



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: 786 Holdings Ltd.
dba Walnut Grove Pub & Bistro
20470 88th Avenue
Langley, BC V1M 2Y6

Case: EH14-039

For the Licensee: Feroz Khan

For the Branch: Cristal Scheer

General Manager's Delegate: Nerys Poole

Date of Hearing: Written submissions

Date of Decision: July 10, 2014

**Liquor Control and
Licensing Branch**

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INTRODUCTION

786 Holdings Ltd. (the “licensee”) holds Liquor Primary Licence No. 181998 (the “licence”) for the Walnut Grove Pub & Bistro (the “Pub”). A third party operator, R.J.K. Hospitality Corporation operates the Pub, which is located at 20470 88th Avenue in Langley BC.

The licence specifies hours of liquor service daily, from 11:00 a.m. to midnight Sunday to Thursday and from 11:00 a.m. to 1:00 a.m. on Fridays and Saturdays. 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”).

A representative of the third party operator signed the written submission, which was forwarded by Feroz Khan, the representative of the corporate licensee.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch’s (the “branch”) allegations and proposed penalties are set out in the Notice of Enforcement Action dated April 9, 2014 (the “NOEA”). The branch alleges that on March 26, 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. Item 2, Schedule 4 of the *Liquor Control and Licensing Regulation* (the “Regulation”) sets out a range of penalties for a first contravention of this type: a 10 to 15 day licence suspension and/or a \$7,500 to \$10,000 monetary penalty.

On April 30, 2014, the licensee’s representative advised the branch that the licensee was admitting the contravention as alleged and not making a due diligence defence. The licensee is disputing the proposed penalty of \$7,500.

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

Exhibit 1: Branch's book of documents, tabs 1 to 13

Exhibit 2: Licensee's one-page written submission, dated June 17, 2014

FACTS

The licensee does not dispute the contravention and therefore accepts the facts as laid out in the NOEA (Exhibit 1, tab 1). The following is a summary of the facts from the NOEA.

On March 26, 2014, two liquor inspectors and a minor agent conducted a Minors as Agents Program (MAP) inspection of the Pub. MAP inspections are used to test compliance with the Act's prohibition against selling or supplying liquor to persons under the age of 19.

Prior to going to the Pub, the minor agent was photographed and his identification was photocopied. The minor agent was 16 years old on the date of the contravention. (Exhibit 1, tab 5)

The minor agent entered the Pub at approximately 2:00 p.m., followed closely by the two liquor inspectors. The minor agent sat at the bar counter alone. Four other patrons were sitting at a table in the Pub. A female server was tending the bar. She spoke to the minor agent asking what she could get for him and he responded "just a pint of Canadian." The server returned and placed the beer in a glass in front of the minor agent. At no time did the server request identification of the minor agent.

The two liquor inspectors took custody of the beer and photographed it for evidentiary purposes (Exhibit 1, tab 11). The minor agent left the Pub and returned to the liquor inspectors' vehicle parked outside. The minor agent then completed the Minor Agent Observation Form and the Minor Agent Statement form. (Exhibit 1, tab 6)

One of the liquor inspectors approached the server, identified himself and advised her of the contravention. She said that she was working alone and was the manager on duty. The liquor inspector served her with a copy of the contravention notice (Exhibit 1, tab 2). The liquor inspector paid for the purchased beer and received the receipt. (Exhibit 1, tab 11)

The same liquor inspector contacted the manager of the licensee's third party operator on March 27, 2014 and mailed him a copy of the contravention notice. The liquor inspector was later advised to direct all correspondence to Feroz Khan as the representative of the licensee. The liquor inspector received a letter from a principal of the corporate licensee directing the branch to deal with Mr. Khan on this matter.

SUBMISSIONS – BRANCH

The branch has submitted the book of documents (Exhibit 1) with the NOEA which outlines the elements of the contravention, as follows:

- The person in question is a minor
- The 16 year old minor entered the Pub and purchased a glass of beer without being asked for any identification
- The licensee sold or supplied the liquor to the minor

The branch sets out its reasons for the proposed enforcement action, stating that a monetary penalty of \$7,500 is considered appropriate to reinforce the seriousness of selling liquor to minors.

