



June 2, 2005

Yuet Ming Chan
C.Y.M. Restaurant Ltd.
c/o Ming Wah Wonton Noodle House
2773 Barnet Hwy.
Coquitlam, BC V3B 1C2

REGISTERED MAIL

Dear Mr. Yuet Ming Chan:

**Re: C.Y.M. Restaurant Ltd., dba Ming Wah Wonton Noodle House, Coquitlam, BC
"Food Primary" Licence No. 176690 Case # EH05-036**

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 Notice of Enforcement Action ("NOEA") #EH05-036 issued to the above named licensee.

Alleged Contravention and Recommended Penalty

The branch alleges that on February 17, 2005, the licensee contravened Section 43 of the *Liquor Control and Licensing Regulation* by failing to have at least one person on duty that has the licensee level certificate for the *Serving it Right Responsible Beverage Service Program*. The recommended enforcement action is a one (1) day suspension of the liquor licence.

Background

On February 18, 2005, the branch issued Contravention Notice B000303 regarding the alleged contravention. A NOEA dated April 14, 2005, 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 April 22, 2005, mailed to the licensed premises, the licensee was informed that it was required to participate in a pre-hearing telephone conference on May 4, 2005, at 1:00 pm. The licensee was given a number to contact if either the date or time were inconvenient. The May 4 pre-hearing conference did not go ahead because the registrar was unable to reach the licensee at the time of the pre-hearing conference. The woman answering the phone took a message, but the licensee has not contacted the branch to explain its failure to participate in the pre-hearing conference.

**Ministry of Public Safety
and Solicitor General**

Liquor Control and
Licensing Branch

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On May 9, 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 its lack of participation in the pre-hearing conference, a decision regarding the alleged contravention would be made without an enforcement hearing. The letter invited the licensee to provide a written response to the NOEA by May 25, 2005. This letter was sent by registered mail, and was successfully delivered on May 11. The licensee has sent no information to rebut the allegations set out in the NOEA.

Applicable Statutory Provisions

Section 43 of the *Regulation* states as follows:

Beverage service training

43 (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 0-7726-1063-3;
- (b) the training program entitled "Serving It Right: The Responsible Beverage Service Program", Server Manual ISBN 0-7726-1035-5.

...

(8) Subject to subsections (6) and (7) of this section, before allowing a person to manage or serve liquor in a licensed establishment to which section 13 of the Act applies, the licensee must verify that the person has successfully completed a required training program.

(9) A person who claims to have successfully completed a training program must produce his or her certificate of completion when requested to do so by the general manager, an officer of the Liquor Control and Licensing Branch or a peace officer.

Issues

1. Did the licensee contravene Section 43 of the *Regulation* by failing to verify that the people managing and serving liquor in the licensed establishment had successfully completed a required training program?
2. If so, what penalty, if any, is warranted?

Particulars of Allegation

The branch's file for the establishment indicates that on June 5, 2001, the licensee met with a liquor inspector and signed an acknowledgement of the terms and conditions of the licence, which include the requirements for *Serving It Right: The Responsible Beverage Service Program* training.

A letter dated June 20, 2001, was sent by the branch to the licensee providing him, once again, with information about how to obtain the required training.

The licensee has been sent the following contravention notices for failure to comply with the RBS requirements:

1. B004233 (May 21, 2003)
2. B00255494 (December 9, 2003)
3. B002679 (January 19, 2004)
4. B002452 (July 20, 2004)

The branch chose not to pursue enforcement action for these incidents.

On November 27, December 15, 2003, and again on January 16, 2004, the licensee failed to attend a required branch information session that included information about the requirement for RBS certification.

On January 19, 2004, during an inspection of the licensed premises, the licensee committed to completing the RBS requirements by January 31, 2004.

On July 26, 2004, the licensee attended a Compliance Meeting and committed to completing the RBS requirements by August 10, 2004.

Licensee's Response

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

Reasons and Decision

I am satisfied that the information contained in the NOEA is accurate. The licensee was given the opportunity to dispute the allegation and the information contained in the NOEA and has not done so. The licensee was clearly advised that RBS training and certification was required for all of its managers and staff who serve liquor. Moreover, the licensee was given ample opportunity to voluntarily comply with that requirement. Therefore, I find that the licensee contravened Section 43 of the *Liquor Control and Licensing Regulation* by failing to verify that the people managing and serving liquor in the licensed establishment had successfully completed a required training program.

Penalty

Having found that the contravention is 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 a penalty is warranted I am bound to follow the penalty regime set out in Schedule 4 of the *Regulation*.

There is no record of a proven contravention of this type having been committed within the 12 month period preceding of the commission of this contravention. Therefore, this contravention must be considered to be a first contravention for the purposes of determining the penalty.

For contraventions of this nature, item 23 of Schedule 4 of the *Regulation* provides for either a licence suspension of 1-3 days or a monetary penalty of \$1000-\$3000 for a first contravention. The branch has recommended a one (1) day suspension as the appropriate enforcement action.

The licensee's failure to voluntarily comply warrants the imposition of a penalty, and I find that a one (1) day suspension of the liquor license is appropriate.

Order

Pursuant to Section 20 (2) of the *Act*, I order the suspension of Liquor Licence No. 176690 for one (1) business day starting as of the close of business Wednesday, June 29, 2005. A "business day" means a day on which the licensee's establishment would normally be open for business (Section 54(1) of the *Regulation to the Liquor Control and Licensing Act*)

Since I do not know what days the establishment would normally be open as of June 29 2005, I do not know what the "business day" will be. To ensure that this order is effective, I direct that the liquor licence be held by the branch or by the R.C.M. Police Coquitlam Detachment from the close of business Wednesday, June 29, 2005, until the licensee has demonstrated to the branch's satisfaction that the licensed establishment has not served liquor for one (1) full business day. A suspension sign notifying the public shall be placed in a prominent location by a liquor inspector or police officer.

Yours truly,

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

cc: R.C.M. Police Coquitlam Detachment

Liquor Control and Licensing Branch, Surrey Regional Office
Attention: Michael Clark, Regional Manager

Liquor Control and Licensing Branch
Attention: Shahid Noorani, Advocate