



**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:** 644222 B.C. Ltd.  
dba Panevino Pasta Bar & Grill  
379 - 12 Street  
New Westminster, BC

**Case:** EH03-152 and EH03-154

**Appearances:**

For the Licensee Orlando Papa, Licensee

For the Branch Shahid Noorani, Advocate

Enforcement Hearing Adjudicator Edward W. Owsianski

Date of Hearing January 20, 2004

Place of Hearing Surrey, BC

Date of Decision March 22, 2004

## **Introduction**

64222 B.C. Ltd. (dba Panevino Pasta Bar & Grill) holds Food Primary Licence No. 200486. The hours of sale are 11:00 A.M. to 1:00 A.M. Monday – Saturday, and 11:00 A.M. to Midnight on Sunday. The patron capacity is 65 in Area 1 and 12 in Area 2. The establishment is located in New Westminster BC.

## **ALLEGED CONTRAVENTION AND RECOMMENDED ENFORCEMENT ACTION**

The Branch's allegations and recommended enforcement action are set out in the Notices of Enforcement Action (NOEA) dated November 7, 2003. The Branch alleges that

1. On October 10, 2003, the licensee contravened section 38 of the *Liquor Control and Licensing Act* by selling or keeping for sale illicit liquor. The recommended enforcement action is a ten (10) day suspension commencing on a Friday. The licensee disputes that this contravention took place.

Schedule 4 of the *Liquor Control and Licensing Regulations* provide a range of penalties for a first contravention of this type, a license suspension for ten (10) – fifteen (15) days and/or a monetary penalty of seven thousand five hundred (\$7500) to ten thousand (\$10,000) dollars.

2. On October 10, 2003, the licensee contravened section 43 of the *Liquor Control and Licensing Regulations* by failing to have a licensee level of the Responsible Beverage Service – Serving it Right (RBS) certificate available for inspection by a liquor inspector. The recommended enforcement action is a \$1000 penalty. The licensee acknowledges that this contravention took place but he disputes the recommended enforcement action.

Schedule 4 of the *Regulations* provide a range of penalties for a first contravention of this type, a license suspension for one (1) – three (3) days and/or a monetary penalty of one thousand (\$1000) to three thousand (\$3000) dollars.

3. On October 10, 2003, the licensee contravened section 35 (3) of the *Liquor Control and Licensing Regulations* by failing to keep a register of all liquor purchased and received by the licensee under the license. The recommended enforcement action is a one (1) day suspension commencing on a Friday. The licensee disputes that this contravention took place.

Schedule 4 of the *Regulations* provide a range of penalties for a first contravention of this type, a license suspension for 1 – 3 days and/or a monetary penalty of one thousand (\$1000) to three thousand (\$3000) dollars.

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The relevant sections of the *Liquor Control and Licensing Act (the Act)* are as follows:

### **Unlawful sale of liquor**

**38** (1) Except as provided in this Act, the *Liquor Distribution Act* or the regulations made under those Acts, a person must not, personally or by his or her clerk, employee or agent, keep for sale, sell or, in consideration of the purchase or transfer of property or for other consideration, give liquor to another person.

(2) Despite subsection (1), a delivery service may purchase liquor on behalf of a customer during the days and hours for sale of liquor prescribed in that area and deliver the liquor to the customer, if the charge for the liquor is no more than the liquor store price plus the delivery service charge.

(3) A licensee must not sell liquor except

- (a) liquor purchased from the Liquor Distribution Branch, and
- (b) in accordance with this Act, the regulations and the terms and conditions of the licence.

The relevant sections of *the Regulations to the Act (the Regulations)* are as follows:

### **Purchase of liquor**

**35** (1) A licensee must not purchase liquor for the licensed establishment unless, at the time of the purchase, the licensee identifies himself or herself as a licensee and that purchase is made from

- (a) a liquor store designated in writing by the general manager, or
- (b) another person designated by the Liquor Distribution Branch.

(2) Subsection (1) does not apply to a licensed manufacturer of wine in respect of purchases of wine by that licensee from another licensed manufacturer of wine.

(3) A licensee must maintain a register of all liquor purchased and received by the licensee under a licence.

