



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENSING BRANCH
IN THE MATTER OF**

A hearing pursuant to Section 20 of

The Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

Licensee:	Champion Pizza Inc. dba Yadi's Eatery 1181 Granville Street Vancouver, BC V6Z 1M1
Case:	EH12-019
For the Licensee:	Yadigar A. Muhammad
For the Branch:	Peter Mior
General Manager's Delegate:	A. Paul Devine
Date of Hearing:	May 24, 2012
Place of Hearing:	Vancouver, BC
Date of Decision:	September 13, 2012

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

Champion Pizza Inc. (“the Licensee”) operates a pizza restaurant on Granville Street in downtown Vancouver under Food Primary Licence number 303772. The Licensee is currently doing business as “Yadi’s Eatery.” Under the terms of the licence, midweek liquor service is to end at 1 a.m.; service on Friday and Saturday is permitted until 2 a.m. Other terms outlined in the licence include:

- the licence is for the sale and consumption of all types of liquor with a primary focus on the service of food;
- the terms and conditions to which this licence is subject include the terms and conditions contained in the publication “A Guide for Liquor Licensees in British Columbia” as that publication is amended from time to time;
- liquor may only be sold, served and consumed within the areas outlined in red on the official plan, unless otherwise endorsed or approved by the LCLB.

The Liquor Control and Licensing Branch (the “Branch”) issued a Notice of Enforcement Action on March 9, 2012 (the “NOEA”). In the NOEA, the Branch alleged that on Thursday, February 9, 2012, the Licensee failed to remove liquor from its patrons within one half hour of liquor service, contrary to section 44(1)(b) of the *Liquor Control and Licensing Regulation* (“*Regulation*”).

The proposed penalty for the alleged contravention was a \$6,000 monetary penalty (item 25 of Schedule 4 of the *Regulation*.) Item 25 of Schedule 4 of the *Regulation* provides a range of penalties for a first contravention of this type consisting of a licence suspension for 4-7 days and/or a monetary penalty of \$5,000 - \$7,000.

The Licensee objected to the proposed enforcement action, and so a hearing was set to deal with the objection. I was appointed as a Delegate of the General Manager for the purpose dealing with this matter.

Mr. Muhammad is the Manager of the restaurant, and was appointed by the principal of the Licensee to act as the Licensee's representative. Mr. Muhammad was not present at the outset of the time scheduled for the start of the hearing. After waiting for 15 minutes, the Branch was directed to call its evidence. Mr. Muhammad attended part way through the evidence of the Branch's first witness, and after I provided a brief summary of the evidence to that point, the testimony continued.

EVIDENCE

Evidence - the Branch

The onus of calling evidence on the balance of probabilities sufficient to support the proposed enforcement action lies with the Branch. To this end, the Branch called two witnesses, Constable A of the Vancouver Police Department, and Liquor Inspector A.

CONSTABLE A

Constable A testified that he attended premises of the Licensee on Granville Street in Vancouver at about 4:15 am on February 9, 2012, in response to a noise complaint. He was working in plainclothes at the time. He found that there was one female employee and five patrons in the restaurant. Two male patrons were drinking bottles of Corona beer. He asked the staff member, who was identified by name, to produce the liquor licence for the restaurant, and on its production, he noted that the restaurant was allowed to sell liquor until 1 a.m. on the night in question.

Constable A testified that he asked the female staff member if she had served beer to the two males. She said that she had done so. She was asked if she knew it was wrong to serve alcohol after 1 a.m., to which she said "no". He asked her if her employer had told her to stop serving after certain time, and she said "no".

The Constable also noticed another male and two females in the restaurant drinking what appeared to be beer out of glasses. He took custody of the glasses, and provided them to the staff member for disposal. The female staff member acknowledged that she had served beer to these patrons.

LIQUOR INSPECTOR A

Liquor Inspector A testified that the proposed \$6,000 penalty is in the mid-range of the Schedule for this offence, being from \$5,000-7,000. He picked the mid-range penalty because the restaurant had been implicated previously for similar activities, although enforcement action had not been taken at the time. Moreover, he had conducted a compliance meeting with the owner of the business and her son in order to review the Licensee' obligations in the operation of its business with respect to its liquor licence. At this compliance meeting, which took place on May 3, 2011, another Liquor Inspector reviewed the obligations of a Licensee operating under a food primary licence in the presence of Liquor Inspector A. Included in the discussion was the obligation to ensure that liquor is taken from patrons within one half hour after the time stated on the licence for hours of service, unless the liquor consisted of a bottle of wine which was sealed in accordance with the Regulations.

In addition to the *viva voce* evidence, the Branch provided documentary evidence consisting of a Book of Documents as well as a copy of a letter dated April 11, 2012, summarizing the telephone pre-hearing conference which took place with the Registrar of the Branch on March 15, 2012.

Evidence – the Licensee

The Licensee's only witness was the Manager of the restaurant. He testified that he manages the Champion Pizza restaurant business on behalf of his mother, who is the restaurant owner. He did not dispute the fact that a staff member of the restaurant had served liquor to the patrons who were described in the evidence of Constable A. The Manager had reviewed the videotapes taken by the surveillance cameras in the restaurant on the night in question, and he confirmed that the sales had taken place as alleged. He also testified that he was not present in the restaurant on the night in question because of family commitments. The Manager testified that the after-hours sales were contrary to his instructions, and he had terminated the staff member as a result of disobeying his instructions. He could not think of why she did it in view of his instructions. He did not offer any other evidence about the training or supervision of staff concerning the obligations of the restaurant in respect to compliance with the terms of its liquor licence.

