



July 24, 2006

REGISTERED MAIL

Wet Restaurant and Lounge Inc.
165-8460 Alexandra Road
Richmond BC V6X 3L4

Dear Licensee:

Re: Wet Restaurant and Lounge Inc., dba Wet Restaurant, Richmond BC
Food Primary Licence 300898 Case #EH06-059

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* (the *Act*) regarding Notice of Enforcement Action EH06-059.

Alleged Contravention and Proposed Penalty

The branch alleges that on April 9, 2006, the licensee contravened section 44 (1)(b) of the *Liquor Control and Licensing Regulation* (the *Regulation*) by failing to ensure that liquor is taken from patrons within 1/2 hour after the time stated on the licence for the hours of liquor service. The proposed penalty is a twenty (20) day suspension of the liquor licence (item 25, Schedule 4 of the *Regulation*).

Background

The branch's records indicate that Vincent Chan and Eugene Ng are the shareholders and directors of Wet Restaurant and Lounge Inc. The branch has received no change request from the licensee regarding its share structure or directorship, nor has the licensee informed the branch of any change in its contact information.

The Notice of Enforcement Action, dated May 15, 2006, was sent by the compliance and enforcement officer to the restaurant.

In a letter dated May 23, 2006, mailed to Vincent Chan and Eugene Ng at the establishment, the branch informed the licensee that there would be a pre-hearing telephone conference on June 16. The letter informed the licensee that should it fail to participate in the pre-hearing conference, the general manager may make a decision without conducting an enforcement hearing.

**Ministry of Public Safety
and Solicitor General**

Liquor Control and
Licensing Branch

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The pre-hearing conference did not proceed because the licensee failed to participate. The branch registrar's attempts to reach Vincent Chan and/or Eugene Ng at the establishment were unsuccessful. She reached Mr. Ng at his home number, and he informed her that he was no longer involved in the establishment and was in the process of selling his shares in the corporate licensee. He gave her Vincent Chan's cell phone number. The outgoing message for that cell indicated that the number was unavailable. There was no option to leave a message.

On June 22, 2006, the branch registrar sent the licensee a registered letter advising 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 which was received by Vincent Chan on June 27, invited the licensee to provide a written response to the Notice of Enforcement Action prior to a decision being made. The licensee was informed that submissions were to be received by no later than July 7, 2006, and that any submissions received after that date will not be considered.

On July 10, Vincent Chan left a telephone message for the branch registrar. The number was same cell phone number as Eugene Ng provided on July 15. On five occasions, the registrar phoned the number provided, and each time the outgoing message indicated that the customer was unavailable. Once again, there was no option to leave a message.

To date, no submission has been received from the licensee.

Applicable Statutory Provisions

Section 44 of the *Regulation*

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).

Section 20 of the *Act*

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 regulations or the licensee's failure to comply with a term or condition of the licence;

...

(2) If the general manager has the right under subsection (1) to take action against a licensee, the general manager may do any one or more of the following, with or without a hearing:

...

Issues

1. Did the licensee contravene section 44(1)(b) of the *Regulation*?
2. If so, what penalty, if any, is warranted?

Particulars of Allegation

The hours of liquor sale permitted for food primary license #300898 are 11:30am to 12:00midnight, Monday through Sunday.

The particulars of the alleged contravention are contained in the Notice of Enforcement Action.

The licensee has been provided no information to refute the facts alleged by the branch, despite being given the opportunity to do so.

Decision

I am satisfied that the information contained in the Notice of Enforcement Action is accurate. I find, based on that information, and absent any reply from the licensee, that on April 9, 2006, the licensee contravened Section 44(1)(b) of the *Regulation*.

Penalty

Having found that the contravention is proven, section 20(2) of the *Act* gives me the discretion to do any one or more of the following:

- Impose a suspension of the liquor license for a period of time;
- Cancel the liquor licence;
- Impose terms and conditions on the license or rescind or amend existing terms and conditions;
- Impose a monetary penalty;
- Order the licensee to transfer the 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*.

I have reviewed the branch's records for this licence. On April 7, 2004, the licensee attended a branch food primary education session and was granted this licence on April 15, 2004. Twice in 2005, the licensee signed waivers for a contravention of section 44(1)(b) of the *Regulation*. Once for a contravention that took place on June 4 (EH05-082) resulting in a four day suspension and then for a contravention that took place on August 26 (EH05-122) resulting in a ten day suspension.

In addition to the above proven contraventions, I note that on October 9, 2004, and again on January 9, 2005, the licensee is alleged to have contravened section 44(1)(b) of the *Regulation*. A compliance meeting was held with the licensee after the October 2004 incident. The branch did not pursue enforcement action for these two incidents.

In light of the two previously admitted identical contraventions (EH05-082 and EH05-122), the branch is treating the April 9, 2006, contravention as a subsequent contravention. According to item 25 of Schedule 4, the penalty range for a subsequent contravention of this type is an eighteen (18) to twenty (20) day suspension of the liquor license and/or a \$5000 to \$7000 monetary penalty. The compliance and enforcement officer recommends a twenty (20) day suspension as appropriate given that lesser suspensions have failed to bring the licensee into voluntary compliance.

The branch's primary goal in bringing enforcement action is achieving voluntary compliance. Some factors that are considered in determining what penalty should be imposed are whether there is a past history of warnings by the branch and/or the police, the seriousness of the contravention, the threat to the public safety and the well being of the community.

Having considered all the information available to me, including the compliance history for this licence, I find that the imposition of a penalty to ensure voluntary compliance in the future is required. I have also considered whether the circumstances warrant going above the minimum of the range for this contravention. I find that there is reason to impose the maximum suspension because the licensee has failed to come into voluntary compliance despite previous suspensions and given the repeated nature of this contravention.

Order

Pursuant to Section 20(2) of the *Act*, I order a suspension of food primary licence #300898 for a period of twenty (20) days to commence at the close of business on Friday, August 11, 2006, and to continue on 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*).

To ensure this order is effective, I direct that food primary licence #300898 be held by the branch or the R.C.M. Police Richmond Detachment from the close of business on Friday, August 11, 2006, until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

Yours truly,

Karen Ayers
A/Deputy General Manager
Compliance and Enforcement Division
Liquor Control and Licensing Branch

cc: R.C.M. Police Richmond Detachment

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