



Ministry of Public Safety
and Solicitor General

May 3, 2007

REGISTERED MAIL

Dear Licensee:

Re: Hoa Bien Restaurant, 1613 Nanaimo Street, Vancouver, BC
Food Primary Licence No. 301110 Cases # EH07-036 and EH07-038

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 Notices of Enforcement Action ("NOEAs") EH07-036 and EH07-038 issued to the above named licensee.

Alleged Contraventions

The Branch alleges the following:

EH07-036

On January 26, 2007, the licensee contravened section 50 of the *Act* by permitting entertainment in the establishment that is contrary to the terms and conditions of the licence. The proposed penalty is a \$1000 penalty (item 35, Schedule 4, *Liquor Control and Licensing Regulation* ("*Regulation*").

EH07-038

On February 11, 2007, the licensee contravened section 44 (1)(b) of the *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 proposed penalty is a \$5000 penalty (item 25, Schedule 4, of the *Regulation*).

Background

Shortly after each event, the liquor inspector hand delivered a contravention notice to the licensee and spoke with him about the allegations. Then on March 7, the branch followed up by mailing the two NOEAs to the establishment to inform the licensee that the general manager was going to be taking further enforcement action.

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Liquor Control and
Licensing Branch

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In a letter dated March 23, 2007, mailed to the establishment, the branch informed the licensee that there would be a pre-hearing telephone conference on April 2. The letter contained a copy of both NOEAs. The letter advised the licensee that should he fail to participate in the prehearing conference, the general manager may make a decision without conducting an enforcement hearing. The pre-hearing conference could not proceed because the licensee failed to participate. The branch registrar tried twice to reach the licensee by telephone but was unsuccessful.

On April 5, the branch registrar sent the licensee a registered letter (including another copy of the NOEAs) advising that due to his failure to participate in the pre-hearing conference, a decision regarding the alleged contraventions would be made without an oral hearing. The letter invited the licensee to provide a written response by April 13 if he had anything to add before a decision was made. Canada Post records indicate that this registered letter was received, and signed for, by the licensee on April 15.

To date, the licensee has not contacted the branch to explain his failure to participate in the pre-hearing conference, to respond to the allegations, or to request additional time to do so.

Applicable Statutory Provisions

Section 50 of the *Act*

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.

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).

Issues

1. Whether the licensee contravened section 50 of the *Act* and section 44 (1)(b) of the *Regulation*?
2. If so, what enforcement action, if any, is appropriate?

Particulars of Allegation

The hours of liquor sale permitted for Food Primary Licence No. 301110 are 11:00 a.m. to midnight, Monday through Sunday, and the terms and conditions of the licence require that all liquor in bottles or glasses must be removed by 12:30 a.m. Further, the terms and conditions of the licence permit patron non-participation entertainment only.

The full particulars of the alleged contravention are contained in the NOEAs. In summary, on January 26, 2007, at approximately 11:20 p.m., three liquor inspectors entered the

establishment and observed karaoke style entertainment taking place. Further, on February 11, 2007, at approximately 1:08 a.m., the police were dispatched to a disturbance call at the establishment. When they arrived, they observed twelve patrons at a table that contained only liquor. The licensee explained that the cook had left at midnight so food was no longer being served.

Licensee's Response

The licensee has provided no information to dispute what the Branch alleges took place. I have reviewed the branch's means of communicating these allegations to the licensee. I am satisfied that the licensee is aware of the branch's allegations, has had the opportunity to respond and has chosen not to do so.

Decision

I find, based on the information before me which is contained in the NOEAs, and absent any response from the licensee, that on January 26, 2007, the licensee contravened section 50 of the *Act*, and that on February 11, 2007, the licensee contravened section 44 (1)(b) of the *Regulation*.

Penalty

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 any penalty is discretionary. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound to follow the minimum set out in Schedule 4 of the *Regulation*. I am not bound by the maximum and may impose higher penalties when it is in the public interest to do so. I am not bound to order the penalty proposed in the NOEA.

These contraventions are first contraventions for the purposes of the penalty schedule. For each contravention, the branch liquor inspector has recommended the minimum monetary penalty found in the penalty schedule.

I have reviewed the branch's records for the licence. The licensee has held this licence since May 2006, and the branch's records reveal the following information about non-compliance for which the branch did not pursue enforcement action:

1. February 11, 2007 - Allow to consume beyond 1/2 hour after liquor service hours, Reg. s. 44(3) - Contravention No. B006376.
2. February 11, 2007 - Operate contrary to primary purpose, s. 20(1)(d), Reg. s. 11(1) - Contravention No. B006376.
3. January 26, 2007 - Fail to comply with RBS, Reg. s. 43 - Contravention No. B006372.
4. June 10, 2006 - Prohibited entertainment, s. 50 - Contravention No. B005220.
5. May 29, 2006 - Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b) - Contravention No. B005217.

6. May 29, 2006 - Licensee or employee consume liquor in premises, Reg. s. 42(3) - Contravention No. B005217.

7. May 29, 2006 - Allow to consume beyond 1/2 hour after liquor service hours, Reg. s. 44(3) - Contravention No. B005217.
8. May 16, 2006 - Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b) - Contravention No B005218.
9. May 16, 2006 - Permit intoxicated person to remain, s. 43(2)(b) - Contravention No. B005218.
10. May 16, 2006 - Licensee or employee consume liquor in premises, Reg. s. 42(3) - Contravention No. B005218.

In addition, on July 11, 2006, the liquor inspector held a compliance meeting with the licensee related to its failure to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1).

I have considered the licensee's recent actions, as well as their past compliance history, and I find that a \$1000 penalty for the contravention of Section 50 of the *Act* and a \$5000 penalty for the contravention of section 44 (1)(b) of the *Regulation* are appropriate.

Order

Pursuant to s. 20(2) of the *Act*, I order the licensee to pay a monetary penalty of Six Thousand Dollars (\$6,000) relating to Food Primary Licence No. 301110. The penalty must be paid by no later than the close of business on June 2, 2007.

Yours truly,

[ORIGINAL SIGNED]

Gary Barker
A/Deputy General Manager
Compliance and Enforcement Division
Liquor Control and Licensing Branch

cc: Vancouver Police Department
Donna Lister, A/Regional Manager, Vancouver Office
Shahid Noorani, Branch Advocate