### **Beverage service training**

**43** (1) For the purposes of this regulation and section 13 of the Act, “**training program**” means one of the following programs delivered under the auspices of a person or organization approved by the general manager:

- (a) the training program entitled “Serving It Right: The Responsible Beverage Service Program”, Licensee Manual ISBN 0-7726-1063-3;
- (b) the training program entitled “Serving It Right: The Responsible Beverage Service Program”, Server Manual ISBN 0-7726-1035-5.

(2) For the purposes of section 13 (1) of the Act, the following licence categories are prescribed:

- (a) winery licences containing an endorsement referred to in section 18 of this regulation;
- (b) winery licences and brewer’s licences issued to establishments that provide samples in a sampling room designated by the general manager under section 53 (1) of the Act;
- (c) liquor primary licences, liquor primary club licences, food primary licences and special occasion licences.

(3) For the purposes of section 13 (1) of the Act, the training program referred to in subsection (1) (a) of this section is prescribed.

(4) For the purposes of section 13 (3) or (4) of the Act, the training program referred to in subsection (1) (a) of this section or the training program referred to in subsection (1) (b) of this section is prescribed.

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(5) Successful completion of the training program by each person must be evidenced by a certificate of completion issued in the name of that person by an authority approved by the general manager.

(6) A person referred to in one of the following paragraphs of this subsection is, for the periods indicated in that paragraph, exempt from the requirement to complete a training program:

(a) an applicant for a new licence, for a period of 120 days after the licence is issued;

(b) an applicant for the transfer of a licence, for a period of 120 days after the transfer is granted;

(c) a licensee who applies for the renewal of a licence, for a period of 120 days after the renewal is issued, less the number of days the licensee has held the licence;

(d) a director, officer or employee of a corporation that is licensed to operate an establishment, if that person is responsible for controlling the sale of liquor for that corporation, for a period of 120 days after that person becomes responsible for controlling the sale of liquor for the corporation;

(e) a manager of a licensed establishment, for a period of 120 days after that person becomes a manager of the licensed establishment;

(f) a server in a licensed establishment, for a period of 120 days after that person becomes a server in the licensed establishment.

(7) The following persons in the following situations are exempt from the requirement to complete a training program:

(a) an unpaid manager or unpaid server in a club that is operated under a liquor primary club licence;

(b) subject to any terms and conditions imposed under section 12 (2) and (3) of the Act, a server in a food primary establishment;

(c) an unpaid server in an establishment licensed under a private special occasion licence or a public special occasion licence;

(d) a person in whose name a private special occasion licence is issued, unless that person is acting on behalf of an organization, association or other organized group of persons.

(8) Subject to subsections (6) and (7) of this section, before allowing a person to manage or serve liquor in a licensed establishment to which section 13 of the Act applies, the licensee must verify that the person has successfully completed a required training program.

(9) A person who claims to have successfully completed a training program must produce his or her certificate of completion when requested to do so by the general manager, an officer of the Liquor Control and Licensing Branch or a peace officer.

## **Issues**

1. Whether the licensee contravened Section 38 of *the Act* and Sections 35 and 43 of the *Regulations* on or about October 10, 2003?
  2. If so, are the recommended penalties appropriate in the circumstances?
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## **Exhibits**

The following exhibits were presented:

1. Book of Documents;
2. one 1.75 litre bottle labelled Canadian Mist whiskey approximately 60% full;
3. one 750 ml bottle labelled Soranzo approximately 1/2 full;
4. one litre bottle labelled Yugoslavian Grappa approximately 1/3 full;
5. one .7 litre bottle labelled Barenjager Bitters, seal broken, appeared full; and
6. two 50ml bottles labelled Bacardi rum, seals intact, appeared full.

## **Evidence** - The Liquor Control and Licensing Branch

A **liquor inspector** testified that he is the inspector responsible for the area in which this establishment is located. On September 5, 2003, he wrote to the establishment requesting that a representative of the licensee attend an Information Session at branch offices on September 25, 2003. The information session is part of the branch's Administrative Inspection process which allows the branch to ensure that the ownership has not changed and that the establishment is being operated in compliance with the terms and conditions of its license. The session is designed to allow for any questions or concerns of the licensee to be addressed. In the letter the representative is requested to bring several documents to the session including the liquor register. The inspector testified that there was no licensee representative in attendance at the session nor was there a response to the branch's request. A second letter was sent to the licensee on September 30, 2003, requesting attendance at a session to be conducted on October 7, 2003. Once again, no representative attended nor was there a response from the licensee.

