



**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 RSBC c. 267

Licensee: Cruz Ventures Ltd.
dba Wild Coyote
1321 S.W. Marine Drive
Vancouver, BC

Case Number: EH03-088

Appearances:

For the Licensee Stanley R. Fiddis

For the Branch Peter K. Jones, Advocate

Enforcement Hearing Adjudicator Suzan Beattie

Date of Hearing September 11, 2003

Place of Hearing Via Teleconference

Date of Decision December 17, 2003

**Ministry of Public
Safety and Solicitor
General**

Liquor Control and
Licensing Branch

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INTRODUCTION

The licensee, Cruz Ventures Ltd. operates the Wild Coyote located at 1321 S.W. Marine Drive, Vancouver, BC.

It holds Liquor Primary Licence (LPL) No. 022485, with hours of operation Monday to Saturday from 9:00 P.M. - 2:00 A.M. and on Sunday from 7:00 P.M. - 12:00 Midnight. The maximum patron capacity is 175 in area 1 with 25 patrons in area 2.

ALLEGED CONTRAVENTION AND RECOMMENDED PENALTIES

The Liquor Control and Licensing Branch alleges that on April 11, 2003, the licensee contravened section 12 of the *Liquor Control and Licensing Act* when it failed to have available for inspection the approved red-lined floor plan, contrary to the *Act*.

Schedule 4 of the *Liquor Control and Licensing Regulations*, provides a range of licence suspensions and monetary penalties for each contravention. For the contravention of section 12, the penalty range is a one (1) to three (3) day licence suspension or one thousand (\$1,000) to three thousand (\$3,000) monetary penalty for the first contravention. In this case, the branch is recommending a two (2) day licence suspension. It recommends the suspension be served starting on a Friday and continue on successive business days until completed.

The relevant statutory provisions of the *Liquor Control and Licensing Act and Regulations* state:

12 Licences

- (1) The general manager, having regard for the public interest, may, on application, issue a licence for the sale of liquor.
 - (2) The general manager may, in respect of any licence that is being or has been issued, impose, in the public interest, terms and conditions
 - (a) that vary the terms and conditions to which the licence is subject under the regulations, or
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- (b) that are in addition to those referred to in paragraph (a)
- (3) Without limiting subsection (2), the terms and conditions referred to in that subsection may:
 - (a) limit the type of liquor to be offered for sale,
 - (b) designate the areas of an establishment, both indoor and outdoor, where liquor may be sold and served

The relevant provisions of the Guide for Liquor Licensees in British Columbia - Food-Primary Licence Terms and Conditions, state, in part:

Managing Your Business

Posting Your Licence and Having Your Approved Floor Plans Available

You must post your liquor licence in a prominent location in the licensed area. It must be available for review by liquor inspectors and police. It also lets your customers know that certain rules must be followed.

Floor plans approved by the general manager form part of your liquor licence. As with the licence certificate, quick and easy access to this information is important for liquor law enforcement. They must be stored in the licensed area of the establishment, and must be immediately available for presentation to a liquor inspector or a police officer when requested during an inspection.

ISSUE

The licensee conceded that the contravention occurred but disputed the proposed two (2) day licence suspension

COMPLIANCE HISTORY

There is no record of prior contraventions, offences or enforcement actions of this type for this licensee or this establishment within the year preceding this incident ("compliance history"). Therefore, this contravention, if proved, would be considered a first contravention for the purposes of the Penalty Schedule.

However, contravention notices do indicate the following information:

- On February 28, 2003, the branch issued a Contravention Notice for overcrowding beyond licence capacity and for a licensee or an employee of the
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licensee, consuming liquor while working in the licensed establishment. The branch did not pursue enforcement action on these allegations.

- On March 1, 2003, the branch issued a Contravention Notice for minors on the premises. Enforcement action was not pursued on this allegation.
- On June 14, 2003, a Contravention Notice was issued for removing liquor from the establishment. No enforcement action was recommended.
- In 2002, two Contravention Notices were issued and no enforcement action was recommended. As well, there was a lengthy complaint filed by way of a Licensed Premises Check on February 21, 2002.
- In 2001, there were two Contravention Notices issued regarding licenced capacity. No enforcement action was pursued on these allegations.

Evidence, Penalty submissions and Decision

Evidence

The evidence, contained in the narrative to the Notice of Enforcement Action, commences with the February 28, 2003, allegation of overcrowding. In that investigation, the Police Officers and inspectors at the establishment were not able to determine the red line floor plan from the documents presented by the licensee. It appeared to the inspectors that the licensee had photocopied the building occupancy load and then hand drawn the redline floor plan on the document.

On March 12, 2003, two Vancouver Police Officers conducted an inspection and were presented with redlined floor plans that showed their occupant load capacity and not the licensed capacity of the establishment.

On March 25, 2003, two liquor inspectors held a compliance meeting with the licensee. At this compliance meeting the licensee committed to posting an official stamped version of the licensed capacity red lined floor plan.

On April 11, 2003, at 22:30 hours the same two Vancouver Police Officers conducted an inspection at the establishment for the purpose of checking the redline floor plans.

