



**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:	San Dong Restaurant Ltd. dba Coquitlam Cheers Chicken Noodle Unit A1-341 North Road Coquitlam, BC V3K 3V8
Case:	EH13-063
For the Licensee:	Sang Yul Park
For the Branch:	Cristal Scheer
Enforcement Hearing Adjudicator	George C.E. Fuller
Date of Hearing:	Written Submissions
Date of Decision:	September 13, 2013

**Liquor Control and
Licensing Branch**

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INTRODUCTION

The Corporate Licensee, San Dong Restaurant Ltd., (the "Licensee") owns and operates an establishment known as Coquitlam Cheers Chicken Noodle. The Licensee holds Food Primary Licence Number 217751 (the "Licence"). The authorized representative of the Licensee is Sang Yul Park.

According to the terms of its Licence, the Licensee may sell liquor from 11:00 a.m. to 2:00 a.m., Monday through Friday, 10:00 a.m. to 2:00 a.m. on Saturday and 11:00 a.m. to midnight on Sunday. The Licensee 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 April 4, 2013.

The Branch alleges that on March 14, 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 10 day suspension. This proposed suspension falls within the penalty range set out in item 2, Schedule 4 of the *Liquor Control and Licensing Regulation* (the "Regulation") for a first contravention of this type. 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, nor does it raise a due diligence defense; 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

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

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 considered:

Exhibit 1: The Branch's book of documents, tabs 1 to 12 inclusive.

Exhibit 2: Copy of an email from Sang Yul Park on behalf of the Licensee to the Branch, setting out the Licensee's position in respect to the alleged contravention.

EVIDENCE—THE BRANCH

As previously noted, the Licensee does not dispute that the contravention occurred as alleged, nor does it raise a defence of due diligence. It is deemed, therefore, 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" ("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.

On March 14, 2013, MAP inspections were conducted to assess compliance of several licensed establishments in the Coquitlam area. Regional 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 #33") was photographed and identification was viewed confirming that he was 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.

The Licensee's establishment had been identified as a high risk premises whereby minors were alleged to have been served liquor by staff members, without identification having been requested. At approximately 8:08 p.m. Minor Agent #33 entered the establishment and was closely followed by Regional Inspectors A and B.

Upon entering the restaurant, the inspectors observed Minor Agent #33 sitting alone at a table near the front doors. Both inspectors were provided with a clear and unobstructed view of the table and Minor Agent #33.

At approximately 8:09 p.m., the Regional Inspectors observed a female server approach Minor Agent #33's table and briefly speak to him. Minor Agent #33 stated to the server that he was waiting for a friend and the server stated, "Okay". Minor Agent #33 then stated, "Can I have a glass of Molson Canadian?" The server responded "Oh, we don't have it" then pointed to the selection they had on the menu. Minor Agent #33 then requested a Kokanee.

The server left the table and proceeded to return at approximately 8:09 p.m. with one bottle of Kokanee beer and a glass. The server then left the agent with the Kokanee beer and at no time during these encounters was Minor Agent #33 requested to produce identification to verify his age.

As a result of evidence secured regarding the alleged contravention of section 33(1)(a) of the Act, contravention notice number B011821 was completed and a copy given to the Licensee. Regional Inspectors A and B exited the establishment at approximately 9:30 p.m.

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 voluntary compliance, by this Licensee, with respect to Section 33(1)(a) of the Act, in the future.

SUBMISSIONS—THE LICENSEE

The Licensee submits that the contravention was its fault as it sold alcohol to an underage person. Since this was the first time that the Licensee operated a licensed premises, the Licensee said I.D checks were always done.

On this particular occasion, the Licensee said the restaurant was very busy and his wife let it get out of control. The Licensee apologizes for its mistake and requests a warning be substituted for a ten day licence suspension, promising that it will be more careful the next time. In the alternative, the Licensee asks for payment on an installment plan or, in the further alternative, a discount.

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 March 14, 2013 the Licensee contravened Section 33(1)(a) of the Act and the terms and conditions of the License 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.

Here, the Licensee expressly advised that it was not seeking a due diligence defence. I have concluded, therefore, 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 Act, 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 ten day suspension of the Licence, 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.

Taking into consideration all of the above, I am satisfied that a ten day suspension is necessary in order to bring this Licensee into compliance.

ORDER

Pursuant to section 20(2) of the Act, I order a suspension of Food Primary Licence No. 217751 for a period of ten (10) days to commence at the close of business on Wednesday, October 23, 2013 and to continue each succeeding business day until the suspension is completed.

To ensure this order is effective, I direct that the liquor Licence be held by the Branch or the Coquitlam RCMP detachment from the close of business on Wednesday, October 23, 2013 until the Licensee has demonstrated to the Branch's satisfaction that the suspension has been served.

Signs satisfactory to the General Manager notifying the public that the Licence is suspended will be placed in a prominent location in the establishment by a Branch inspector or a police officer, and must remain in place during the period of suspension.

Original signed by

George C.E. Fuller
Enforcement Hearing Adjudicator

Date: September 13, 2013

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

Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: Cristal Scheer, Branch Advocate