes later".

He further testified that his is a clean bar, and known in the community to cater to older "regulars" and provide a service to the community. He does not know where those patrons will go if he is closed. The licensee said that the police

know him to operate a "nice place" and that the VPD do not often have to attend his bar.

SUBMISSIONS ON PENALTY

Inappropriateness of penalty

The licensee argued that all of the contravention notices came on the same day, as a result of the police initiative. There was no opportunity to attempt to remedy the situation earlier. He argued that had one or two contravention notices been served on one occasion, he would have had an opportunity to address the problems and further contraventions would have been reduced or eliminated.

The licensee also argued that he is a conscientious individual and a good licensee. He says that his bar is in a difficult area in which to eliminate the sale of illicit drugs and stolen goods but that he does his best. He says he has taken considerable measures to improve the situation lately, including installation of monitoring cameras at considerable expense, and having staff meetings every two weeks. He has initiated a zero tolerance policy toward the sale of illicit drugs and merchandise, and any patron caught purchasing such goods will be refused service and ejected from the premise. He has posted notices of this policy and provided copies to his employees. A doorman has been retained for increased hours to attempt to keep out the undesirable individuals.

Redundancy

The licensee argued that he served a fourteen (14) day suspension for the same events that form the basis of the contraventions identified in this hearing. He said that not only did the Municipality suspend his business licence, but the branch suspended him contemporaneously for the same things. Suspending him

again, would result in a type of "double jeopardy" as he has already been punished once for these events.

ANALYSIS AND DECISION

Appropriateness of penalty

I find it is not the branch, nor the VPD that is charged with advising the licensee on an ongoing basis of his obligation of compliance with the legislation and licence requirements. The licensee knew these events were occurring, and knew or ought to have known that they were contraventions of his obligations. The argument that he was not provided with notice such that a reasonable attempt at remediation could be had thereafter does not hold water. I note in this regard that each of the penalties recommended are on the basis of a first contravention.

The licensee's attempt at rectifying the situation at Funky Winkerbeans is to be commended. The contraventions did occur, and they did occur with the full knowledge of the licensee's management and staff. The measures implemented by the licensee, if deemed necessary, should have been instituted long ago. The consequences of the lack of timely action must be attributed to the licensee.

Redundancy

The Municipality is empowered to suspend a business licence, and the branch is not involved in that decision. The Municipality chose to do so after receiving a report from the VPD regarding their initiatives on the Lower East Side, and in particular with respect to the alleged incidents which occurred in Funky Winkerbeans.

The branch, then suspended the licensee's liquor licence as a matter of policy in accordance with Section 20(1)(e) of the *Act*, as there was no valid business licence in force and effect during the period of Municipal suspension.

I find that the suspension issued by the branch concurrent with the business licence suspension was authorized by Section 20(1)(e) and relating to a *reason* distinguishable from the contraventions described in the NOEAs of Tab 1,4, and 7 of Exhibit 1.

I find therefore, that the penalties to be imposed for the contraventions of May 3, 7, and 18, 2004, as authorized by Section 20(1) are not "redundant" relative to the branch's imposed fourteen (14) day suspension of October 18, 2004, to November 1, 2004. This is consistent with the decision of the general manager in *61395 B.C. Ltd, dba Atlantis Club*, Case EH03-086/096 decided March 3, 2004.

PENALTY

Pursuant to Section 20(2) of the *Act*, the licensee having agreed that he has contravened the *Act*, the *Regulation* and/or the terms and conditions of the licence, and so finding, 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 a 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 *Regulation*.

The minimum penalty for a first contravention of Section 36(2)(b), as identified in NOEA EH04-123, permitting unlawful activities/conduct, is a ten (10) day suspension and/or \$7,000 monetary penalty. The branch recommended a ten (10) day suspension.

The minimum penalty for a first contravention of Section 36(2)(b), as identified in NOEA EH04-127, permitting unlawful activities/conduct, is a ten (10) day suspension and/or \$7,000 monetary penalty. The branch recommended a ten (10) day suspension.

The minimum penalty for a first contravention of Section 43(2)(b), as identified in NOEA EH04-127, permitting intoxicated person to remain, is a four (4) day suspension and/or \$5,000 monetary penalty. The branch recommended a four (4) day suspension.

The minimum penalty for a first contravention of Section 36(2)(b), as identified in NOEA EH04-128, permitting unlawful activities/conduct, is a ten (10) days suspension and/or \$7,000 monetary penalty. The branch recommended a ten (10) day suspension.

The minimum penalty for a first contravention of Section 43(2)(b), as identified in NOEA EH04-128, permitting intoxicated person to remain, is a four (4) day suspension and/or \$5,000 monetary penalty. The branch recommended a four (4) day suspension.

The minimum penalty for a first contravention of Section 43(1), as identified in NOEA EH04-128, permitting intoxicated person to remain, is a four (4) day

suspension and/or \$5,000 monetary penalty. The branch recommended a four (4) day suspension.

I find that the minimum aggregate suspension of forty-two (42) days is an appropriate penalty for these contraventions. The licensee's evidence is that the impact of this suspension will be considerable, and such is the intent of the legislature. The reason for the penalty is to demonstrate that contravention of the protection afforded the community by the legislation is a serious matter.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of the Primary Liquor Licence No. 004540 for a period of forty-two (42) days to commence as of the close of business on Thursday, May 12, 2005, and to continue each succeeding business day until the suspension is completed. "Business day" means a day on which the licensee's establishment would normally be open for business (Section 67 of the *Regulation*).

I direct that the Liquor Licence No. 004540 for Palace Holdings Ltd., dba Palace Hotel be held by the Vancouver Police Department from the close of business on Thursday, May 12, 2005, until the licensee has demonstrated to the satisfaction of the branch that Funky Winkerbeans has been closed for forty-two (42) business days.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: April 7, 2005

cc: Vancouver Police Department

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

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