



February 24, 2005

Juan S. Segura
c/o Viva Latino Café Inc.
2784 East Hastings Street
Vancouver, BC V5K 1Z9

Registered Mail

Dear Mr. Segura:

**Re: Viva Latino Cafe Inc., Vancouver, BC
"Food Primary" Licence No. 300454**

Case # EH04-160

This letter constitutes a decision by the general manager of the Liquor Control and Licensing Branch pursuant to Section 20 of the *Liquor Control and Licensing Act*, regarding the recommended enforcement action set out in Notice of Enforcement Action ("NOEA") #EH04-160 issued to Viva Latino Café Inc. (the "licensee").

Alleged Contravention and Recommended Penalty

The branch alleges that on November 7, 2004:

1. The licensee contravened section 50 of the *Liquor Control and Licensing Act* by permitting entertainment in the establishment that is contrary to the terms and conditions of the licence. The recommended enforcement action is a \$1000 penalty.
2. The licensee contravened section 44 (1)(b) of the *Liquor Control and Licensing Regulation* by failing to ensure that liquor is taken from patrons within ½ hour after the time stated on the licence for the hours of liquor service. The recommended enforcement action is a ten (10) day suspension of the liquor license.

Background

On November 7, 2004, the branch issued contravention notice B08252 regarding the alleged contraventions. A Notice of Enforcement Action (NOEA) dated December 2, 2004, was subsequently sent to inform the licensee that the general manager was scheduling an enforcement hearing in order to review whether to take enforcement action for the alleged contravention.

In a letter dated December 3, 2004, (copy attached) the branch informed the licensee that there would be a pre-hearing telephone conference on January 12, 2005. The licensee did not participate in the pre-hearing conference nor did he contact the branch to explain his failure to participate.

**Ministry of Public Safety
and Solicitor General**

Liquor Control and
Licensing Branch

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On January 13, the branch registrar wrote to the licensee advising that Section 20 (2) of the *Liquor Control and Licensing Act* permits the general manager to take action against a licensee with or without a hearing. The letter also explained that due to the licensee's failure to participate in the pre-hearing conference, a decision regarding the alleged contraventions would be made without an enforcement hearing. The letter invited the licensee to provide a written response to the allegations prior to a decision being made.

On February 1, the licensee telephoned the registrar to say that he had passed the January 13th letter on to his solicitor. He also explained that his business has been closed as of December 31, 2004.

The branch has received no written response from the licensee regarding the alleged contraventions.

Applicable Statutory Provisions

Section 50 of the *Act* and Section 44 (1)(b) of the *Regulation* state 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.

Time

44 (1) Unless otherwise authorized by the general manager,
(b) food primary licensees must ensure that liquor is taken from patrons within 1/2 hour after the time stated on the licence for the hours of liquor service, unless the liquor is a bottle of wine that is sealed in accordance with section 42 (4) (a).

Issues

Whether the licensee contravened section 50 of the *Act* and section 44(a)(b) of the *Regulations*? If so, what enforcement action, if any is appropriate?

Particulars of Allegation

The license in question is a food primary license. The license contains a patron non-participation entertainment endorsement which permits television, recorded music, live radio/television broadcasts, computer internet access, card and board games that can be played provided they do not alter the primary focus on food and they can be played while the patrons are seated at their tables. This type of endorsement does not permit dancing.

The hours of liquor service are Saturday to Sunday, 11:00am to 12:00am. On November 7, 2004 at 12:35am, two liquor inspectors entered the establishment. There was a three piece band playing, and approximately ten patrons were dancing. Other patrons were seated and were consuming liquor. There were numerous full bottles of liquor on patron tables.

The licensee said that everyone was finishing up. The inspector remarked that this did not appear to be the case given the number of full bottles of liquor on the tables.

Shortly thereafter the music stopped and the band started to put their instruments away.

The liquor inspector instructed the licensee to clear the liquor from the tables.

Patrons began to pay and leave.

The inspector reviewed the licensee's receipts for the evening and concluded that three meals had been sold that evening.

The licensee was given contravention notice #B008252, and the inspectors departed at 12:52am.

Licensee's Response

The licensee has provided no information to refute what the branch alleges took place.

Decision

I find that, based on the information contained in the NOEA, and absent any response from the licensee, that the alleged contraventions are proven. I am satisfied that the licensee was given ample opportunity to make a submission in reply to the allegations, but chose not to do so.

Having found that the contraventions are proven, section 20(2) of the *Act* gives me the 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 a monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 4 of the *Regulation*.

The history for this license contains a record of a proven March 27, 2004, contravention of section 44(1)(b) of the *Act*. Therefore, the November 7, 2004, contravention of section 44(1)(b) of the *Act* is considered a second contravention for the purposes of determining the penalty. For second contraventions of this nature, item 25 of Schedule 4 of the *Liquor Control and Licensing Regulations* provides for a licence suspension of 10-14 days. The branch has recommended a ten (10) day suspension as the appropriate enforcement action.

The history for this license also contains a record of contravention notice #B04470 issued for a contravention of section 50 of the *Act* allegedly occurring on March 27, 2004. The branch's records indicate that on that occasion, patrons were dancing, although the patron non-participation endorsement did not permit this. Although the branch chose not to pursue that contravention and as such it remains unproven, I consider it indicative of the type of issues that have been brought to the licensee's attention by way of contravention notices or compliance meetings. Such evidence indicates that the branch has been communicating with the licensee in an attempt to achieve voluntary compliance.

I find that the enforcement action recommended in the NOEA for each contravention is appropriate.

Order

Therefore, pursuant to section 20(2) of the *Act*, I order

- 1) A ten (10) day suspension of liquor licence #300454, for the November 7, 2004, contravention of section 50 of the *Act*. The suspension will take effect on the same day of the week as the day on which the contravention was committed and the suspension must continue on each succeeding business day until the license has been suspended for ten (10) consecutive business days. "Business day" means a day on which the licensee's establishment would normally be open for business (s. 54(1) of the *Regulation*).

Given that the establishment is currently not open for business, the suspension will commence once the establishment has operated for at least thirty (30) calendar days. The suspension must be served before licence #300454 can be transferred.

- 2) For the contravention of section 44(1)(b) of the Regulations on November 7, 2004, I order a monetary penalty of one thousand (\$1,000.00) dollars to be paid no later than **March 31, 2005**.

Yours truly,

Mark Tatchell
Deputy General Manager
Compliance and Enforcement Division
Liquor Control and Licensing Branch

cc: Vancouver City Police Department
Regional Manager, Liquor Control & Licensing Branch
Manager of Licensing, Rebecca Villa-Arce