



November 10, 2006

Deroye Enterprises Ltd.
1360 Sperling Avenue
Burnaby BC V5B 4J7

REGISTERED MAIL

Dear Licensee:

**Re: Deroye Enterprises Ltd, dba Green Element Dining & Lounge, Richmond, BC
Food Primary Licence No. 301770 Case # EH06-152**

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”) #EH06-152 issued to the above named licensee.

Alleged Contravention and Recommended Penalty

The Branch alleges that on October 1, 2006, the licensee contravened Section 44(1)(b) of the *Liquor Control and Licensing Regulation* by failing to ensure that liquor is taken from patrons within ½ hour after the time stated on the licence for the hours of liquor service. The proposed penalty is a cancellation of the liquor licence (Section 20(2) of the *Act*).

Background

On October 5, the liquor inspector telephoned the licensee to inform him of the NOEA. The licensee asked that the NOEA be left with his father. The liquor inspector did as requested.

On October 20, the branch registrar left a detailed message at the telephone number previously used by the branch to reach the licensee. She requested that he respond and confirm the address where he is currently receiving his mail. The licensee did not reply.

In a letter dated October 23, 2006, the branch informed the licensee that there would be a pre-hearing telephone conference on October 27 regarding this NOEA. That letter informed the licensee that should he fail to participate in the pre-hearing conference the general manager may make a decision without conducting an enforcement hearing. The letter was sent by registered mail to the records office address that the licensee has listed with the BC Corporate Registry. Canada Post’s records indicate that the letter was successfully delivered. The licensee did not participate in the prehearing conference nor did he contact the branch to explain his absence.

**Ministry of Public Safety
and Solicitor General**

Liquor Control and
Licensing Branch

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Victoria BC V8W 9J8

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A registered letter was then sent to explain that due to his failure to participate in the pre-hearing conference, the licensee had lost the opportunity to have this matter determined by way of an oral hearing. The licensee was given until November 6 to provide a written submission before the deputy general manager of compliance and enforcement made a decision regarding the contravention. The letter was sent to the records office address that the licensee has listed with the BC Corporate Registry. Canada Post attempted delivery and on October 31 left a delivery notification card with pick-up details for the licensee. The licensee has not picked up the letter. The letter was also sent by regular mail to the establishment address. As of today's date, the licensee has not contacted the branch regarding this matter.

Based on the above information, I am satisfied that the branch has provided notice to the licensee of the allegations contained in the NOEA as well as an opportunity to respond and notice of the consequences of failing to do so. I conclude that the licensee has chosen not to respond.

Applicable Statutory Provisions

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

44 (1) Unless otherwise authorized by the general manager,

(b) food primary licensees must ensure that liquor is taken from patrons within 1/2 hour after the time stated on the licence for the hours of liquor service, unless the liquor is a bottle of wine that is sealed in accordance with section 42 (4) (a).

Issue

1. Did the licensee contravene section 44(1)(b) of the *Regulation*?
2. If so, what enforcement action, if any, is appropriate?

Particulars of Allegation

The hours of liquor sale permitted for food primary license are 9:00 am to midnight, seven days a week. The particulars of the alleged contravention are contained in the NOEA.

Licensee's Response

The licensee has provided no 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 on October 1, 2006, the licensee contravened Section 44(1)(b) of the *Regulation* by failing to ensure that liquor is taken from patrons within ½ hour after the time stated on the licence for the hours of liquor service.

Penalty

Having found that the contravention is 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 penalty proposed in the NOEA.

The licensee has held this licence since November 2005, and this is the fourth proven contravention of this type in under a year. Item 25, Schedule 4 of the *Regulation* provides for an 18-20 day suspension of the liquor licence for a subsequent contravention of this type. The liquor inspector has recommended cancellation of the licence as the appropriate enforcement action.

I have considered the following proven compliance history for this license and this licensee:

- June 18, 2006 - EH06-113 - Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b) - \$10,000 monetary penalty.
- May 19, 2006 - EH06-113 - Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b) - \$7,000 monetary penalty.
- May 13, 2006 - EH06-072 - Fail to clear liquor within ½ hour after liquor service hours - Reg. s. 44(1)(b) - \$5,000 monetary penalty.
- May 13, 2006 - EH06-072 - Operate contrary to primary purpose, s. 20(1)(d) Reg. s.11(1) - \$7,500 monetary penalty.

The adjudicator in the above case wrote in his September 27, 2006, decision:

I find that the licensee is not likely to voluntarily comply with the liquor rules at any time in the near future. I find that the licensee is likely an adverse influence on the surrounding community. I find that the licensee is causing an exceptional drain on municipal and provincial resources utilized in the cause of enforcement. I find that consideration of the short time that this licensee has been operating, and during which it has amassed this considerable history, is critical to the determination of an appropriate penalty.

...

The total monetary penalty is considerable but reflects the severity of the contraventions, and particularly the licensee's lack of demonstrated effort to reform the policies of the Green Element. (pp. 20-21)

The licensee's disregard for, and lack of intention to comply with the liquor rules is further demonstrated by the fact that within days of the above hearing decision, the contravention before me took place. Further, the branch has had to commence enforcement action for a failure to pay the monetary penalties ordered in the above decision (NOEA #EH06-159).

The branch's records also reveal the following information about non-compliance for which the branch did not pursue enforcement action:

- May 17, 2006 - CN # B005262 - Fail to clear liquor within 1/2 hour after liquor service hours, s. 44(1)(b) Reg.
- May 13, 2006 - CN # B006311 - Allow to consume beyond 1/2 hour after liquor service hours, s. 44(3) Reg.
- May 13, 2006 - CN # B006311 - Contravening a term and condition, s.12 Act, Drink Sizes.
- April 09, 2006 - CN # B006305 - Fail to clear liquor within 1/2 hour after liquor service hours, s. 44(1)(b) Reg.
- February 25, 2006 - CN # B006303 - Contravening a term and condition, s. 12 Act, Drink Sizes.

- February 25, 2006 - CN # B006303 - Licensee or employee consume liquor in premises, s. 42(3) Reg.
- February 25, 2006 - CN # B006303 - Fail to comply with RBS, s. 43 Reg.
- February 25, 2006 - CN # B006303 - Allow to consume beyond 1/2 hour after liquor service hours, s. 44(3) Reg.
- February 25, 2006 - CN # B006303 - Fail to clear liquor within 1/2 hour after liquor service hours, s. 44(1)(b) Reg.

On March 7, 2006, the branch held a compliance meeting with the licensee to discuss what is required of the licensee regarding service hours and clearing liquor.

Significant resources have been expended by both the branch and police to regulate this establishment and to try and bring it into voluntary compliance. Safety concerns require that several police officers accompany branch staff on their inspections of the establishment. Having considered the licensee's recent behaviour as well as their past compliance history, I concur with the views expressed by my delegate in his September 27th decision.

Therefore, I conclude that this licensee cannot be brought into compliance through the mechanisms of the legislation, and I am canceling the licence.

Order

Pursuant to s. 20(2) of the *Act*, food primary licence #301770, is canceled effective the close of business today.

Yours truly,



Karen Ayers
Assistant Deputy Minister and General Manager
Liquor Control and Licensing Branch

cc: Green Element Dining & Lounge
2170 - 8788 McKim Way
Richmond, BC V6X 4E2

R.C.M.P, Richmond Detachment

Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: Lee Murphy, Regional Manager

Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: Shahid Noorani, Branch Advocate