



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: 0752768 B.C. Ltd.
dba Spicy House Korean Restaurant
1-555 Clark Road
Coquitlam, BC V3J 3X4

Case: EH14-160

For the Licensee: Helen Kim

For the Branch: Cristal Scheer

General Manager's Delegate: Daniel M. Graham

Date of Hearing: Written Submissions

Date of Decision: October 8, 2015

**Liquor Control and
Licensing Branch**

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INTRODUCTION

0752768 B.C. Ltd. (the "Licensee") operates the Spicy House Korean Restaurant (the "Restaurant") under Food Primary Licence #205662 (the "Licence"). The Restaurant is located at 1-555 Clark Road, Coquitlam, B.C.

The Licence specifies hours of liquor service of noon to 2:00 a.m. seven days a week. The Licence is, as are all liquor licences in the province, subject to the terms and conditions contained in the publication *A Guide for Liquor Licensees in British Columbia* (the "Guide").

Ms. Helen Kim represented the Licensee for the purposes of this hearing.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalty are set out in a Notice of Enforcement Action dated December 10, 2014 (the "NOEA"). The Branch alleges that on Friday, December 5, 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 sanction is a \$7,500 monetary penalty. This proposed monetary penalty falls within the penalty range set out in 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 10 to 15 day licence suspension and/or a \$7,500 to \$10,000 monetary penalty.

On January 5, 2015 the Licensee advised the Branch that it opted to proceed by way of written submission. By agreeing to proceed with a hearing in writing, the Licensee admits that it contravened as alleged in the NOEA and chooses not to make out a due diligence defence to the contravention. The Licensee is disputing the proposed enforcement action of a \$7,500 monetary penalty.

For the purposes of this hearing, and in accordance with section 6.1 of the Act, the General Manager has delegated to me the powers, duties and functions provided to the General Manager by section 20 of the Act and sections 65-69 of the Regulation.

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.

Liquor Control and Licensing Regulation, B.C. Reg. 244/2002

Schedule 4 Enforcement Actions

Minors

Item	Contravention	Period of Suspension (Days)			Monetary Penalty
		First Contravention	Second Contravention	Subsequent Contraventions	
2	A breach of section 33 of the Act (<i>Selling liquor to minors</i>)	10-15	20-30	30-60	\$7,500-\$10,000

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: The Branch's book of documents, tabs 1 to 12 inclusive.
Exhibit 2: The Licensee's undated one-page written submission.

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 December 5, 2014, two liquor inspectors ("Inspector 1" and "Inspector 2") and two minor agents conducted a Minors as Agents Program ("MAP") inspection of the Restaurant. 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 Restaurant, the minor agents (a female and a male) were photographed and their identification was viewed and photocopied. (Exhibit 1, tab 4) Both minor agents were 17 years old on the date of the contravention.

On December 5 at 5:34 p.m. the minor agents entered the Restaurant for a MAP inspection. They were greeted by a female server who seated them at a table adjacent to a window, giving Inspector 1 a clear view of the minor agents and the server. The male minor agent ordered beer. The server returned a few minutes later with a pitcher of dark beer in a Granville Island brand pitcher along with two chilled glasses. The minor agents were never at any point asked for identification.

After the pitcher of beer was served, Inspector 1 entered the Restaurant and sat at the minor agents' table, while the minor agents left the Restaurant. Inspector 1 tried to speak to the female server and the chef, but both struggled to understand him as their primary language was Korean. A male patron offered to interpret. Inspector 2 then entered the Restaurant just ahead of another male member of the Restaurant staff who spoke English. While Inspector 2 explained the circumstances of the alleged contravention to the male staff member and paid for the beer, Inspector 1 took photos of the pitcher of beer and the chilled glasses. (Photos and receipt in Exhibit 1, tab 6.)

Inspector 2 issued Contravention Notice #B011216 (Exhibit 1, tab 2) and the inspectors left the Restaurant at 6:07 p.m.

SUBMISSIONS – BRANCH

Through the book of documents (Exhibit 1), including the NOEA, the Branch submitted that the elements of the contravention have been established by the evidence. The Branch's position is that the recommended monetary penalty of \$7,500 is appropriate to reinforce the seriousness of the contravention.

SUBMISSIONS – LICENSEE

In its written submission the Licensee explained that the Restaurant operates from 5:00 p.m. to 2:00 a.m. and that because the Restaurant is small, only one server is needed until 9:00 p.m. On December 5, the scheduled server informed the Licensee that he would not be able to attend work until 6:00 p.m. A female kitchen helper (who primarily spoke Korean) served the two patrons who came into the Restaurant about 5:20 p.m. - before the minor agents. Because both those patrons spoke Korean, the kitchen helper had no problem taking their orders. When the minor agents came in, the kitchen helper understood that they wanted beer but she was in a panic because she was not familiar with taking orders in English. After she served the beer the chef told her to ask the minor agents for identification, but by then the minor agents had left the Restaurant.

The Licensee submitted the following factors should be considered in mitigation:

- This was the Licensee's first contravention in eight years of operation.
- The principal of the corporate Licensee had designated the chef to manage the Restaurant in his absence. The Licensee subsequently terminated the chef's employment as a result of the contravention.
- The Licensee apologizes for this matter and promises that it will never happen again.

The Licensee argued that in consideration of these factors, a ten-day suspension of the Licence is a more appropriate penalty.

REASONS AND DECISION

Contravention

The Licensee admits the contravention.

That admission, along with the evidence and submissions filed in these proceedings, demonstrate on the balance of probabilities that, with reference to section 33(1)(a) of the Act:

- A person (the Licensee, acting through its employee, the kitchen helper/server)
- supplied liquor (a pitcher of beer)
- to a minor (the minor agents).

Accordingly, I find that on December 5, 2014 the Licensee contravened section 33(1)(a) of the Act by selling, giving or otherwise supplying liquor to a minor.

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. There is no evidence before me with respect to efforts made by the Licensee to exercise due diligence before the contravention occurred.

In these circumstances, 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 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.

The Branch has consistently maintained 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.

In this case the facts are that the Licensee's employee served liquor to a 17 year old without any request for identification. The Licensee has provided no evidence of any training being provided to its staff, or of any steps taken to supervise and monitor its operations sufficiently to ensure that staff are applying their training appropriately.

Based on the seriousness of this public safety contravention, the fact that an employee served liquor to a 17 year old without any request for identification, and the lack of evidence of due diligence, I find that a penalty is warranted.

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 the Licensee at the Restaurant 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.

There is no evidence before me of any other compliance history involving the Licensee.

In consideration of:

- the serious public safety concerns related to selling alcohol to minors; and
- the insufficiency of evidence of training or systems to reasonably reduce the risk of the contravention occurring;
- as mitigated by the Licensee's good compliance record;

I find a 10 day suspension of the Licence to be reasonable and appropriate to achieve the Branch's objectives with respect to general and specific deterrence.

ORDER

Pursuant to section 20(2) of the Act, I order a suspension of the Licence for a period of 10 days to commence at the close of business on Thursday, November 5, 2015 and to continue each succeeding business day until the suspension is completed.

To ensure this order is effective, I direct that the Licence be held by the Branch or the local police from the close of business on November 5, 2015 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 Restaurant by a Branch inspector or police officer, and must remain in place during the period of suspension.

Original signed by

 Daniel M. Graham

Date: October 8, 2015

General Manager's Delegate

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

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