This was a follow-up to their March 12, 2003, inspection when they were presented with the incorrect redline plans. On April 11, 2003, the Police Officers were presented with floor plans from an envelope located behind the liquor license frame. The Vancouver Police Officers noted that the floor plans again corresponded to the building occupancy capacity. The Notice of Enforcement Action states that the licensee attempted to locate the liquor capacity red line plans.

When the licensee was unable to locate the liquor capacity red line floor plans, the Officers issued a licensed premises check. The branch subsequently issued a Contravention Notice dated May 9, 2003, and the Notice of Enforcement Action on July 28, 2003.

The licensee does not dispute these facts. However, the licensee says, in essence, that the facts as outlined in the Notice of Enforcement Action are incomplete. The licensee states that there were approximately 20 patrons in the establishment when the Officers arrived at 22:30 hours on Friday, April 11, 2003. He explained to the Officers that he had an official stamped version of the licensed capacity red lined floor plan in the office. When he could not find it he telephoned his partner. His partner returned the telephone call within fifteen minutes and advised him that the plans were in the filing cabinet. By this time the Officers had issued the Licensed Premises Check and left the premises.

Approximately five to ten minutes after the Police Officers left, two liquor inspectors entered the establishment. The licensee explained to these liquor inspectors that he was initially unable to find the correct version of the establishment's red lined floor plans. The licensee says that at this time there were still only about 20 patrons in the establishment. The liquor inspectors "sort of laughed" shrugged their shoulders and said words to the effect of "no big deal". The liquor inspectors left shortly after their conversation with the licensee.

At approximately 23:00 hours the Police Officers returned to the establishment and stopped in the parking lot. By this time the licensee had located the licensed capacity red lined floor plan. He showed the floor plans to the officers in their vehicle. The

licensee stated that the Officers agreed they were the correct plans but maintained that the licensee was unable to show the proper floor plan immediately.

Submission

Against this background, the licensee apologized for the mistake of filing the red-lined plans in the office. It agreed that, in February 2003 it did misunderstand its operating parameters. As a result of the compliance meeting in March 2003, it committed to posting an official stamped version of the licensed capacity red lined floor plan. It argues that its only mistake was that the official stamped version of its licensed capacity red lined floor area was in a filing cabinet.

The licensee submits it should not receive a two day licence suspension for this contravention.

DECISION

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 have discretion to order one or more of the following enforcement actions:

- 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 or monetary penalty is warranted, I am bound to follow the minimum set out in Schedule 4 of the *Regulations*.

The *Regulations* provide for a graduated scale of penalties for contraventions of the *Act*. The graduated nature of the penalties is necessary for the consistent and vigorous enforcement of the provisions in the *Act* and *Regulations*.

The branch's primary goal in determining the appropriate penalty along the scale is achieving voluntary compliance. 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.

I agree with the licensee that, in this case, a two day license suspension is excessive.

However, I find that a penalty is necessary in these circumstances to ensure the licensee's voluntary compliance. I note that on February 28, 2003, the liquor inspectors and the Vancouver Police Officers were unable to determine the red lined floor plan from the documents presented by the licensee. On March 12, 2003, the Police Officers returned and again were presented with incorrect redlined floor plans.

No enforcement action was recommended as a result of the February Contravention Notice or the March inspection. Rather, a Compliance Meeting was held with the licensee on March 25, 2003. At this meeting the licensee committed to posting an official stamped version of its licensed capacity red lined floor plan.

On April 11, 2003, the licensee was again unable to initially present the correct red lined floor plans. I accept the licensee's statement that, after discussions with its partner, it found the red lined floor plans in the filing cabinet in the office and presented them later in the evening to the same Police Officers.

I agree with the Police Officer's comments (as related by the licensee) that at the time of the inspection it was unable to show the proper floor plan immediately. It is a term and condition of the liquor license that the floor plans and liquor licence be stored in the licensed area of the establishment and be readily and easily accessible for enforcement

purposes. Floor plans form part of the liquor licence and must be available for review by liquor inspectors and Police. These red lined floor plans allow the Police and liquor inspectors to readily determine the licenced area where liquor consumption can occur and confirm where they conduct a count to ascertain the number of patrons or persons in the establishment at any given time.

In this case the red lined floor plans were not immediately available for presentation to the Police Officers as requested on April 11, 2003. In these circumstances a penalty is appropriate. As stated, I have concluded that the recommended two day licence suspension is not appropriate in this case. I exercise my discretion and impose a two thousand (\$2,000) dollar monetary penalty for this first contravention.

ORDER

Pursuant to section 20(2) of the *Act*, concerning the LP Licence No. 022485, I order as follows:

For the contravention of Section 12 of the *Liquor Control and Licensing Act* on April 11, 2003, I order the licensee, Cruz Ventures Ltd. dba Wild Coyote to pay a monetary penalty of two thousand (\$2,000) dollars to be paid no later than January 28, 2004.

Original signed by

Date: December 17, 2003

Suzan Beattie
Enforcement Hearing Adjudicator

cc: Vancouver Police Department

Liquor Control and Licensing Branch, Vancouver Regional Office
Attention: Wendy Jones, A/Regional Manager

Liquor Control and Licensing Branch, Victoria Office
Attention: Peter K. Jones, Advocate
