



**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, R.S.B.C. 1996, c. 267

Licensee: Northstar International Motor Hotel Ltd.
dba Cobalt Hotel
917 Main Street
Vancouver, BC

Case: EH04-133

For the Licensee: Gurdyal Singh Sahota, President
Paul Sahota, Manager

For the Branch: Sonja Okada, Advocate

Enforcement Hearing Adjudicator: M. G. Taylor

Date of Hearing: March 18, 2005

Place of Hearing: Vancouver, BC

Date of Decision: April 19, 2005

INTRODUCTION

The licensee, Northstar International Motor Hotel Ltd., doing business as the Cobalt Hotel (“the hotel”), operates a bar at 917 Main Street, Vancouver, BC. It holds Liquor Primary Licence (“LPL”) No. 033649 with hours of operation Monday to Saturday from 11:00 a.m. until 1:00 a.m. and on Sunday from 11:00 a.m. to Midnight.

The maximum licensed capacity for Area 01 and 02 is 190 patrons. The licence has an endorsement for off-premises sales. As with all liquor primary licenses, it is subject to the terms and conditions contained in the publication ‘Guide for Liquor Licensees in British Columbia’ (“the Guide”).

ALLEGED CONTRAVENTIONS AND RECOMMENDED PENALTY

By Notice of Enforcement Action (NOEA) amended as of March 10, 2005, the Liquor Control and Licensing Branch (“the Branch”) alleged that on August 13, 2004, the licensee permitted a patron to remove liquor from the establishment, contrary to *Liquor Control And Licensing Regulation*, B.C. Reg. 244/2002, (the “*Regulation*”) Section 42(4).

In the alternative, the branch alleged that the licensee breached the conditions of off-premises sales, by permitting a patron to consume liquor that was purchased as off-premises sales inside the establishment, contrary to Section 23 of the *Liquor Control and Licensing Act*, R.S.B.C. 1996, c. 267 (the “*Act*”).

Schedule 4 of the *Regulation* provides a range of licence suspensions and monetary penalties for contraventions. For the contraventions of Section 42(4), Item 29, or Section 12 Item 46, the penalty range is a one (1) to three (3) day suspension or a one thousand (\$1,000.00) to three thousand (\$3,000.00) dollar monetary penalty for the first contravention.

The branch has recommended a monetary penalty of \$1,000.

RELEVANT STATUTORY PROVISIONS

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

42 (4) All liquor sold or served in a licensed establishment must be consumed there, and the licensee must not allow liquor, other than the following, to be taken from the licensed establishment:

(a) a bottle of wine that is unfinished by a patron and sealed by the licensee before being taken by that patron from the licensed establishment;

(b) liquor that is sold for consumption off premises in accordance with the Act, this regulation and the terms and conditions of the licence.

Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267 (the "Act")

12 (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

(b) that are in addition to those referred to in paragraph (a).

ISSUES

1. Does the evidence establish that a patron removed liquor from the establishment contrary to Section 42(4) of the Regulation?
2. Does the evidence establish that a patron consumed inside the establishment liquor that was purchased as off-premises sales?
3. If the answer to either is 'yes', is the branch's recommended enforcement action appropriate?

EXHIBITS

Exhibit No. 1 Book of Documents

Exhibit No. 2 Hand drawn sketch of area around the Cobalt Hotel

EVIDENCE

The branch called as witnesses two police constables and a liquor inspector. The licensee called the sound technician who was working that night and the manager gave evidence and submissions. The manager described the establishment as a punk rock bar. There was live music on this occasion.

At approximately, 10:45 p.m., on Friday, August 13, 2005, the two police constables were on a Drinking and Driving Counterattack. They were driving along the Georgia Viaduct in downtown Vancouver, in the process of changing locations, when they observed a large gathering of people in the parking lot behind the Cobalt Hotel. They were concerned because of the large number and because they appeared to be drinking. When they pulled into the parking lot, they confirmed the people were drinking from beer cans, and they observed beer cans strewn about. They described it as an outdoor party.

The constables went to the front of the hotel where there were a few people standing outside the front door. The lead constable said that some of the people in front were drinking beer, but she did not specify what kind or whether they were cans or bottles. The other constable recalled that no one outside the front was drinking.

They testified that as they went inside, a woman walked past them and out the front door, with a beer bottle in her hand. The constables did not identify the brand of beer, but were clear that it was a bottle as opposed to the cans they observed in the parking lot. The constables did not stop the woman or otherwise check what was in the bottle.

