



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENCING BRANCH**

IN THE MATTER OF

A hearing pursuant to Section 20 of

The Liquor Control and Licensing Act RSBC c. 267

Licensee:	One More Glassy Ltd., dba Desi Junction Bar and Grill 8821 120 th Street Delta, BC V4C 6R6
Case:	EH08-133
For the Licensee	Jorawar Singh Athwal
For the Branch	Olubode Fagbamiye
Enforcement Hearing Adjudicator	Sheldon M. Seigel
Date of Hearing	March 4, 2009
Place of Hearing	Surrey, B.C.
Date of Decision	March 24, 2009

INTRODUCTION

The Licensee operates an establishment in Surrey under food primary license #301832. The license indicates that liquor may be sold from 11:00 AM to midnight, seven days per week.

The licence is, as are all liquor licences issued in the province, subject to the terms and conditions contained in the publication *Food Primary Licence Terms and Conditions: A Guide for Liquor Licensees in British Columbia* (the *Guide*).

The Branch's allegations and proposed penalty are set out in the Notice of Enforcement Action (NOEA) dated January 12, 2009.

Appearing for the corporate licensee was the primary shareholder and operating executive of the company (Licensee).

THE ALLEGED CONTRAVENTION

The Branch alleges that on November 22, 2008, the licensee contravened section 44(1)(b) of the *Liquor Control and Licensing 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 four (4) day suspension of the liquor licence (item 25 of Schedule 4, *Liquor Control and Licensing Regulation*).

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Regulation

Time

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

Did the Licensee contravene the Regulation as alleged?

If the contravention occurred, is a penalty required under the circumstances of this case, and if so, what penalty is appropriate?

EVIDENCE

The liquor inspector received an anonymous complaint that the Licensee was operating outside of its permitted hours. The inspector arrived at the establishment at 00:45 am on November 22, 2008 (the business day of Friday, November 21, 2008) to conduct a compliance check. On entering, the inspector observed two males on the patron side of the bar and an individual known to be the on-site manager of the establishment on the staff side of the bar. There were mugs of what appeared to be beer in front of each of the three males. The inspector observed the manager to be putting down his mug. The inspector concluded that the three male were in the process of drinking beer and confirmed that the time was beyond one half hour after liquor service should have ended in accordance with the term of the license.

The inspector discussed his observations and conclusions with the on-site manager and issued a contravention notice (CN) identifying the alleged contravention.

SUBMISSIONS

The Branch submits that the contravention occurred as alleged, that the on-site manager knew he was contravening the *Regulation*, and that the public had complained to the Branch about after hours service and other matters. The Branch also submits that failing to clear liquor within the time required has an impact on the public and on other area licensees who may be licensed to serve liquor beyond the time that this Licensee is required to clear liquor.

The Licensee submits that the on-site manager closed the establishment down in the early hours of November 22, 2008 as is customary and relieved three other staff members before allowing two patrons in and serving them after hours. The Licensee says that the manager knew better and was not authorized to so act. The Licensee submits that he acknowledges responsibility for the contravention and believes that his clean record of compliance and full cooperation, coupled with his immediate termination of the on-site manager following the issuance of the CN, demonstrate the appropriateness of waiving a penalty.

The Licensee also submits that the proposed minimum 4 day suspension would provide a considerable financial hardship to an already struggling enterprise.

ANALYSIS AND DECISION

The Licensee does not attack the Inspector's evidence relating to the elements of the contravention. The Inspector provided evidence of the license hours (Exhibit #1, tab 3), the requirements of the Regulation regarding time to clear (Exhibit #1, tab 10), the time of his observations and his observations and conclusions regarding liquor on the counter in front of the patrons and manager.

I find that the contravention occurred as alleged.

I find the on-site manager was in control of the establishment at all relevant times and entrusted with that responsibility by the Licensee. As such, the on-site manager was the controlling mind. The controlling mind was knowingly responsible for the mechanism of the contravention. The Licensee presented only rudimentary evidence of typical staff training and no direct evidence of in house training of the manager. Accordingly I find there is insufficient evidence of diligence on the part of the Licensee to amount to a defence of the alleged contravention.

PENALTY

Pursuant to section 20(2) of the Act, having found that the Licensee has contravened the Act, the Regulations 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
- Impose terms and conditions to a license or rescind or amend existing terms and conditions
- Impose a monetary penalty
- Order a Licensee to transfer a license

Imposing any penalty is discretionary. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound by the minimums set out in Schedule 4 of the *Regulations*. However, I am not bound by the maximums 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 Notice of Enforcement Action.

The terms of the license are fixed and enforceable, and include compliance with the *Act* and *Regulation*. It is the sole responsibility of the Licensee to ensure compliance with these terms while operating the establishment.

While the Branch wishes to have voluntary compliance, it has the mandate to assure compliance through enforcement action if required to do so.

For the purposes of assessing penalty, I must consider past contraventions, proven and alleged, as a whole, and in the context of this enforcement action. The documents disclose no previous compliance history of similar contraventions during the previous twelve months. The contravention is therefore a first contravention.

Schedule 4 of the *Regulation* provides the range of penalty for contraventions of the *Act* and *Regulation*. The specific penalty range for a first contravention of this contraventions is four (4) to seven (7) days suspension, or a monetary penalty of \$5,000-\$7,000.

Typically, the only situation in which no penalty is assessed is when the adjudicator is satisfied that voluntary compliance with the Licensee's obligations will be obtained without a penalty. In this case, I have insufficient evidence that voluntary compliance would be so obtained. The evidence disclosed previous complaints and irregularities in practice that suggest that the Licensee has insufficient control over the operation of the establishment. The Branch is entitled to choose when to act on information regarding contraventions and the inspector certainly acted within his mandate. Therefore I am not persuaded by the Licensee's plea that it should be excused from a penalty for this contravention. As to the nature and extent of the penalty, I find that a suspension is warranted.

I find the appropriate penalty for the contraventions is a four (4) day suspension

ORDER

Pursuant to section 20(2) of the *Act*, I order a suspension of the Food Licence No. 301832 for a period of four (4) days to commence at the close of business on Thursday, April 23, 2009, and to continue 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 *Regulations*). I direct that liquor licence No.301832 be held by the branch or the Delta Police Department from the close of business on Thursday, April 23, 2009 until the Licensee has demonstrated to the Branch's satisfaction that the Licensed establishment has been closed for four (4) days.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: March 24, 2009

cc: Delta Police Department

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

Liquor Control and Licensing Branch, Surrey Regional Office
Attn: Olubode Fagbamiye, Branch Advocate