



April 21, 2008

Roberto E. Anazco Sanchez
c/o Mister Salsa Dine & Dance Place
206 – 1483 Douglas Street
Victoria BC V8W 3K4

REGISTERED MAIL

Dear Mr. Sanchez:

**Re: Roberto Anazco Sanchez, dba Mister Salsa Dine & Dance Place, Victoria BC
Food Primary Licence No. 302373 Cases: EH07-160 and EH08-008**

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 EH07-160 and EH08-008 (the "NOEAs") issued to the above named licensee.

EH07-160

The Branch alleges that on October 31, 2007, the licensee contravened section 20 of the *Act* and section 11 of the *Liquor Control and Licensing Regulation* (the "Regulation") by operating its establishment in a manner that was contrary to the primary purpose of the licence. The proposed penalty is \$10,000 (item 1 of Schedule 4 of the *Regulation*).

EH08-008

The Branch alleges that on January 3, 2008, the licensee contravened section 73 of the *Act* by failing to promptly produce a document or record requested by the liquor inspector. The proposed penalty is \$7500 (item 31 of Schedule 4 of the *Regulation*).

Issues

1. Did the licensee contravene section 20 of the *Act* and section 11 of the *Regulation* and if so, what enforcement action, if any is warranted?
2. Did the licensee contravene section 73 of the *Act* and if so, what enforcement action, if any is warranted?

Applicable Statutory Provisions

**Ministry of Public Safety
and Solicitor General**

Liquor Control and
Licensing Branch

Mailing Address:
PO Box 9292 Stn Prov Govt
Victoria BC V8W 9J8

Telephone: 250 387-1254
Facsimile: 250 387-9184

Location:
Second Floor, 1019 Wharf Street
Victoria BC

[http:// www.pssg.gov.bc.ca/lclb](http://www.pssg.gov.bc.ca/lclb)

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;

Section 73 of the Act

73 (1) To obtain information respecting the administration or enforcement of this Act or the regulations, the general manager, a person designated by the general manager or a person within a class of persons that is designated by the general manager may

(a) require the licensee to produce any prescribed document relating to the operation of the business licensed under this Act, and ...

(2) Without limiting any other provision of this section, a licensee must

(a) promptly produce and submit for inspection any record, thing or sample requested by a person acting under the authority of this section, and

Section 11 of the Regulation

11 (2) The following terms and conditions apply to a food primary licence:

(a) minors are allowed in the establishment;

(b) liquor must not be served unless the establishment is open for service of a varied selection of food items, including both appetizers and main courses, or their equivalent;

(c) subject to limitation by the general manager, hours of liquor service must start no earlier than 9:00 a.m. and end no later than 4:00 a.m. the next day.

(3) The general manager may consider, in determining whether the primary purpose of the business carried on in the establishment is or will be the service of food during all hours of its operation, any or all of the following:

(a) kitchen equipment;

(b) furnishings and lighting;

(c) menu;

(d) type and hours of entertainment and games offered by the licensee;

(e) advertising;

(f) hours of operation;

(g) financial records;

(h) the ratio of receipts from food sales to receipts from liquor sales in the establishment;

(i) any other relevant consideration that may assist in the determination.

Background

The licensee operates Mister Salsa Dine and Dance Palace under food primary licence 302373 and is licensed to sell liquor Monday to Sunday from 11:00 a.m. to midnight. It has a licensed capacity of 55 persons and patron participation entertainment other than games is permitted. The licence is subject to terms and conditions that include the terms and conditions contained in the publication "A Guide for Liquor Licensees in British Columbia."

The licence was issued to the licensee on February 9, 2007. The branch's file for the establishment reveals that on January 9, 2007, the licensee met with a liquor inspector and said that he understood, and would abide by, the terms and conditions of his licence.

With regard to the circumstances associated with this decision, on March 3, 2008 the branch sent a letter to the licensee's home address informing him that a pre-hearing conference was scheduled for March 11, 2008 to discuss the two aforementioned NOEAs. The licensee did not participate in the pre-hearing conference.

