



**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:	Blue Boy Motor Hotel Ltd. dba Super 8 Vancouver 725 Marine Drive S.E. Vancouver, BC V5X 2T9
Case:	EH14-013
For the Licensee:	Mel Espadilla
For the Branch:	Peter Mior
General Manager's Delegate:	George C.E. Fuller
Date of Hearing:	Written Submissions
Date of Decision:	May 26, 2014

Ministry of Justice

Liquor Control and
Licensing Branch

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INTRODUCTION

The Licensee, Blue Boy Motor Hotel Ltd., (the "Licensee") owns and operates an establishment known as Super 8 Vancouver, in Vancouver, BC. The Licensee holds Licensee Retail Store Licence number 191487 (the "Licence"). The authorized representative of the Licensee is Mel Espadilla.

According to the terms of its Licence, the Licensee may sell liquor from 9:00 a.m. to 11:00 p.m., 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 12, 2014.

The Branch alleges that on January 25, 2014, 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. The proposed monetary penalty 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 10 to 15 day licence suspension and/or a \$7,500 to \$10,000 monetary penalty.

The Licensee does not dispute committing the contravention, nor is the Licensee pursuing a defence of due diligence. The Licensee disputes the proposed enforcement action and requests that, if any penalty is to be imposed, that it simply be a warning, instead of the proposed \$7,500 monetary penalty.

RELEVANT STATUTORY PROVISIONS***Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267***

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: Email letter to the Branch from the Licensee dated May 3, 2014, setting out the Licensee's position with respect to an appropriate penalty.

EVIDENCE—BRANCH

As previously noted, the Licensee does not dispute that the contravention occurred as alleged, nor does it seek to claim the benefit of the 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 set out below.

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 19 years ("Minors").

The Branch has hired 16 to 18 year old minors 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 January 25, 2014, MAP inspections were conducted to test compliance at several licensee retail stores in the Vancouver region. Regional Inspector A and Liquor Inspector B were the Branch staff members accompanying the Minor Agent on this date (the "Inspection Team"). At the start of the shift, Minor Agent #57 was photographed. His identification was viewed and confirmed that he was 16 years of age.

On January 25, 2014 at approximately 5:49 p.m., Minor Agent #57 entered the Licensee's establishment. Regional Inspector A and Liquor Inspector B followed Minor Agent #57 into the establishment and observed him enter at approximately 5:49 p.m. Regional Inspector A and Liquor Inspector B entered approximately 20 seconds behind Minor Agent #57.

Regional Inspector A observed a male clerk at the counter serving a customer, plus a line of three other customers waiting to purchase their liquor. Minor Agent #57 proceeded to the cooler sections situated along the wall. Minor Agent selected a six pack of "Molson Canadian" beer. Minor Agent #57 then presented the beer for purchase and provided the clerk with a \$20.00 bill and received change back.

The product was then bagged by the clerk and Minor Agent #57 proceeded to exit the establishment at approximately 5:51 p.m. Regional Inspector A and Liquor Inspector B left the store at approximately the same time. At no time during this transaction was identification requested from Minor Agent #57.

SUBMISSIONS – BRANCH

The Branch says that the contravention has been proven and that the recommended \$7,500 monetary penalty is appropriate and necessary in the circumstances, in order to ensure future compliance by this Licensee with respect to the operation of section 33(1)(a) of the Act.

SUBMISSIONS – LICENSEE

In its very brief written submission of May 3, 2014 (Exhibit 2), the Licensee submits that the cause of the contravention was the hiring of new personnel who did not have the same commitment to being vigilant with respect to the operation of the Act and the Regulations. Previously, the Licensee's staff were always on top of the Licensee's policies until new personnel were hired who did not share the same dedication. Accordingly, the Licensee requests that it simply be given a warning instead of a monetary penalty.

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 January 25, 2014 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 responsible steps to prevent the contravention from occurring. The Licensee must not only establish the existence of procedures to identify and deal with problems, it must ensure that those procedures are consistently acted upon and problems are dealt with accordingly.

The onus is upon the Licensee to prove this defence on the balance of probabilities. The Licensee here did not present a defence of due diligence. I find, therefore, that the Licensee has not established a defence of due diligence.

Accordingly, I find that the Licensee contravened section 33(1)(a) of the Act by selling liquor to a minor.

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 a monetary penalty are 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 compliance with the Act, Regulation, and the terms and conditions of the Licence. Among the factors that I have considered in determining the appropriate penalty in this case are: 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.

Licensees are obligated to comply with the Act, Regulation and the terms and conditions of their licences. Enforcement actions are intended to both address the Licensee's non-compliance, and to encourage future compliance by way of deterrents. Sale of liquor to minors is considered a serious contravention, as the range of possible monetary penalties and licence suspensions attests. The Branch recognizes that minors, as a group, are unable to metabolize alcohol in the same manner as an adult, and so

may be more susceptible to becoming intoxicated. In this condition, a minor may be at personal risk or constitute a public danger.

There is no record of a proven contravention of the same type for this Licensee at this establishment within the 12 months prior to this incident. I find, therefore, this to be a first contravention for the purposes of reviewing the range of applicable penalties under Schedule 4 of the Regulation. As previously noted, item 2 in Schedule 4 of the Regulation provides that the penalties for a first contravention of this type are a 10 to 15 day licence suspension and/or a \$7,500 to \$10,000 monetary penalty.

In considering the Licensee's plea for leniency, by substituting a warning for the monetary penalty, I have carefully reviewed the Licensee's submission. Basically, the Licensee submits that the contravention was the fault of a new employee or employees who had been hired recently. I would simply point out that it is the Licensee who is responsible for ensuring that its employees are trained to an acceptable level in order to avoid contraventions of the Act, Regulation, and the terms and conditions of its Licence. The Licensee failed to satisfy this fundamental obligation in this case.

Although the Licensee has alluded to the existence of policies and training, both prior to and after the contravention, no details whatsoever were provided for analysis and consideration.

In light of all of the above, I find that a \$7,500 monetary penalty is appropriate in the circumstances, in order to encourage compliance with section 33(1)(a) of the Act by this Licensee.

ORDER

Pursuant to Section 20(2) of the Act, I order that the Licensee pay a monetary penalty in the sum of \$7,500 to the General Manager of the Liquor Control and Licensing Branch, and I direct that this monetary penalty be paid to the General Manager on or before June 27, 2014.

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 Branch inspector, or a police officer.

Original signed by

George C.E. Fuller
Enforcement Hearing Adjudicator

Date: May 26, 2014

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

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