



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENCING BRANCH
IN THE MATTER OF
A hearing pursuant to Section 20 of
The Liquor Control and Licensing Act RSBC c. 267**

Licensee:	VCR Holdings Ltd. dba Rock Pit 312 W. 1 st Street PO Box 780 Revelstoke BC
Case:	EH03-107
Appearances:	
For the Licensee	Claudio Brunetti, Licensee
For the Branch	Shahid Noorani, Advocate
Enforcement Hearing Adjudicator	Edward Owsianski
Date of Hearing	October 7, 2003
Place of Hearing	Revelstoke BC
Date of Decision	December 2, 2003

INTRODUCTION

VCR Holdings Ltd. (dba Rock Pit) holds Liquor Primary Licence No. 168998. The hours of sale are 7:00 P.M. to 2:00 A.M. seven days a week. The patron capacity is 250. The establishment is located in the downtown area of Revelstoke, BC.

ALLEGED CONTRAVENTION AND RECOMMENDED ENFORCEMENT ACTION

The Liquor Control and Licensing Branch has alleged that on March 29, 2003, the licensee contravened section 42(3) of the Regulations to the *Liquor Control and Licensing Act* by allowing the licensee or an employee to consume liquor while working in the licensed establishment. Section 42(3) states:

Consumption of liquor in licensed establishments

42 (3) A licensee, and the employees of the licensee, must not consume liquor while working in the licensed establishment.

For the alleged contravention, the Liquor Control and Licensing Branch is recommending a suspension of the liquor licence for two successive business days until completed. Pursuant to Schedule Four of the Regulations to the Act this represents the mid-range of a penalty for a first contravention of this type.

ISSUES

1. Whether the licensee contravened Section 42(3) of the Regulations on or about March 29, 2003?
 2. If so, is the recommended penalty an appropriate penalty in the circumstances?
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EXHIBITS

The following exhibits were presented:

Exhibit

1. Book of Documents
2. Accountant's letter of September 23, 2003.

EVIDENCE - The Liquor Control and Licensing Branch

A **constable from the R.C.M. Police** Revelstoke Detachment testified that on March 29/30, 2003, he attended at the Rock Pit on four separate occasions. During the first visit, at approximately 9:30 P.M., he was approached by an employee of the establishment who expressed concern that the owner was present, was drinking and that this could lead to problems. The constable observed the owner with a beer while playing pool. On the second visit, approximately 1-1/2 hours later the constable observed the owner standing near the door, appearing to greet arriving patrons. He had a drink on the counter beside him, a high-ball. During the third visit at approximately Midnight the constable again observed the owner near the door, again with a high-ball glass on the counter beside him. He told the owner that he could either be a patron and as such consume liquor or be working but that he couldn't be doing both. The owner said that he was not working. The constable made his last visit to the establishment at approximately 2:10 A.M. He observed the owner at the doorway and overheard him telling two females that they had to be searched prior to leaving. The owner then put his hands into the jacket of one of the females at which time the constable intervened. The owner became argumentative and the constable escorted him from the establishment.

The constable testified that it was obvious to him that the owner had been consuming liquor, his face was flushed and his eyes bloodshot and watery, he had liquor on his breath. His level of sobriety changed during the course of the night, moving toward intoxication.

A **liquor inspector** testified he conducted an interview with the owner on February 17, 1998, when the liquor license was transferred to the owner. He advised the owner of the requirements of the Act and Regulations including those concerning the prohibition against a licensee or employees from consuming liquor whilst working. He provided the owner with copies of the Act, Regulations and the Branch publication outlining a licensee's responsibilities.

The liquor inspector testified that on October 25, 2001, he conducted a compliance meeting with the owner as a result of receiving a police report that a minor had been found in the establishment. The inspector received a further police report indicating that patrons had been found in the establishment at 4:50 A.M. on April 21, 2002. He discussed the report with the owner and advised him that all patrons were required to leave the establishment within ½ hour of the 2:00 A.M. closing. A further compliance meeting was held with the owner following receipt of a police report that on November 31, 2002, liquor was being consumed in the establishment with the owner present, at approximately 6:30 A.M., well after the closing time of 2:00 A.M. He advised the owner that he set a poor example for his employees.

EVIDENCE - The Licensee

The **manager of the establishment** testified that on March 29, 2003, she phoned the owner when the bouncer didn't show up for work. The owner subsequently came in to the establishment sometime after 11:00 P.M. The owner was in the bar area talking to patrons until she asked him to look after the door until the DJ could take over. He did that for about 10 minutes when the police arrived and asked him to leave. The manager testified that she did not serve the owner any beer or see him with any drinks. He did not appear intoxicated but did have liquor on his breath. She recalled that he was present in the establishment for less than an hour, leaving before the closing time of 2:00 A.M.

The manager testified that the practice of the establishment is to remove any beer left at the pool table by patrons. They also remove liquor from patrons leaving the establishment. The liquor is put on a table at the door and the patrons get it upon their return. As manager she is in charge of staff, all employees are told on hiring that they are not allowed to consume liquor whilst working. Employees are also told not to consume liquor before starting their shift and are sent home if they have done so. She agreed that it is part of the job of employees to search patrons for liquor.