The inspector followed up by attending at the establishment at approximately 12:45 P.M. on October 10, 2003, for the purpose of conducting the administrative inspection on site. The staff on duty consisted of a server and kitchen staff, the principal for the corporate licensee (the owner) was not present, he arrived approximately one-half hour later. The server advised the inspector that he was in charge of the establishment. He was requested to produce his Responsible Beverage

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Service (RBS) certificate; he produced his “servers” certificate and advised the inspector that he did not hold a “licensee” certificate. The inspector requested the server to produce the liquor register. The inspector was not certain, but believes that he would have explained that he was looking for the records of liquor purchases for the establishment. The server said, they didn’t have any such records. The liquor inspector proceeded to inspect the liquor being kept for sale in the establishment. Several bottles of liquor were located on the shelf over the liquor service bar that did not appear to be purchased from the Liquor Distribution Branch (LDB) as required for licensed establishments. These bottles of liquor were subsequently seized by the inspector and kept in safekeeping at the branch regional office. No analysis was done of the contents of the bottles. They are described as follows:

- One 1.75 litre bottle labelled Canadian Mist whiskey approximately 60% full. It bore a Surgeon General’s warning indicating that it was a product labelled for sale in the USA.
- One 750 ml bottle labelled Soranzo approximately 1/2 full. This was produced in the USA and is not listed for sale with the LDB.
- A one litre bottle labelled Yugoslavian Grappa approximately 1/3 full. This is not listed for sale with the LDB.
- One .7 litre bottle labelled Barenjager Bitters, appeared full. There was no documentation that this product had been purchased through the LDB.
- Two 50ml bottles labelled Bacardi rum, appeared full. They bore a label “not for resale”.

The owner arrived at the establishment at this point. He did not produce any records of liquor purchases. He provided the inspector with the following explanations for the liquor seized:

- The Canadian Mist whiskey was left at the establishment following a private party held there.
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- The Yugoslavian Grappa was given to the owner as a gift and was used in cooking as a flambé.
- The Barenjager bitters were on the premises when the owner took over the establishment.
- The owner did not know where the Soranzo had come from, nor was he able to offer an explanation for the two 50 ml bottles of Bacardi rum.

The inspector referred us to exhibit 1, tab 13, an "Inspection Interview Information Sheet" and testified that he had interviewed the owner of the establishment on September 26, 2002, as part of the process of transferring the liquor license. During the course of the interview, he discussed the licensee's responsibilities including those related to the terms and conditions of the liquor license found in the "Guide for Licensees" (the Guide), RBS certification requirements, and the process for the purchase of liquor by a licensee. He would normally provide a copy of *the Act and Regulations* and the Guide to the interviewee during the course of the interview, however, could not recall whether that was done at the time of the interview as it was not checked off in the "Inspection Interview Information Sheet" (see exhibit 1, tab 13 at page 3). He referred us to the licensing terms and conditions in the "Guide" in effect at the time of the interview (exhibit 1, tab 18) dealing with the RBS requirements for licensees (see pages 8 & 9); "Buying Your Liquor" requirements for licensee (see pages 11 & 12); and "Illicit Liquor" (see page 12). The inspector advised that the "Guide" as identified in exhibit 1, tab 18, was subsequently updated and provided to all licensees (tab 19). The version in effect at the time of his inspection on October 10, 2003, is found at exhibit 1, tab 19. The provisions for "Buying, Storing, Selling and Serving Liquor" which include 'Buying Liquor', 'Maintaining a Liquor Register' and 'Illicit or Private Liquor' are found at page 9, the RBS requirements at page 11.

The liquor inspector referred us to a previous Contravention Notice issued by the branch alleging that on November 7, 2002, the licensee contravened a term and condition of the liquor license by failing to display the liquor license and contravened the Regulations by failing to have an employee on duty holding a "licensee" level of

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RBS certificate (exhibit 1, tab 15). The branch did not proceed with enforcement action for these allegations.

**Evidence** - The Licensee

**Witness A** testified; that he is employed at the establishment as a server during the week and a bartender on weekends. He acts as manager when the owner is not present. He was working as a server at the time of the inspection on October 10, 2003. When the liquor inspector asked to see the liquor register, he did not explain to the witness, that it was the proof of liquor purchases that the inspector was looking for. He testified that he was unfamiliar with the term "liquor register" thus could not provide it and believed that they did not have one. Had the witness known that the inspector wanted the liquor purchase documents, he would have provided him with the copies of the invoices which are kept on a shelf in the establishment.