On March 13, 2008 the licensee responded to the registrar's telephone messages and explained that he did not know why he had not received the letter informing him of the pre-hearing conference because it was addressed to his correct home address. He was unable to explain why it had been returned to the branch marked "return, not here." He agreed to attend a pre-hearing conference on March 14, 2008. He said that he had not received the two NOEAs, and he provided two email addresses so that the registrar could email the documents to him.

The licensee participated in the pre-hearing conference on March 14, 2008. He said that he had not received the registrar's email containing the NOEAs because he was having problems with his computer. The allegations and proposed penalties were summarized for him by the branch advocate. The licensee confirmed that the branch had his correct home and business contact information. The licensee said that he would provide the name and number of his lawyer by the end of the following week so that his or her availability could be taken into account when scheduling the enforcement hearing.

A March 19, 2008 letter summarizing the pre-hearing conference was sent to the licensee's business and home address, along with copies of the two NOEAs and their attachments. The letter sent to his home was returned, marked "return, not here." The letter sent to his establishment appears to have been successfully received as it was not returned to the branch. That letter informed the licensee that if he disagreed with the summary, he must contact the registrar. He has not done so to date.

On March 21, 2008 the licensee left a voice message for the registrar saying that he had left telephone messages for two different lawyers telling them to call the branch on his behalf. The registrar was not contacted by either lawyer.

On April 1, 2008 when the licensee failed to respond to multiple telephone messages and emails, the registrar sent a registered letter to his establishment informing him that the hearing was set for April 25, 2008. According to Canada Post's records, the licensee refused to accept service of that letter.

On April 1, 2008, two branch inspectors visited the establishment and found that the door was locked. They could see that the surveillance camera, TVs, turntable, computers, beer fridge, furniture, liquor and glasses had all been removed, and there were papers strewn on the floor. The inspectors were unable to reach the licensee, and they received information that he had plans to leave Canada. On April 3, 2008 another liquor inspector noted that there was a sign on the establishment door stating that the establishment was closed.

In light of the repeated efforts to contact the licensee by phone, by registered mail and in person as described above, the registrar concluded that the licensee would not attend the April 25, 2008, hearing. The hearing was cancelled and the licensee was informed of this change by way of an April 4, 2008 registered letter sent to his home and business addresses. He was given the opportunity to provide a written submission by April 14, 2008. As of the date of this decision, the licensee has neither claimed the registered letters from the post office nor contacted the branch.

Summary of Evidence

Full particulars of the alleged contraventions are contained in the NOEAs. In summary, on October 31, 2007, at approximately 2325 hours, two liquor inspectors entered the establishment and observed that the door was propped open. There were approximately 20 patrons inside, some dancing to loud music, and the remainder of patrons drinking mainly bottled beer. There were numerous empty and partially empty glasses, beer bottles and liquor bottles were on the bar counter and tables. The inspectors saw no menus, dishes, utensils or food. The only staff person was a doorman who was collecting a cover charge. An inspection of the kitchen area revealed a large stack of dirty dishes and glasses in the sink, and it did not appear that the kitchen had been in operation for some time. Upon exiting the establishment, the inspectors met the licensee. He denied that the establishment was operating as a liquor primary and said that they had been serving a varied menu.

A short time later at approximately 0013 hours on November 1, 2007, two Victoria City police officers entered the establishment in response to a noise complaint. When they arrived, they could hear the music from the sidewalk. The music was so loud they had to significantly raise their voices, and eventually one of the officers had to turn the music off. They observed patrons dancing and others standing around but not using the tables. They observed numerous beer and tequila bottles on the tables and ledges. In the kitchen one of the officers noted that the deep fryer was off and the oil was cold, there were dirty dishes piled all over, and there were no clear food preparation surfaces or evidence of food or food preparation. The police learned that the only staff member present was the licensee.

On November 5, 2007, a branch liquor inspector sent, via registered mail, contravention notice B013027 related to the above incident and a letter requesting documentation from the licensee. The material was returned by the post office as unclaimed. On December 7, 2007, the liquor inspector personally gave the licensee the documents.

