



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

Licensee: 500166 B.C. Ltd.
dba Mirage Cabaret
15330 - 102A Avenue
Surrey, BC V3R 2R6

Case: EH05-160

For the Licensee: Kirsten Tonge

For the Branch: Shahid Noorani

Enforcement Hearing Adjudicator: Sheldon M. Seigel

Date of Hearing: March 20, 2006

Place of Hearing: Victoria

Date of Decision: March 27, 2006

INTRODUCTION

The licensee operates an establishment with Liquor Primary Licence No. 176354 in Surrey, British Columbia.

On October 28, 2005, two members of the Surrey R.C.M. Police Detachment conducted a walk through of the establishment from approximately 12:50 to 1:05 a.m.

The Liquor Control and Licensing Branch (the branch) issued a Notice of Enforcement Action as a result.

The licensee admitted to having minors in the establishment but sought a finding of an appropriate penalty less than that proposed by the branch.

ALLEGED CONTRAVENTIONS

The branch alleged that on October 28, 2005, at 1:00 a.m. the licensee contravened Section 35 of the *Act* by allowing minors in the premises.

RELEVANT STATUTORY PROVISIONS

35 A person who holds a licence under this Act or who sells liquor under the *Liquor Distribution Act*, or the person's employee, must not authorize or permit a minor to enter on or to be on premises where liquor is sold or kept for sale except

- (a) if the minor is accompanied by a parent or guardian on premises where liquor is sold exclusively for consumption off the premises,
 - (b) with lawful excuse, or
 - (c) in prescribed circumstances.
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ISSUE

1. Is a penalty warranted and if so, what is the appropriate penalty to be imposed?

EXHIBITS

Exhibit No. 1: Book of Documents (the branch)

Exhibit No. 2: Employee Discipline Letters (2), dated October 28, 2005

EVIDENCE

The branch called a compliance and enforcement officer (C&E officer). She testified as follows:

- She has been an inspector for the branch responsible for establishments in Surrey for five years.
 - She is very familiar with the licensee and its operation.
 - The Mirage is one of the busier nightclubs in the area. It has been in operation continuously since 1997.
 - She is the author of the relevant Contravention Notice.
 - Before making a recommendation of penalty, she considered the history of the establishment and the relationship of the licensee to the branch.
 - She recommended a \$1,000 monetary penalty for this contravention and submitted her recommendation to her regional manager in due course.
 - Her regional manager approved her recommendation and forwarded it on to the deputy general manager of compliance and enforcement.
 - The deputy general manager disagreed with the recommended penalty and required that the C&E officer amend the recommended penalty to reflect a one-day suspension.
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- In her experience, it is rare for the deputy general manager to require a recommended penalty different from that recommended by the C&E officer and regional manager.

The C&E officer identified all of the relevant documents in the branch's Book of Documents.

The licensee called the *de facto* owner/operator of the establishment. He testified as follows:

- He is the fourth generation of his family in the alcohol service industry.
 - He and his family are well respected in the industry and in the community.
 - He is well known for being anti-gang and anti-drug, and he keeps his establishment clean of such issues.
 - At the time of the contravention, the establishment had a smoking area outside of the front door.
 - The door staff was supposed to monitor those going out to smoke and returning.
 - Patrons regularly attempted to walk out with drinks but were advised that it was not permitted.
 - On the occasion in question, the door staff saw two girls in the smoking area with drinks and thought they had stopped outside to smoke.
 - The door staff advised the girls that they had to get back in with their drinks.
 - On video examination, it was clear that the door staff were not watching the smoking area as required. It was also apparent that the two girls had not been inside the establishment, nor had they purchased their drinks there.
 - The girls were not asked for identification as is required of the door staff.
 - He disciplined both attending doormen and demoted them for lack of diligence.
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- He changed the location of the smoking area as a result of the contravention.
- There has been no similar problem since the changes were effected.
- The minors were 18 years of age.
- The policy of the establishment is that everyone is supposed to produce identification and have it "swiped" into the system upon entering the establishment. This is to occur regardless of age or appearance.

SUBMISSIONS

The branch submitted that a one-day suspension is appropriate. There were two minors involved and accordingly, there could have been two Contravention Notices issued. Accordingly, some leniency has already been shown. The licensee has had previous contraventions for other public safety issues in the past.

Two minor females were permitted entry by carrying drinks inside, drinks, which apparently they had brought from home. That action may have duped the doormen, but should not exonerate the licensee from responsibility for failing to diligently monitor entrance to the establishment.

The establishment is a large and busy one. Imposing only a small monetary penalty would be insufficient to establish the importance of compliance with the licensee's obligations to protect the public.