The witness testified; that he has a "Servers" RBS certificate, not a "Licensee" certificate. He acknowledged that he was present when a previous contravention notice was issued on November 7, 2002. Following this he had obtained the RBS "Licensee" materials, however was unclear whether he or the owner was required to hold the "Licensee" certificate so never proceeded with it.

The witness testified; that the establishment has never sold liquor that has not been properly purchased through the LDB. He testified; that the part bottle of Canadian Mist whiskey was left on a table at the establishment following a private party quite a while ago. He brought it to the attention of the owner who told him to put it away or to get rid of it. He put it on the shelf where it remained until the inspector's visit; none of it has been sold. The part bottle of Soranzo was left behind by the previous owner of the establishment as was the bottle of Barenjager Bitters, neither had been sold. The witness was of the impression that the Barenjager Bitters contained only tea and believed that it was on the shelf for decorative purposes only, as this was a practice of the previous owner. The two 50 ml bottles of Bacardi rum were promotional items attached to bottles of liquor purchased at the LDB. They were uncertain what to do with

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them so kept them on the shelf for decorative purposes. He testified that the bottle of Yugoslav Grappa was brought to the establishment as a gift for the owner following a wedding reception held at the establishment. It was put on the shelf. It has never been sold. It has been used in cooking as a flambé because of the high alcohol content. The witness admitted that he has taken a glass from it on occasion at the end of his shift.

The witness testified; that he is familiar with the "Guide" found at exhibit 1, tab 18, but had not actually read it prior to the inspector's visit.

**Witness B** testified; that he has been the owner of the establishment since February 2002. He had not held a liquor license prior to this one. The establishment is operated as a family business with several members of his family working there in various capacities. He recalls being provided with instructions concerning the requirements under *the Act and Regulations* during the interview with the liquor inspector when the liquor license was transferred. He is familiar with the Guide at exhibit 1, tab 18. He was uncertain whether he had received a copy of the "Food Primary Licensee Guide" at tab 19. He agreed that he received the two letters from the Branch (exhibit 1, tabs 16 & 17) requesting that he attend an information session. He did not attend either of the proposed sessions, nor contact the Branch to reschedule. His attention at that time was concentrated on dealing with other business problems.

The witness testified; that he did not understand what was meant by a liquor register. Had the liquor inspector requested to see the receipts for the liquor purchased for the establishment, he would have provided him with the invoices for the liquor purchases which are kept in files in an office in the establishment. This was the process followed by the previous licensee which he continued to follow. He agreed that he did not ask what was meant by a liquor register after receiving the letters from the branch or during the visit of the inspector.

The witness testified; that at the time of the transfer of the liquor license, he was made aware that he was required to obtain an RBS "Licensee" certificate and that he did not

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obtain the certificate until January of this year. He received the Contravention Notice of November 7, 2002, and completed the materials, but did not send them in.

Concerning the issue of illicit liquor, the witness agreed that although no analysis had been conducted of the liquor seized during the inspection of October 10, 2003, he did not dispute that the contents of the bottles were other than what was represented on the labels. He testified; that he has provided an explanation of how the establishment came into possession of each item. He testified; that there was never an intention that those items of liquor would be sold. He is aware that any liquor that is used for cooking should be kept separate from liquor that is intended to be sold. He testified; that it was a mistake to keep the Yugoslavian Grappa, which was sometimes used as a flambé, with the liquor kept for sale. He could not provide an explanation of why he had told the server (witness A) to put the "Canadian Mist" on the shelf rather than to throw it away, but reiterated that it was not being kept for sale, otherwise it would have been gone by the time of the inspection on October 10, 2003.

## **SUBMISSIONS**

The licensee representative in his submission referred to the decision of the Liquor Appeal Board in Whistler Mountain Ski Corp. (Dusty's), October 6, 2000. He submitted that that case dealt with the re-pouring and mixing of liquor which was done to gain a financial advantage. That did not occur in this instance. Here there was never an intention of making money through the sale of illicit liquor. He submitted that as a first time licensee he did not pay attention to letters sent by the Branch. He now realizes the importance of doing so and will pay more attention in the future. He submitted that a one thousand dollar (\$1000) monetary penalty or a suspension may be more than the business can survive. He would prefer a warning and given the opportunity would not repeat the mistake.

