



**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:	Kasm International Enterprises Ltd. dba Mr. Mikes Steakhouse & Bar Unit 106, 8140-120 Street Surrey, BC V3W 3N3
Case:	EH13-029
For the Licensee:	Harry Madan
For the Branch:	Peter Mior
General Manager's Delegate:	George C.E. Fuller
Date of Hearing:	Written Submissions
Date of Decision:	June 25, 2013

INTRODUCTION

The Corporate Licensee, Kasam International Enterprises Ltd. (the "Licensee") owns and operates an establishment known as Mr. Mikes Steakhouse & Bar, at Unit 106, 8140 - 120 Street, Surrey, BC. The Licensee holds Food Primary Licence number 303382 (the "Licence"). The authorized representative of the Licensee is Harry Madan.

According to the terms of its Licence, the Licensee may sell liquor from 9:00 am to midnight, seven days a week. The Licence is, as are all liquor licences issued in the Province, subject to the terms and conditions contained in the publication "Guide for Liquor Licensees in British Columbia" (the "Guide").

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalty are set out in the Notice of Enforcement Action (the "NOEA") dated February 15, 2013.

The Branch alleges that on February 7, 2013, the Licensee contravened Section 33(1)(a) of the Liquor Control and Licensing Act (the "Act"), by selling, giving or otherwise supplying liquor to a minor. The proposed enforcement action outlined in the NOEA is a \$7,500 monetary penalty (item 2, schedule 4 of the *Liquor Control and Licensing Regulation*) (the "Regulation"). The range of penalties for a first contravention of this type is a ten to fifteen day licence suspension and/or a \$7,500 to \$10,000 monetary penalty.

The Licensee does not dispute that the contravention occurred. However, it disputes the proposed penalty. The Branch and the Licensee agreed that the hearing would take place by way of written submissions.

RELEVANT STATUTORY PROVISIONS

Supplying Liquor to Minors

- 33(1) A person must not
- (a) sell, give or otherwise supply liquor to a minor.

ISSUES

1. Did the contravention occur?
2. If so, has the Licensee established a defence to the contravention?
3. If the contravention is proven, what penalty, if any, is appropriate?

EXHIBITS

The following documents were submitted and were considered:

Exhibit 1: The Branch's book of documents, Tabs 1 to 14 inclusive.

Exhibit 2: Letter dated May 15, 2013 to the Branch collectively from the Managing Director and three management staff of the establishment.

EVIDENCE – THE BRANCH

As previously noted, the Licensee does not dispute that the contravention occurred as alleged and, therefore, it is deemed to accept the facts as put forward by the Branch with respect to the issue of whether the contravention occurred. The Licensee has, however, made submissions in respect to the appropriateness and fairness of the penalty which the Branch has recommended. Accordingly, the evidence may be summarized as follows.

These proceedings arise out of an inspection conducted under the “Minors as Agents Program” (the “MAP”). These types of inspections are utilized by the Branch in order to monitor compliance with the Act’s prohibition against selling liquor to persons under the age of nineteen (“Minors”).

The Branch has hired seventeen and eighteen year old minors, who appear young, as agents to carry out these compliance inspections. No attempt was made to hide the minor’s age or otherwise deceive the Licensee. The MAP is intended to test and ensure that liquor is not being sold to minors. The food primary licence requires Licensees to check two pieces of identification when verifying age.

On February 7, 2013, inspections were conducted to assess compliance of several licensed establishments in Vancouver. Liquor inspectors A and B were the lead Branch personnel accompanying the minor agent on this date (the “Inspection Team”). At the start of the shift, the minor agent (“Minor Agent #34”) was photographed and identification was viewed confirming the agent to be seventeen years of age.

On the evening in question, the Inspection Team attended at the Licensee’s establishment for the sole purpose of assessing the establishment for compliance regarding the identifying and requesting identification from a young person under the age of nineteen years, who had ordered liquor. At approximately 5:40 pm Minor Agent #34 entered the Licensee’s establishment and was followed by Inspectors A and B.

Minor Agent #34 seated herself at the main service bar in the lounge area. She ordered a Smirnoff Ice, and was served one bottle in a glass at approximately 5:45 pm. Minor Agent #34 advised that at no time during this transaction was she requested to provide identification. Following the serving of the liquor, Inspectors A and B directed Minor Agent #34 to leave the premises, which she did.

Inspectors A and B identified themselves to the bartender and explained what had just occurred with regard to the sale of liquor to a minor. The bartender was asked by the inspectors to call his manager, which he did. The manager arrived and identified herself as the duty manager. Contravention Notice B012670 was issued to the duty manager by Inspector A for supplying liquor to a minor, contrary to section 33(1)(a) of the Act.

SUBMISSIONS – THE BRANCH

The Branch says that the contravention has been proven and that the recommended penalty is appropriate and necessary in order to ensure future voluntary compliance by this Licensee with respect to Section 33(1)(a) of the Act.

SUBMISSIONS – THE LICENSEE

The Licensee begins by offering a sincere apology for having committed the contravention. The Licensee wishes to assure the affected parties that this type of contravention is not a regular occurrence in the establishment.

