



October 8, 2010

North America Sea Haven Group Ltd.
c/o Hu Qin Yang
3141 Kingsway
Vancouver, BC V5R 5J9

Dear Licensee:

**Re: North America Sea Haven Group Ltd., dba Chun Xian Ju Restaurant, Vancouver BC
Food Primary No. 303366 Case: EH10-086**

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*, regarding Notice of Enforcement Action #EH10-086 (the "NOEA") issued to the above named licensee.

Alleged Contravention and Recommended Penalty

The Branch alleges on June 26, 2010, the licensee contravened section 44(1)(b) of the *Liquor Control & Licensing Regulation* (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 \$5000 (item 25 of Schedule 4 in the *Regulation*).

Applicable Statutory Provisions

Liquor Control and Licensing Regulation, B.C. Reg. 244/2002

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).

Issue

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

Exhibits

For the purpose of making this decision, I have considered the following information, copies of which have previously been provided to the licensee:

1. The food primary liquor licence #303366.
2. The red lined floor plan for the establishment.
3. The NOEA dated August 24, 2010 (6 pages) and Schedule 1 Details of Contravention (2 pages).
4. Contravention notice #B016342.
5. The licensee's compliance history report (2 pages).
6. Contravention notice #B000585.
7. The "No Enforcement Action Recommended" report for contravention notice #B000585.
8. Compliance meeting report #C002980 dated April 7, 2010.
9. Page 17 of the *Licensee Food-Primary Terms and Conditions Guide*, and section 44 of the *Liquor Control and Licensing Regulation*. (The entire guide and legislation are available online at <http://www.hsd.gov.bc.ca/lclb/resources/index.htm>).
10. The August 17 and September 3, 2010 letters inviting the licensee to the pre-hearing conferences and the fax confirmations that delivery was successful.
11. The branch registrar's September 24, 2010 registered letter inviting the licensee to provide a written submission and the Canada Post record of its delivery attempt.
12. The licensee's October 3, 2010 written submission.

Particulars of Allegation

The licensee operates the Chun Xian Ju Restaurant (Traditional Chinese BBQ House) at 3141 Kingsway Avenue, Vancouver, BC. The licensee holds food primary licence #303366 which allows liquor service from 9:00 a.m. to midnight, seven days per week. The licensed capacity of the establishment is 29 persons. The licence is, as are all liquor licenses issued in the province, subject to the terms and conditions contained in the publication *Guide for Liquor Licensees in British Columbia* (the *Guide*).

The particulars of the alleged contravention are contained in the NOEA.

On June 26, 2010 (the business day of Friday, June 25) at approximately 0205 hours, two liquor inspectors conducted a routine inspection of the Chun Xian Ju Restaurant. They noticed that there were 10 patrons sitting at three separate tables. There were bottles of Yanjing beer on two of the tables and two Kokanee beer bottles on the third table. One of the inspectors observed patrons at one of the tables drinking from the Yanjing beer bottles. They also observed a waitress pour the contents of the Kokanee beer bottles into glasses for patrons and then the patrons consume the beer.

The inspectors identified themselves to the server and asked to speak with the manager. She summoned a man from the kitchen area to speak with them. He advised them that he was not the manager and that the owner was in out of the country. When asked when the establishment stops selling liquor, he replied, "I think two o'clock." During this conversation, the inspectors observed the waitress hurriedly removing the beer from the tables.

Upon request, the waitress provided the inspectors with a print-out of three bills for the patrons who were still in the establishment. The bills showed that liquor purchases were made after the liquor service hours permitted under the licence.

The inspectors advised them that that liquor service must cease and that a contravention notice would be issued the following week.

The inspectors departed at 0230 hours.

On July 7, 2010, the branch mailed contravention notice #B016342 to the licensee. The NOEA, dated August 4, 2010, was subsequently sent to inform the licensee that the general manager was pursuing enforcement action regarding the alleged contravention.

