

December 19, 2006

0742856 BC Ltd  
c/o Tim Guest  
#504, 2187 Bellevue Avenue  
West Vancouver, BC V7V 1C2

**REGISTERED MAIL**

Dear Licensee:

**Re: 0742856 BC Ltd, doing business as The Riverwalk Grille & Banquets,  
Fort Langley, BC  
Food Primary Licence No. 300884 Case # EH06-135**

This letter constitutes a decision by the General Manager of the Liquor Control and Licensing Branch pursuant to Section 20 of the *Liquor Control and Licensing Act*, regarding Notice of Enforcement Action ("NOEA") #EH06-135 issued to the above named licensee.

**Alleged Contraventions and Proposed Penalties**

The Branch alleges the following:

1. That on August 25, 2006, the licensee contravened section 20(1)(d) of the *Liquor Control and Licensing Act* and section 11(1) of the *Liquor Control and Licensing Regulation* by operating the licensed establishment in a manner that was contrary to the primary purpose of the business as stated on the license. The proposed penalty is a fifteen (15) day suspension of the liquor licence (item 1, Schedule 4 of the *Regulation*).
2. That on August 25, 2006, the licensee contravened section 43(2)(b) of the *Liquor Control and Licensing Act* by permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied. The proposed penalty is a four (4) day suspension of the liquor licence (item 11 of Schedule 4, *Liquor Control and Licensing Regulation*).
3. That on September 8, 2006, the licensee contravened section 73 of the *Liquor Control and Licensing Act* by failing to produce documents or records requested by the liquor inspector. The proposed penalty is a fifteen (15) day suspension of the liquor licence (item 31 of Schedule 4 of the *Regulation*).

## **Background**

In a letter dated November 15, 2006, sent via courier to the licensee's registered office, the branch informed the licensee that there would be a pre-hearing telephone conference on November 20, 2006. The letter advised that if the licensee failed to participate in the pre-hearing conference, the general manager may make a decision without conducting an enforcement hearing.

The pre-hearing conference could not proceed because the licensee failed to participate. The registrar's attempt to reach the licensee by telephone was unsuccessful, and her telephone message was not returned.

In a registered letter dated November 21, 2006, the registrar informed the licensee that due to his failure to participate in the pre-hearing conference, he had lost the opportunity to have this matter determined by way of an oral hearing. The licensee was given the opportunity to provide a written submission by November 30, 2006. Canada Post's records show that the licensee has not picked up the letter from the local post office.

On December 13, the registrar spoke with Tim Guest, the corporate licensee's director. He confirmed that he had received the NOEA and was aware of the branch's allegations. The registrar explained that he had the opportunity to respond to the allegations if he wanted to do so. He stated that the licensee would not respond because the establishment has ceased operations and he did not want to put any more time or effort into the business.

## **Applicable Statutory Provisions**

See Schedule A, attached.

## **Issues**

1. Whether the licensee contravened the *Act* and *Regulation* as alleged?
2. If so, what enforcement action, if any, is warranted?

## **Particulars of Allegations**

The particulars of the alleged contraventions are contained in the NOEA.

## **Licensee's Response**

The licensee has chosen not to provide information to refute what the branch alleges took place.

## **Decision**

I find, based on the information contained in the NOEA, and absent any response from the licensee, that

1. On August 25, 2006, the licensee contravened section 20(1)(d) of the *Act* and section 11(1) of the *Regulation* by operating the licensed establishment in a manner that was contrary to the primary purpose of the business as stated on the licence; and

2. On August 25, 2006, the licensee contravened section 43(2)(b) of the *Act* by permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied; and
3. On September 8, 2006, the licensee contravened section 73 of the *Act* by failing to produce documents or records requested by the liquor inspector.

### **Penalty**

Having found that the contraventions are proven, section 20(2) of the *Act* gives me the 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 *Regulation*. I am not bound by the maximum and may impose higher penalties when it is in the public interest to do so. I am not bound to order the penalties proposed in the NOEA.

There is no record of proven contraventions of the same type having been committed by the licensee while he was the licensee of record within the 12 month period prior to the commission of these contraventions. Therefore, these contraventions must be treated as first contraventions for the purposes of determining penalty.