The lead constable testified that she went inside and tapped the doorman on the shoulder to get his attention. It appeared to her that his attention was on the band. He denied the woman could have walked passed him with a beer bottle and became uncooperative.

The lead constable was of the opinion that the hotel was 'out of control' based on her observation of the people at the back and the front. When she saw the woman walk out, she did not pursue her because she felt that the hotel was the major concern. She telephoned for back up for the parking lot party but there was no back up available. She obtained some expired liquor licenses from the doorman and issued a Licensed Premises Check. The doorman told her the bar would be closing soon. She determined that nothing further could be done and the constables left at approximately 11:00 p.m.

There is a dead end street and a carriage way on either side of the hotel that leads to the parking lot. There is another parking lot adjacent to the hotel parking lot and both areas attract people because it is a large empty space.

The licensee's witness testified that when he was packing his equipment into the parking lot at about 2:00 a.m., he notice a couple of beer cans lying about at the back of the parking lot.

The licensee's evidence is that only packaged cans of beers are sold as off-premises sales, and cans of beer are not sold inside, as per the branch's recommendations to licensees. The licensee does not sell single cans of beer as off-premises sales. The licensee gave evidence that it is common practice for patrons to put water in their beer bottles, so it appears they are continuing to drink.

The liquor inspector reviewed the establishment's past history from the branch's file. He testified that there have been no previous allegations of liquor being removed. Overall, he testified that this licensee is diligent in following the requirements.

The licensee's witness testified that the two door security working on this occasion were seasoned, well trained, diligent employees. He also testified that

in his four and a half years at the Cobalt, he observed new staff being trained and staff being disciplined. The licensee trains employees to be on the watch for patrons who might cause trouble and to be vigilant about who enters. He was aware of employees having been fired for not being sufficiently diligent. He noted that the hotel is located close to the police station and there are frequent inspections by the police.

SUBMISSIONS

The licensee submitted that the branch had not proven that liquor was removed from the bar. In his opinion, if the woman had been walking out with alcohol she would have tried to hide it from view of the police. There is no evidence of what was in the bottle, either from reading the label or from smelling the contents.

He also submitted that there is no evidence of the alternative allegation, that the bottle she was carrying was purchased as an off-premises sale or that she consumed an off-premises sale in the bar.

The licensee submitted that people congregate in the back parking lots and that they are not associated with the hotel.

Concerning penalty, the licensee submitted that he would prefer a licence suspension because the \$1,000 monetary penalty exceeds the daily profit.

ANALYSIS AND DECISION

The burden of proof on the branch is to establish that the contravention occurred, on a balance of probabilities. That is, that the branch's view of the case is more probable than any other explanation, given the totality of the evidence.

I find that the constables should have investigated this incidence further. It would have been prudent to stop the woman and inquire about the bottle. The lead constable was concerned that the establishment was out of control and her attention was drawn to dealing with the doorman. In my view, the constables' impressions of the bottle the woman was carrying were coloured by their view of the parking lot party, and people standing in front of the hotel. Given that the constables were not able to identify the label on the bottle, even at the time they wrote their report, I am not prepared to infer that the most probable explanation is that it contained beer or even that it was a beer bottle. As the licensee submitted, it could have been a non-alcoholic beverage, or it could have been a beer bottle containing water. Or, it could have been empty. There was no compelling evidence about the bottle. There was also no evidence about the woman that would lead me to conclude, that more probably than not, she was removing liquor from the bar.

The only additional evidence is the milling of people of people at the back, who were drinking from beer cans. It may be that beer purchased as off-premises sales was being consumed in the parking lot, but that circumstance would not lead me to conclude that the woman walking out the front door was removing liquor. The other circumstance was the people standing at the front door. The constables were not unanimous in their evidence, and they did not investigate those people to ascertain what, if anything, they were drinking.

I find that the branch has not demonstrated on a balance of probabilities that the licensee permitted a patron to remove liquor from the premises.

For the same reason, I find that the alternative alleged contravention has not been proven. In addition, I accept that the licensee only sells cans of beer as off-premises sales and, therefore, find it improbable that this single bottle was sold as an off-premises sale.

ORDER

I find that the branch has not proven the alleged contraventions.

Original signed by

M. G. Taylor
Enforcement Hearing Adjudicator

Date: April 19, 2005

cc: Vancouver Police Department

Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: Doug Dyck, A/Regional Manager

Liquor Control and Licensing Branch, Surrey Regional Office
Attn: Sonja Okada, Branch Advocate