On August 17, the branch faxed the licensee a letter informing it of an August 24 telephone prehearing conference which had been scheduled to discuss the above allegation. The prehearing conference could not proceed because the licensee failed to participate in the teleconference. Later that same day, the licensee attended the branch's Vancouver regional office, but neither the branch advocate nor the inspector were available.

A second telephone prehearing conference was scheduled for September 9. The letter informing the licensee of this second prehearing conference was successfully faxed to the number the branch has on file for the licensee. The second prehearing conference could not proceed because the licensee failed to join the teleconference. A subsequent telephone message left for the licensee by the branch registrar was not returned.

On September 14, 2009, the branch sent a registered letter advising the licensee that due to its failure to participate in the pre-hearing conferences, a decision regarding the alleged contravention and the proposed penalty would be made without an oral hearing. The letter provided the licensee with an opportunity to provide a written submission by September 23. Canada Post's records indicate that delivery of the registered letter was unsuccessful and a notice card was left for the licensee with instructions on how the letter could be picked up. As of the deadline for submissions, the licensee still had not picked up the registered letter from the postal facility.

On September 28, an acquaintance of the licensee contacted the branch registrar to explain that the licensee had not received the information about the second prehearing conference in time. She was advised to encourage the licensee to pick up his registered mail and to let him know that the licensee would be given an extension until October 5 to provide a written submission. The licensee's written submission was received by way of email on October 4.

Licensee's Response

In his October 4 submission, the licensee acknowledges that the contravention occurred. He writes, "We understand that some of our staff violated the liquor serving time rule when I was in China during June 1st to June 28th, and we already fired those staff." The licensee adds that while he accepts a penalty, he does not have \$5000, and that he prefers a four day licence suspension, preferably Monday to Thursday to avoid the weekend when they have more customers and are able to earn more money.

Decision

I have reviewed the branch's means of communicating with the licensee. I note that all correspondence from the branch has been sent to the licensee's mailing address as set out on the face of its liquor licence. This address is also the location of the restaurant. I am satisfied that the licensee is aware of the branch's allegations, and has had the opportunity to provide a submission.

I find, based on the information contained in the NOEA, and absent any response from the licensee other than the licensee's October 4th submission which confirmed that the contravention has occurred, that on the balance of probabilities the alleged contravention of section 44 (1) (b) of the *Regulation* has been proven.

Penalty

Having found that the 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 NOEA.

For contraventions of this nature, item 25 of Schedule 4 of the *Liquor Control and Licensing Regulations* provides for a four to seven day licence suspension and/or a \$5000-\$7000 penalty. The proposed penalty is \$5000.

There is no record of a proven contravention of the licensee having previously committed the same type of contravention. Therefore, this contravention is a first contravention for the purposes of determining penalty.

In his reasons for proposing a \$5000 penalty, the liquor inspector has written in the NOEA that he recommends a monetary penalty because the restaurant is a small one and it appears that the employees will be inordinately blamed by losing pay due to a suspension. He emphasizes that it is the licensee's responsibility to ensure that staff understand all aspects of the restaurant's liquor licence, and that the licensee should bear the responsibility by way of a monetary penalty.

As noted above, the *Regulations* give the general manager the authority to impose a monetary penalty. Under the circumstances, I find that the minimum monetary penalty of \$5000 is necessary to promote future compliance on the part of the licensee. The licensee's statement that it has fired the employee's responsible, and that it would prefer a suspension on those days of the week that would have less of a financial impact do not convince me that other than the recommended minimum monetary penalty would be effective in promoting future compliance.

Order

Pursuant to Section 20 (2) of the *Act*, I order the payment of a Five Thousand Dollar (\$5000) monetary penalty by the licensee to the general manager on or before Friday, November 5, 2010.

Yours truly,

Original signed by

Bruce Edmundson
Deputy General Manager
Compliance and Enforcement Division

cc Vancouver Police Department – Cst. Alex Clark
Liquor Control and Licensing Branch, Vancouver Office
Attn: Donna Lister, Regional Manager
Liquor Control and Licensing Branch, Vancouver Office
Attn: Peter Mior, Branch Advocate