#### 1. Operating contrary to the primary purpose of the licence

An establishment with a food primary licence is authorized to offer liquor service as an accompaniment to a meal, rather than as the primary activity. It is contrary to the public interest for the branch to allow restaurants to operate as bars. Public and local government input is required for liquor primary licences but not for food primary licences and operating a restaurant as a bar circumvents this process.

The current licensee has been operating this establishment since January 30, 2006. Since then there have been several occasions when the branch raised concerns with him regarding how the establishment is operated. The branch issued CN #B007771, for alleged contraventions on February 17, 2006: unauthorized third party use of licence, unauthorized structural alterations, liquor removed from red lined area, failure to have a valid business licence available for inspection. Again, on August 25, 2006, the branch identified an unauthorized structural change (a stage). These allegations were not pursued beyond the issuance of contravention notices.

Under the circumstances, I find that the maximum liquor licence suspension of fifteen (15) days is warranted. I believe that a suspension of this length will allow the licensee to continue to operate and focus on its primary purpose which is the service of food.

#### 2. Permitting intoxicated person to remain

The branch's records indicate that on March 31, 2006, the licensee was alleged to have committed the same contravention. The branch issued CN #B001345 for that incident but chose not to pursue further enforcement action. Instead, on April 19, 2006, the branch held a compliance meeting with the licensee to discuss the licensee's responsibility regarding service and removing intoxicated patrons.

I conclude that a suspension is now required to ensure that the licensee understands the importance of detecting and removing intoxicated patrons. Therefore, I find that a four (4) day suspension of the liquor licence is appropriate.

3. Fail to produce document, record as requested

I note that this is the second time that the branch has made this type of allegation regarding this licensee; first as the operator of the business and then as licensee. Our records indicate that on May 2, 2006, the now licensee allegedly failed to produce records pertaining to the events of April 10, 2006, when two minors were killed in a motor vehicle accident minutes after leaving the establishment. The branch chose not to pursue that contravention.

Under the circumstances, I find that the maximum licence suspension is warranted in this case. The failure to produce documents and records seriously undermines the relationship between the branch and the licensee and impairs the branch's ability to identify and address contraventions and protect the public interest. I find that a fifteen (15) day suspension of the liquor licence is appropriate.

**Order**

Therefore, pursuant to s. 20(2) of the *Act*, I order a suspension of food primary licence #300884 for a period of thirty-four (34) days, to commence as of the close of business on Thursday, January 18, 2007, and to continue each succeeding business day until the suspension is completed. "Business day" means a day on which the licensee's establishment would normally be open for business (Section 67 of the *Regulation*).

To ensure this order is effective, I direct that food primary licence #300884 be held by the branch or the Langley Detachment of the RCMP from the close of business Thursday, January 18, 2007, until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

Yours truly,

[ORIGINAL SIGNED]

Cheryl Caldwell  
A/Deputy General Manager  
Compliance and Enforcement Division  
Liquor Control and Licensing Branch

cc: Langley RCMP Detachment

Liquor Control and Licensing Branch, Surrey Office  
Attention: Michael Clark, Regional Manager

Liquor Control and Licensing Branch, Surrey Office  
Attention: James Macdonnell, Branch Advocate

## Schedule A

### ***Liquor Control and Licensing Act, RSBC 1996 Chapter 267***

#### **Action against a licensee**

**20** (1) In addition to any other powers the general manager has under this Act, the general manager may, on the general manager's own motion or on receiving a complaint, take action against a licensee for any of the following reasons:

- (a) the licensee's contravention of this Act or the regulations or the licensee's failure to comply with a term or condition of the licence;
- (b) the conviction of the licensee of an offence under the laws of Canada or British Columbia or under the bylaws of a municipality or regional district, if the offence relates to the licensed establishment or the conduct of it;
- (c) the persistent failure to keep the licensed establishment in a clean and orderly fashion;
- (c.1) a failure by the licensee to take reasonable measures to ensure that the operation of the establishment is not contrary to the public interest and does not disturb persons in the vicinity of the establishment;
- (d) the existence of a circumstance that, under section 16, would prevent the issue of a licence;