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## **Findings and Decision**

Having considered all of the evidence I find that on October 10, 2003, the licensee:

- contravened section 43 of the *Liquor Control and Licensing Regulations* by failing to have a licensee level of the Registered Beverage Service – Serving it Right (RBS) certificate available for inspection by a liquor inspector;
- contravened section 35 (3) of the *Liquor Control and Licensing Regulations* by failing to keep a register of all liquor purchased and received by the licensee under the license.

I am not satisfied that the licensee contravened section 38 of the *Liquor Control and Licensing Act* by selling or keeping for sale illicit liquor.

In reaching this decision, I am satisfied that the evidence is clear that neither the owner, nor the server, who was in charge of the establishment at the time of the inspector's visit had obtained a RBS "licensee" certificate. I am satisfied as well that no liquor register in any form was produced up to and including the course of the hearing. I accept the evidence of the liquor inspector, that he requested to see the liquor register and that in all likelihood he explained that in requesting to see the liquor register he was seeking the records of liquor purchased for the establishment. Even if I am wrong on that point, the licensee has had plenty of opportunity to seek clarification of what was meant by a liquor register following receipt of the two letters from the Branch, the inspector's visit, and subsequently following receipt of the NOEAs. I am satisfied that clarification was not sought nor was the liquor register produced.

It is clear that all of the liquor seized by the inspector was "illicit liquor" by definition (see the "Guides" at exhibit 1, tabs 18 & 19). For the contravention to be established it must be found that the illicit liquor was sold or kept for sale. Here there is no evidence that any of the illicit liquor was sold. There is a presumption that all liquor found within the liquor service bar area is being kept for sale. This presumption can be rebutted. I am satisfied that the evidence on behalf of the licensee was sufficient to rebut the presumption that the liquor was being kept for sale.

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**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 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; and
- order a licensee to transfer a license.

Imposing any penalty is discretionary. If I decide that the contravention(s) did occur and that enforcement action is appropriate, I may accept the penalty recommended in the Notice of Enforcement Action, impose a higher penalty, impose a lesser penalty or impose no penalty. 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*.

There is no record of prior contraventions, offences or enforcement actions of the same type for this licensee or this establishment within the year preceding these incidents ("compliance history"). Pursuant to *Liquor Control and Licensing Regulation*, Schedule 4, section 1(1)(b), the branch has treated the allegations as first contraventions.

There was, however, a previous contravention notice issued to the licensee on November 7, 2002, for failing to meet the RBS requirements. Enforcement action was not pursued by the Branch and while it does not represent a proven contravention, it should have served to alert the licensee to a problem and to act to rectify it.

The purpose of the branch in bringing about enforcement action and in determining the appropriate penalty is to encourage voluntary compliance. Among the factors that are

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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.

Having considered the evidence, I am satisfied that a penalty for each contravention is necessary to ensure future voluntary compliance. This licensee has demonstrated considerable recalcitrance.

For failing to have a "licensee" level of the Responsible Beverage Service – Serving it Right (RBS) certificate available for inspection by a liquor inspector, I find that the recommended minimum monetary penalty of one thousand dollars (\$1000) is appropriate.

For failing to keep a register of all liquor purchased and received by the licensee under the license, I find that the recommended minimum one (1) day suspension penalty to be served on a Friday is appropriate.

### **Order**

Pursuant to Section 20 (2) of the Act, concerning Food Primary Licence No. 200486 I impose a monetary penalty on the licensee of \$1,000.00 (one thousand dollars) to be paid no later than Friday April 30, 2004, and I order the suspension of liquor licence No. 200486 for one (1) business day starting as of the close of business Thursday, April 29, 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.)

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Since I do not know whether the establishment would normally be open seven (7) days per week as of April 30, 2004, I do not know what the "business day" will be. To ensure that this order is effective, I direct that the liquor licence be held by the Branch or the New Westminster Police Department from the close of business Thursday, April 29, 2004, until the licensee has demonstrated to the Branch's satisfaction that the licensed establishment has been closed for one (1) business day. A 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: March 22, 2004

cc: New Westminster Police Department

Liquor Control and Licensing Branch, Surrey Office  
Attention: Mike Clarke, Regional Manager,

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

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