SUBMISSION OF THE LICENSEE

The Licensee submitted that the after-hour sales were the fault of its employee, who had been made aware that she was not to sell liquor after hours. As well, the restaurant had been closed for 20 days because of a business licence suspension by the City of Vancouver as a result of this incident, and the Licensee hoped not be penalized twice over the same mistake.

ANALYSIS AND DECISION

The issues before me are whether the offence as alleged by the Branch is made out, and if so, was the defence of due diligence made out by the Licensee? If not, what penalty, if any, is warranted in all of the circumstances?

Section 44(1)(b) of the *Regulation* provides:

Unless otherwise authorized by the general manager,

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).

The Manager on behalf of the Licensee does not deny that its staff member sold liquor outside of the hours of service provided for in the liquor licence for the restaurant on the day in question. The evidence is therefore undisputed that liquor was sold on the early morning of February 9, 2012, at a time which was far later than the 1 a.m. time for ending liquor sales specified in the Licensee's food-primary licence. The offence for which the NOEA was issued is therefore established. The remaining issues are whether a defence of due diligence was made out by the Licensee, and if not, was the penalty selected by the Branch is appropriate in the circumstances?

A defence of due diligence may vitiate the penalty proposed by the Branch. There must, however, at a minimum be evidence to establish that the offence happened despite diligent steps taken by the Licensee to prevent its occurrence. The onus is on the Licensee to establish that it acted with due diligence.

The only evidence here is that the Manager of the Licensee's restaurant told the staff member not to sell liquor after hours. The employee was not called as a witness. In addition, there was contrary evidence from Constable A that the employee had not been given such instructions. In any event, such instructions to an employee alone falls far short of establishing that the Licensee acted with due diligence. There is no evidence of staff training, steps taken to enforce the training, supervision of staff, or other procedures taken by the Licensee to ensure that its employees understand and comply with the obligations required in the sale of liquor under the *Act* and the *Regulation*. This is despite the fact that the Manager of the restaurant and his mother had both attended a Compliance Meeting on May 3, 2011, in which the sale of liquor after hours was specifically discussed. The Licensee committed at the meeting that it would ensure that its staff was educated in all aspects of their duties in regard to proper liquor service and hours of service. The Licensee offered no evidence of compliance with this commitment. In sum, there is almost a complete absence of evidence on which a finding of due diligence could be based.

In conclusion, I find that the licensee is not entitled to the benefit of the defence of due diligence.

PENALTY

I turn now to consider penalty. Pursuant to section 20(2) of the *Liquor Control and Licensing Act* ("Act"), having found that the Licensee has contravened the *Act*, the *Regulation*, and/or the terms and conditions of the licence, I may do one or more of the following:

- Take no enforcement action
- Impose terms and conditions on the licence or rescind or amend existing terms and conditions
- Impose a monetary penalty on the licensee
- Suspend all or any part of the licence
- Cancel all or any part of the licence
- Order the licensee to transfer the licence

I am not bound to order the penalty proposed in the Notice of Enforcement Action. 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 *Regulation*. I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so.

Under section 20(2) of the *Act*, once I have found that the Licensee has contravened the *Act* or the *Regulation*, I may decide to take no enforcement action, impose terms and conditions on the licence, impose a monetary penalty, suspend all or any part of the licence, cancel all or any part of the licence, or order the Licensee to transfer the licence.

The primary goal of the Branch in bringing enforcement action and imposing penalties is to achieve voluntary compliance. The factors that are considered in determining the appropriate penalty include whether there is a proven history of compliance, a past history of warnings by the branch and/or police, the seriousness of the contravention, the threat to the public safety, and the well being of the community.

There is no record of a proven contravention of the same type for the Licensee at this establishment within the preceding 12 months of this incident. On the other hand, the Licensee had attended a Compliance Meeting because of allegations of this type of misconduct.

I am in agreement with the Inspector that a mid--range penalty is appropriate given the history of difficulty with compliance for this Licensee, and in view of the fact that the restaurant had a Compliance Meeting at which its obligations under its Food Primary Licence were clearly explained.

I conclude that in all of the circumstances, a mid-range penalty is appropriate. I therefore order and direct that the Licensee pay the penalty as assessed below.

ORDER

Pursuant to section 20(2) of the *Act*, and Schedule 4 of the Regulation, I find that the Licensee is required to pay a monetary penalty of the sum of Six Thousand Dollars (\$6,000) to the General Manager of the Liquor Control and Licensing Branch on or before October 15, 2012.

Signs satisfactory to the General Manager showing that a monetary penalty has been imposed will be placed in a prominent location in the establishment by a Liquor Control and Licensing Branch inspector or a police officer.

Original signed by

A. Paul Devine
Enforcement Hearing Adjudicator

Date: September 13, 2012

cc: Liquor Control and Licensing Branch, Vancouver Office
Attention: Donna Lister, Regional Manager

Liquor Control and Licensing Branch, Vancouver Office
Attention: Peter Mior, Branch Advocate