



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: Oriental Aim Management Ltd.
dba Seven Dining Lounge
53 W Broadway
Vancouver, BC V5Y 1P1

Case: EH15-040

For the Licensee: Ye Yu Feng

For the Branch: Hugh Trenchard

General Manager's Delegate: Nerys Poole

Date of Hearing: Written Submissions

Date of Decision: August 25, 2015

**Liquor Control and
Licensing Branch**

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INTRODUCTION

Oriental Aim Management Ltd. dba Seven Dining Lounge (the “licensee”) operates a restaurant (the “restaurant”) under Food Primary Licence number 218823 (the “licence”). The restaurant is located at 53 West Broadway in Vancouver.

The licence specifies hours of liquor service daily, from 11:00 a.m. to 1:00 a.m., seven days per week. The licence has a lounge endorsement that permits liquor service without food. Minors may be present in the lounge area only if accompanied by a parent or guardian.

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”).

Ye Yu Feng, Managing Partner of the licensee, signed the written submission on behalf of the corporate licensee.

The branch alleges that on March 21, 2015 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.

On May 5, 2015, the licensee advised the branch that the licensee wished to proceed with a written submissions hearing. The licensee is disputing the proposed penalty of \$7,500.

A penalty-only written submissions hearing includes all of the following elements:

- The licensee admits that it contravened as alleged in the NOEA
- The licensee is not pursuing a due diligence defence to the contravention
- The licensee only disputes the proposed enforcement action (penalty)

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 16, 2015 (the "NOEA").

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.

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 No. 1: Branch's book of documents, tabs 1 to 16

Exhibit No. 2: Licensee's one page written submission, undated

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 21, 2015, two liquor inspectors and a minor agent 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 agent was photographed and his identification was photocopied. The minor agent was 17 years old on the date of the contravention.

At approximately 9:28 p.m. on March 21, 2015, the minor agent entered the front door of the restaurant and paid the \$10.00 cover charge. The two liquor inspectors entered about 20 seconds behind the minor agent and observed him at the bar waiting for service. The bartender spoke to the minor agent who ordered a craft beer. The bartender took the order and then returned to advise the minor agent that they were changing the keg and there would be a short delay in service. At approximately 9:32 p.m., the bartender returned with a glass (pint) of beer and placed the beer on the counter in front of the minor agent. At no time did the bartender request identification of the minor agent. The minor agent paid the bartender for the beer and then left the restaurant.

The two inspectors moved to secure the beer. One inspector approached the bartender and requested to speak with the manager. The bartender advised that he was the manager on that evening and gave the inspector his name. The inspector explained the contravention and then walked downstairs to his private office. The inspector reviewed the liquor licence at that time. The inspector requested a receipt for the beer and the bartender produced the receipt for 1516 Lager totalling \$7.19. The inspector read the contravention notice to the bartender who then signed the notice acknowledging service

(Exhibit 1, tab 2). The inspector left a copy of the notice with the bartender. Both inspectors left the restaurant at approximately 10:00 p.m.

The minor agent completed an observation form to record his observations and wrote a narrative statement detailing the incident regarding the sale of the liquor (Exhibit 1, tabs 8 and 9).

SUBMISSIONS – BRANCH

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

- The person in question is a minor
- The 17 year old minor entered the restaurant 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 admits the contravention and is not making a defence of due diligence.

The licensee states that they take this contravention very seriously and have reflected upon it deeply. It has served as a strong lesson for the licensee. Since the contravention, the licensee has adjusted their procedures and house policy to ensure future voluntary compliance. They state that no future contraventions will occur.

The licensee agrees that a penalty is warranted but asks me to consider their history with no prior contraventions. The licensee asks for a lesser penalty than the \$7500 fine. The licensee states that the \$7500 fine will significantly affect their cash flow and ability to carry out future and continued business. The licensee asks me to consider levying a

lesser monetary penalty, a compliance meeting or educational sessions instead of a monetary fine, or a combination of the two.

As an alternative to the above, if I impose the \$7500 penalty, the licensee requests me to consider a payment option in monthly instalments. The licensee states that the payment of the whole amount of \$7500 at one time is very difficult for a small business like theirs.

Finally, and as a further alternative to the above, the licensee requests that I grant the licensee more time to pay the fine and extend the due date for payment by three to six months.

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.

The licensee has not presented any evidence to demonstrate due diligence nor has it raised a defence of 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

I am not bound to order the penalty proposed in the NOEA. However, if I find that either a licence suspension or a monetary penalty is warranted, I am bound to follow 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 find that a penalty is warranted here. The licensee, in its written submission, agrees that a penalty is warranted, but asks for a lesser penalty. 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

In the present case, the minor agent was only 17 years old. The bartender made no attempt to ask for identification. The licensee indicates in its submission that they have now adjusted their procedures and house policy to ensure future voluntary compliance. Although the licensee provides no evidence of these policies, I accept the licensee's statements that they have done so. Improving policies after a contravention does not relieve a licensee of the consequences of a contravention.

Having found that a penalty is warranted here, I do not have the discretion to order a lesser penalty. I am bound to follow the minimum as set out in item 2 of Schedule 4 of the Regulation. 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.

The Branch has recommended a monetary penalty of \$7,500, the minimum monetary penalty for this particular contravention. I find this 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.

If I am unable to impose a lesser penalty, the licensee has requested a payment option in monthly instalments. In the alternative to monthly payments, the licensee asks that I extend the date from the normal 30 day period for payment to a date three to six months later.

Section 20 (2.6) of the Act states that the entire monetary penalty imposed upon a licensee must be paid within 30 days after the written notice of its imposition, unless a longer period is specified by the General Manager. I thus have the discretion to specify a longer period, but no authority to require the monetary penalty to be paid in monthly instalments.

The licensee has provided no financial records to support its claim that the amount of \$7500 "will significantly affect its cash flow and ability to carry out future and continued business." Further, the contravention occurred in March of this year. The NOEA was issued in mid-April, giving the licensee three to four months of warning of the amount of the monetary penalty that the branch is recommending. By the time the licensee receives notice of the due date of the penalty, it will be more than five months from the date of the NOEA and six months from the date of the contravention. I find that the licensee has had adequate notice of the likelihood of its requirement to pay the \$7500 fine and should have planned accordingly to find the funds to make the payment as required under the Act.

The licensee indicates in its submission that it has already used this opportunity to improve its policies and to educate its staff on the importance of preventing service to minors. I encourage the licensee to continue to emphasize this in its training to ensure future 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 to the general manager of the Liquor Control and Licensing Branch on or before **September 30, 2015**.

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: August 25, 2015

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

Liquor Control and Licensing Branch, Victoria Office
Attention: Hugh Trenchard, Branch Advocate