On December 17, 2007, the licensee left a telephone message for the inspector requesting an extension in time to provide the documents requested. The liquor inspector spoke to the licensee and provided a 10 day extension. The licensee agreed to provide the documents by no later than January 3, 2008. On January 3, 2008, the liquor inspector received a telephone message from someone calling on behalf of the licensee stating that the documents were not ready.

On January 3, 2008, the inspector personally gave the licensee contravention notice B013029 for failure to produce the documents requested.

On January 24, 2008, the branch issued the two NOEAs. They were addressed to the licensee's home address.

Licensee's Response

At the pre-hearing conference, the licensee said that he disputed both allegations. He did not provide detail of the nature of his disagreement with the operating contrary to primary purpose allegation, but he did explain that his paperwork is not organized and that is why he was unable to produce the documents when requested. He added that he is being unfairly targeted by the police

and other provincial and municipal agencies. The licensee has provided no other information to refute what the Branch alleges took place.

Analysis and Decision

Based on the above information about the branch's attempts to communicate with the licensee, I am satisfied that he has been provided adequate notice of the allegations contained in the NOEAs, an opportunity to respond and notice of the consequences of failing to do so. It appears that he has purposively been avoiding communicating with the branch regarding these enforcement matters. I conclude that the licensee has chosen not to provide a response other than what he said at the pre-hearing conference. I have relied upon the summary of his response at the pre-hearing conference which is contained in the registrar's March 19, 2008 letter. I conclude that this letter was successfully delivered to the licensee at his establishment address, and that the summary of his response is accurate, given that he has not responded to indicate otherwise.

I also have no reason to believe that the evidence provided by both the police and liquor inspectors in respect of these matters as described above is inaccurate or not truthful.

Based on the information contained in the NOEAs and their attachments, and absent any additional information provided by the licensee, I find that on October 31, 2007, the licensee contravened section 20 of the *Act* and section 11 of the *Regulation* and that on January 3, 2008, the licensee contravened section 73 of the *Act*.

Penalty

Having found that each 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 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 NOEAs.

The branch's primary goal in bringing enforcement action and imposing penalties is achieving voluntary compliance. Among the factors that are considered in determining the appropriate penalty is 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.

I have reviewed the branch's records for the licence and for the licensee. There is no record of prior proven contraventions or enforcement actions of the same type for this licensee or this establishment within the year preceding this incident.

The range of penalties for a first contravention of section 20(1)(d) of the *Act* in accordance with item 1 of Schedule 4 of the *Regulation* is a 10-15 day suspension and/or \$7,500-\$10,000. The differences between a food primary licence and a liquor primary licence in terms of the licensing requirements are significant. The terms and conditions of a liquor primary licence emphasize public safety and good relationships with the community in which the establishment is located. For this reason, local government or First Nations input is an important aspect of the liquor primary licensing process. Their input is sought during the application process particularly on issues relating to the establishment's location, size, impact on the neighbourhood and surrounding

community, information about demographics, and the views of nearby residents. The licensee circumvented this process and showed disregard for the community when he operated the establishment as though it were a liquor primary establishment. I find that in the circumstances a penalty is warranted to ensure voluntary compliance in the future, and I find the proposed penalty of \$10,000 is appropriate.

The range of penalties for a first contravention of section 73 of the Act, in accordance with item 31 of Schedule 4 of the *Regulation* is also a 10-15 day suspension and/or \$7,500-\$10,000. The failure to produce documents and records seriously undermines the relationship between the branch and the licensee and impairs the branch's ability to identify and address contraventions and protect the public interest. I find that in the circumstances a penalty is warranted to ensure voluntary compliance in the future, and I find the proposed penalty of \$7500 is appropriate.

Order

Pursuant to Section 20(2) of the *Act*, I order the licensee to pay a monetary penalty in the amount of seventeen thousand and five hundred dollars (\$17,500) relating to food primary licence #302373. The monetary penalty must be paid no later than the close of business on May 22, 2008.

Yours truly,

Original signed by

Jaclynn Hunter
Deputy General Manager
Compliance and Enforcement Division
Liquor Control and Licensing Branch

cc: Sgt. Jim Simpson, Victoria City Police

Cheryl Caldwell, Deputy General Manager, Licensing Division

Gary Barker, Regional Manager