All employees of the Licensee are required to obtain “Serving It Right” certification and, therefore, are very clear on the rules concerning alcohol service. In addition, management routinely follows up with servers in order to ensure that they have asked for identification from any individual who appears to be under the age of twenty-five years. Furthermore, there have been a number of occasions when the Licensee has been forced to refuse alcohol service to an individual, who is obviously of age, because they are unable to provide proof of age. The Licensee believes that its adherence to the rules is clearly demonstrated by the fact they it has been inspected on several occasions and has never failed one.

The Licensee states that management employees are unable to supervise every employee in the establishment at all times. It is the Licensee's deepest regret that the bartender on duty seemed to have felt that the underage individual did not need to provide proof of age. The Licensee opines that had a member of the management been in the area at the time of the contravention they would have intervened and questioned the bartender's judgment and required him to ask for necessary identification.

After the contravention, the bartender in question was released from employment with the Licensee. Furthermore, the Licensee reiterated to all employees the seriousness of the bartender's error and ensured that all employees were clear on the establishment's policy regarding alcohol service. Accordingly, servers are now required to ask for identification from anyone who appears to be under the age of thirty.

The Licensee does not wish to dispute the proposed signage which will be required to appear on the front door of the establishment. It understands that the posting is a necessary punishment with which the Licensee must come to terms. Publically acknowledging that the minor was served liquor will cost the Licensee a great deal of business, as the establishment's family demographic might not take the posted notice of this contravention lightly.

Accordingly, the Licensee says that given the fact that it has taken the necessary steps to remove the guilty party from employment with the Licensee, and the fact that the Licensee has no previous faults on its records, it pleads that the monetary penalty of \$7,500 be reduced.

Finally, the Licensee says that it must take some responsibility for what occurred and wishes to assure that a similar error in judgment will never occur again.

ANALYSIS AND DECISION

Contravention

The Licensee has admitted to the contravention. Having considered all of the evidence and the submissions filed in these proceedings, I find that on February 7, 2013 the Licensee contravened Section 33(1)(a) of the Act and the terms and conditions of the Licence by selling, giving, or otherwise supplying liquor to a minor.

Due Diligence

The Licensee is entitled to a defence to the contravention, if it can be shown that it was duly diligent in taking reasonable steps to prevent the contravention from occurring. The Licensee must not only establish the existence of procedures to identify and deal with the problems, it must ensure that those procedures are consistently acted upon and problems are dealt with accordingly.

I am advised that during a telephone conversation between the Licensee and the Branch Registrar of April 29, 2013, the Licensee advised that it was not disputing the contravention, nor was it asserting a due diligence defence. This position was confirmed in a letter to the Licensee dated May 7, 2013 from the Branch Registrar. In any event, there is no evidence before me upon which I can find that the Licensee was duly diligent. I have concluded, therefore, that the Licensee in this case is not entitled to the benefit of the defence of due diligence.

PENALTY

Pursuant to Section 20(2) of the Act, having found that the Licensee has contravened the Act, the Regulation or the terms and conditions of the Licence, I have discretion to order one or more of the following enforcement actions:

- Take no enforcement action
- 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 and/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. I am not bound to order the penalty proposed in the Notice of Enforcement Action.

The Branch's primary goal in bringing enforcement action and imposing penalties is to achieve voluntary compliance with the Act, the Regulation, and the terms and conditions of the Licence. 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 public safety and the well-being of the community.

Item 2 of Schedule 4 of the Regulation sets out penalties for first contraventions of Section 33(1)(a) of the Regulation, a licence suspension of ten to fifteen days and/or a monetary penalty of between \$7,500 and \$10,000. The Branch has recommended a monetary penalty of \$7,500, which is the minimum penalty for this particular contravention.

There can be no doubt that the contravention of Section 33(1)(a) of the Act is at the high end of the seriousness scale and, therefore, this contravention should be dealt with accordingly. The consumption of liquor by minors can lead to a host of social ills.

The Licensee in this case has been very contrite in acknowledging the seriousness of this contravention and has acknowledged that, at the end of the day, it is the responsibility of the Licensee to ensure that its employees are compliant with the provisions of the Act, the Regulation and the terms and conditions of its Licence. The Licensee asks for leniency in the selection of a monetary penalty based upon the fact that it had:

- immediately met with all employees and underscored the seriousness of the contravention
- terminated the employment of the offending employee, and
- implemented a new policy requiring the IDing of any patron who appeared to be under the age of thirty

The Licensee had an obligation to take all reasonable steps to ensure that the contravention would not happen. While it is positive that the Licensee has subsequently taken steps to try to prevent this from happening again, it does not excuse the Licensee from the consequences of the contravention.

Taking into consideration all of the above, I am satisfied that a monetary penalty of \$7,500 is appropriate and necessary, in order to bring the Licensee in this case into compliance.

ORDER

Pursuant to Section 20(2) of the Act, I order that the Licensee pay a monetary penalty in the sum of \$7,500 (Seven Thousand Five Hundred Dollars) to the General Manager of the Liquor Control and Licensing Branch on or before July 31, 2013.

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

George C.E. Fuller
Enforcement Hearing Adjudicator

Date: June 25, 2013

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

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