SUBMISSIONS – LICENSEE

The licensee submitted a one page letter dated June 17, 2014 as its written submission on this matter. (Exhibit 2)

The licensee admits in the letter that the Pub manager sold the liquor to the minor. He states that they terminated her immediately for failing to comply with the law. The writer of the letter states that he has taken the measure for training all the employees and the manager, going over the procedures and Serving It Right guidelines on a regular basis. He says that they have put up posters in the Pub to make employees and patrons aware of their obligations on serving alcohol. In addition, both the manager and supervisor talk to all the employees on a regular basis to remind them to follow all the liquor laws.

The licensee requests that the branch modify the monetary penalty because of the initiatives taken above and because the Pub manager let down the licensee.

REASONS AND DECISION

Contravention

The licensee admits the contravention occurred. I therefore find that the licensee has contravened section 33(1)(a) of the Act.

Due Diligence

The licensee is entitled to a defence 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 procedures to identify and deal with problems, it must ensure that those procedures are consistently acted upon and problems are dealt with.

In requesting the hearing by written submission, the licensee agreed that the contravention occurred and that the licensee was not pursuing a due diligence defence.

The licensee has not presented any evidence to demonstrate due diligence. I therefore find that the licensee has not established due diligence and I turn to the question of penalty.

PENALTY

Pursuant to section 20(2) of the Act, having found that the licensee has contravened the Act, the Regulations 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

The branch has consistently indicated that the sale of alcohol to minors is a significant public safety issue and a high priority for enforcement. The NOEA outlines why the branch considers this a significant public safety issue:

- The effects of alcohol on growing bodies and developing minds
- The effects on individuals and society of irresponsible drinking behaviour learned at an early age
- A minor's lack of capacity to metabolize alcohol in the same manner as an adult; therefore, liquor has a more intoxicating effect on minors, and
- Liquor is a significant factor in many crimes committed by youth, including serious driving offences, assault, sexual assault, and theft

The facts are undisputed: that the server did not request any identification of a 16 year old minor when she served him with a glass of beer. The licensee's submission refers to the manager taking some measures to train its employees and to review procedures. The licensee presented no evidence to support these statements about its training and procedures. Further, the statements in its submission are somewhat ambiguous in that it is not clear whether the training and procedures were implemented before or after the incident on March 26, 2014.

Licensees are obliged to comply with the legislation and the terms and conditions of their licences. Enforcement action is intended to both redress the licensee's non-compliance, and to encourage future compliance by way of deterrence.

Based on the seriousness of this public safety contravention, the fact that an employee served beer to a 16 year old without any request for identification, and the absence of any evidence about the training of employees and procedures in place at the Pub, I find that a penalty is warranted here.

The factors that I considered in this case in determining the appropriate penalty include: consideration of whether there is a proven compliance history, a past history of warnings by the branch and/or the 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 this licensee at this establishment within the preceding 12 months of this incident. Therefore, I find this to be a first contravention for the purposes of Schedule 4 and calculating a penalty.

I have reviewed the compliance history as listed in the NOEA. This licensee accepted enforcement action for three contraventions of the Act on April 2, 2005, one of them involving a minor. In July 2011, a contravention involving the sale of liquor to a minor pursuant to section 33(1)(a) resulted in a \$7,500 monetary penalty. On January 7, 2012, three contraventions on that date relating to intoxication and an employee consuming liquor (contrary to sections 42(3), 43(2)(b) and 43 (1) of the Act) resulted in the licensee accepting enforcement action. I find this history of prior contraventions to be a relevant factor in determining the appropriate penalty here.

The licensee in its submission sincerely apologizes to the branch for this incident. The licensee also indicates that he terminated the server who sold the beer to the minor agent. The licensee refers to training employees and reviewing procedures and guidelines on a regular basis, but presented no evidence to support this. By agreeing to proceed by way of written submission, the licensee chose not to present a defence of due diligence, and to dispute the issue of penalty only.

The licensee asks that I consider the measures it has taken, including the termination of its employee who sold the beer, to reduce the amount of the penalty. I encourage the licensee to continue to implement training and procedures to ensure its employees comply with the Act. However, having found that a penalty is warranted, for the reasons stated above, I am bound to follow the minimums set out in Schedule 4 of the Regulation.

I find a \$7,500 penalty to be reasonable and appropriate given the importance of ensuring minors do not have easy access to liquor, to encourage future compliance from the licensee, and to ensure specific and general deterrence in society at large.

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 on or before **August 15, 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 and Licensing Branch inspector or a police officer.

Original signed by

Nerys Poole
General Manager's Delegate

Date: July 10, 2014

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

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