The **DJ employed by the establishment** testified that he started work at 10:00 P.M. on March 29, 2003, at which time the owner was present. He did not see him consuming liquor. He played music until closing time at 2:00 A.M. when, because there was no bouncer on duty, he went to the door to prevent patrons from leaving with liquor. At that time he saw the owner being escorted out by the police. He testified that employees are not permitted to consume liquor prior to starting to work or while working. If they do so, they are not allowed to work. He agreed that searching patrons for liquor on leaving is part of an employee's job.

The **owner of the establishment** presented a letter from his accountant stating that the owner has hired employees to manage the establishment and that the owner is not engaged in the day to day operation of the establishment (exhibit 2). The owner testified that the manager is responsible for hiring, scheduling and supervising staff. He stated that on March 29, 2003, he had consumed a total of approximately three glasses of beer between 3:00 and 5:00 P.M. at a local establishment; he did not consume any liquor following that time. He went into the Rock Pit that night, on two occasions between 9:00 and 10:00 P.M., finding little activity he left. He had not been playing pool. He had however, put away the pool cues and organized the pool tables. He received a telephone call from the manager at approximately 11:00 P.M. advising him that the bouncer had not shown up for work. He advised her that as it was not busy she could handle it with the staff present, he instructed her to have the waitress walk around to ensure that no minors had entered. The owner testified that he returned to the establishment sometime later. He spoke with patrons in the bar area then went to the

coat check at the front of the establishment and watched the drinks of patrons going out for a smoke. He then returned to the bar area and talked to patrons. The manager asked him to look after the front door exit at closing time until the DJ was finished his duties. He did so until 2:00 A.M., at which time the DJ came to the door. At the same time the manager got into an argument with the police officer. He told the police officer that he was not working, just checking to see that patrons were not leaving the establishment with drinks. He did not search the female patrons for liquor. The police officer grabbed his shoulder and told him to leave and he did so. He testified that he was not intoxicated, having consumed only three beers approximately five hours earlier.

SUBMISSIONS

Liquor Control and Licensing Branch

The advocate submitted that on the evidence of the police officer; that he was advised by an employee of the establishment that the owner was drinking, and the officer's observations of the owner with liquor and the deteriorating condition of the owner due to intoxication, together with the officer's observations of the owner engaging in activities of an employee supported a finding of a contravention. He submitted that the recommended penalty of a two day suspension in the circumstances of the contravention and the past history of the establishment was fair and reasonable.

The Licensee

The licensee declined making a submission.

Finding of Fact

Having considered all of the evidence I find on a balance of probabilities that the owner acting as an employee consumed liquor while working in the establishment.

REASONS AND DECISION

In reaching this decision I accept the evidence of the police officer that he observed the owner with liquor during the officer's visits to the establishment and that the condition of the owner deteriorated during the course of the night leading to his conclusion that the owner was nearing intoxication when the police officer dealt with him at the closing time of approximately 2:10 A.M. I do not accept the evidence of the owner that he had not consumed any liquor after approximately three glasses of beer between 3:00 and 5:00 P.M. This is not only contrary to the police officer's evidence, it is contrary to the evidence of the manager who testified that the owner had liquor on his breath when he attended at the establishment for less than 1 hour just prior to the closing time of 2:00 A.M. I am also satisfied that the evidence of the owner's activities in tidying up the pool tables and observing patrons exiting to ensure they were not leaving with liquor is part of the activities of an employee and as such the owner put himself into the position of acting as an employee during his attendance at the establishment. The owner through his actions not only contravened the Regulations, but also acted contrary to the rules set for employees working at the establishment, putting his manager and staff in a difficult position.

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 license or rescind or amend existing terms and conditions
 - impose a monetary penalty
 - order a licensee to transfer a license
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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 minimums set out in Schedule 4 of the Regulations to the Act.

The purpose of the branch in bringing about enforcement action is to encourage voluntary compliance. Having considered the information provided by the liquor inspector I am satisfied that there is a continuing problem with the manner in which the owner conducts himself at the establishment. In my view a penalty is necessary to ensure future voluntary compliance.

In the circumstances, I find that the recommended two (2) day licence suspension penalty is appropriate

ORDER

Pursuant to section 20(2) of the *Act*, I order the suspension of liquor licence No. 168998 for two (2) days starting as of the close of business Friday, January 23, 2004, and continuing on successive business days until the suspension is completed. "Business Day" means a day on which the licensee's establishment would normally be open for business (section 54(1) of the Regulations to the Liquor Control and Licensing Act).

Since I do not know whether the establishment would normally be open 7 days per week as of January 23, 2004, I do not know what the "business days" will be. To ensure that this order is effective, I direct that the liquor licence No. 168998 be held by the Branch or the Revelstoke Detachment of the R.C.M. Police from the close of business Friday, January 23, 2004, until the licensee has demonstrated to the Branch's satisfaction that the licensed establishment has been closed for two (2) business days. The suspension sign notifying the public shall be placed in a prominent location by a Liquor Inspector or Police Officer.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: December 2, 2003

cc: R.C.M. Police Revelstoke Detachment

Liquor Control and Licensing Branch, Victoria Office
Attention: Gary Barker, Regional Manager

Liquor Control and Licensing Branch, Surrey Office
Attention: Shahid Noorani, Branch Advocate