The licensee submitted that it has been in business for ten years, and the active management of the establishment has been in the industry for 35 years. The establishment has no history of problems with minors. No warnings or Contravention Notices have been issued to it in the past five years. There has been no enforcement history in past ten years for related issues. The licensee has a policy of cooperation with C&E officers. The branch knows that the

licensee takes branch issues very seriously. It is a proactive licensee. As a result of the Contravention Notice, the licensee took disciplinary action against the employees involved and attended the recommended branch Compliance Meeting. The licensee acknowledged its mistake and immediately made changes to prevent a further occurrence and to ensure voluntary compliance in the future.

ANALYSIS AND DECISION

This contravention occurred as the result of a sophisticated and premeditated plan by two minors to gain access to the establishment. While the licensee has an obligation to deny entry to minors, the extraordinary efforts used in this case to thwart such designs should be considered in determining the penalty to be assessed.

I note that there was no indication that the minors were ever served liquor in the establishment, nor as to how long they had been in the establishment before being discovered. I note also that the minors were 18 years of age.

The licensee took full responsibility for the contravention, mounted no defence of due diligence, and did not ask for a finding that no penalty be imposed. Rather, the licensee accepted accountability, made changes to the environment to address the flaw in its system, and sought the penalty originally recommended by the C&E officer and confirmed by the regional manager.

The C&E officer, the Branch employee most familiar with the licensed premises and its operation recommended a \$1,000 fine. The regional manager approved the recommendation.

The licensee's counsel argued that the deputy general manager has no authority specified in the *Compliance and Enforcement Policy and Procedures Manual* to

replace a penalty recommended in accordance with branch policy. I disagree. The general manager and her delegates are empowered by legislation with the enforcement of the relevant statute and regulation, and imposition of penalties (in her discretion) for contraventions. The deputy general manager is her delegate. The deputy general manager therefore has authority to recommend a penalty

It is not the authority of so doing, but the administrative propriety of the action- if indeed that action is contrary to established policy that may be questioned. I find that an examination of the administrative propriety of the recommendation is not required in order to adjudicate this matter.

Whether the inspiration for the recommended penalty originated with the C&E officer, or an executive member of the branch, it is a penalty recommended by the branch. As adjudicator, I have authority to assess a penalty if I believe it is warranted. Further, I am obligated to determine what penalty is appropriate in the circumstances. The *Regulation* contains minimum penalties for contraventions that are found to have occurred, and my discretion in accordance with the *Regulation* is not fettered by the internal source of the recommendation.

I find that a contravention of Section 35 of the *Act* has been proven, as agreed by the licensee.

PENALTY

Pursuant to Section 20(2) of the *Liquor Control and Licensing Act*, having found that the licensee has contravened the *Act*, the *Regulation* and/or the terms and conditions of the licence, I have 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;
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- 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 minimums set out in Schedule 4 of the *Regulation*.

The branch recommended a one-day suspension for the contravention relating to this enforcement action.

The C&E officer testified for the branch that the establishment has no history of contravention for minors in the premises, and has historically been cooperative and proactive in complying with the wishes of the branch.

I find that the licensee has accepted accountability for the contravention and has taken all actions of the branch seriously. The evidence discloses a proactive approach to compliance. I find that this licensee does not require anything more than a minimum penalty to be assessed in order to obtain voluntary compliance with the *Act* and the *Regulation*.

The licensee expressed its preference for a monetary penalty. It indicated that the Contravention Notice itself was enough to inspire a wholesale change in the establishment's smoking area in order to prevent similar events from occurring in the future. The changes were effected and the employees were sanctioned.

The licensee also submitted that its history and reputation in the industry is positive and well known. I have no evidence to dispute the licensee's history as submitted. I also accept the branch's submissions that allowing minors to be in a

licensed establishment is a serious offence, which potentially involves significant public safety issues.

The range of penalty for a first contravention of Section 35 of the *Act* in accordance with Schedule 4 of the *Regulation* is one (1) to three (3) days suspension and/or a monetary penalty of \$1,000-\$3,000.

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

ORDER

Pursuant to Section 20(2) of the *Liquor Control and Licensing Act*, I order the licensee to pay a monetary penalty in the amount of one thousand dollars (\$1,000) relating to Liquor Primary Licence No. 176354 relating to Notice of Enforcement Action EH05-160. The monetary penalty must be paid no later than the close of business on Tuesday, April 18, 2006.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: March 27, 2006

cc: R.C.M.Police Surrey Detachment

Liquor Control and Licensing Branch, Surrey Regional office
Attn: Mike Clark, Regional Manager

Liquor Control and Licensing Branch, Surrey Regional office
Attn: Shahid Noorani, Branch Advocate