#### **Issue of licence prohibited**

**16** (1) A licence must not be issued, renewed or transferred if, in the general manager's opinion, the applicant

- (a) is not a fit and proper person,
  - (b) is not the owner of the business carried on at the establishment or the portion of the establishment to be licensed,
  - (c) is not the owner or lessee of the establishment or the portion of the establishment to be licensed, or
  - (d) is disqualified under this Act or the regulations or has not complied with the requirements of this Act or the regulations.
- (2) In deciding if a person is fit and proper for the purposes of subsection (1) (a), consideration must be given to convictions in the preceding 3 years under the laws of Canada or any province or the bylaws of a municipality or regional district in British Columbia.
- (3) A licence must not be issued, renewed or transferred if, in the general manager's opinion, it would be contrary to the public interest.
- (4) Without limiting subsection (3), the general manager must consider whether
- (a) the applicant is the holder of, has an interest in or is applying for another licence under this Act, or
  - (b) the applicant is qualified under this Act or the regulations or has complied with the requirements of this Act or the regulations.

(5) A licence, other than a special occasion licence under section 7, must not be issued, renewed or transferred except to

- (a) a person who is a resident, normally resides in British Columbia and is not a minor,
- (b) a partnership, of which each member is a resident, normally resides in British Columbia and is not a minor, or
- (c) a corporation whose agent or manager selected by the corporation to carry on its business in the licensed establishment is a resident, normally resides in British Columbia and is not a minor.

(6) A special occasion licence must not be issued except to a person who is not a minor and who

- (a) is a resident of and normally resides in British Columbia, or
- (b) although not a resident of British Columbia is approved for a special occasion licence by the general manager.

(7) [Repealed 1999-36-9.]

### **Drunkness**

**43** (1) A person must not sell or give liquor to an intoxicated person or a person apparently under the influence of liquor.

(2) A licensee or the licensee's employee must not permit

- (a) a person to become intoxicated, or
- (b) an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

### **Power to retain documents and inspect books and premises**

**73** (1) To obtain information respecting the administration or enforcement of this Act or the regulations, the general manager or a person designated by the general manager may

- (a) require the licensee to produce any prescribed document relating to the operation of the business licensed under this Act, and
- (b) inspect any of the following:
  - (i) records in the possession of any person that may contain information relating to goods shipped, carried or consigned or received for shipment or carriage in British Columbia,
  - (ii) premises of any person set apart or used as a warehouse for the storage of liquor, and
  - (iii) establishments licensed under this Act and records, liquor and other things associated with the operation of the establishment.

(1.1) A person requiring the production of documents or carrying out an inspection under subsection (1) may

(a) retain the documents produced or remove records or things relevant to the inspection for the purpose of making copies or extracts, and

(b) take reasonable samples of liquor for testing and analysis.

(1.2) A person who retains the documents produced, removes records or things or takes a sample must

(a) give a receipt for the documents retained, records or things removed or the sample taken, and

(b) make any copy or extract, and return the documents, records or things retained or removed, within a reasonable time.

(1.3) A copy made or extract taken under this section, certified by the person carrying out the inspection as a true copy of or extract from the original, is admissible in evidence to the same extent as, and has the same evidentiary value as, the record of which it is a copy or from which it is an extract.

(1.4) When acting under the authority of this section, a person shall carry identification in a form authorized by the general manager and present it on request to the owner or occupant of the premises referred to in subsection (1).

(1.5) A person when acting under the authority of this section may request and receive the assistance of a peace officer.

(2) A person commits an offence if the person neglects or refuses to do any of the following under this section:

(a) produce a document required to be produced;

(b) produce and submit a record or thing for inspection or a sample of liquor;

(c) allow premises to be inspected.

## ***Liquor Control and Licensing Regulation, BC Reg. 244/2002***

### **Food primary licences**

**11 (1)** A food primary licence in respect of an establishment may be issued, renewed or transferred if the primary purpose of the business carried on in the establishment is the service of food during all hours of its operation.