



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENSING 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:	Three Jay Holdings Ltd. dba North Delta Inn 11920 – 70 Avenue Delta, BC V4E 1T1
Case:	EH05-114 EH05-118
For the Licensee:	Scott Moir
For the Branch:	Sonja Okada
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	December 15, 2005
Place of Hearing:	Surrey, BC
Date of Decision:	January 12, 2006

INTRODUCTION

The licensee operates a licensed establishment within an Inn. The establishment holds two distinct Liquor Primary Licenses. Notwithstanding the two licenses, the establishment operates as one business, with one name, and one main entrance. The red-lined areas distinguishing the two licenses are in the same room, and physically separated only by an elevation difference of one step.

After midnight on the business day of August 4, 2005, the establishment was inspected by members of the Anti-Gang Violence Bar Initiative team. The team was comprised of police officers and branch staff. The inspection revealed minors in the establishment.

The branch issued Notices of Enforcement Action (NOEA) for each of the licenses as a result.

The licensee admitted to having minors in the establishment but disputed the two actions on the basis of redundancy, and sought a finding of no penalty or in the alternative, a penalty less than that proposed by the branch.

ALLEGED CONTRAVENTIONS

Relating to Liquor Primary Licence No. 019981, the branch alleged that on August 5, 2005, at 1:25 a.m. the licensee contravened Section 35 of the *Liquor Control and Licensing Act* (the *Act*) by allowing minors in the premises.

Relating to Liquor Primary Licence No. 006259, the branch alleged that on August 5, 2005, at 1:25 a.m. the licensee contravened Section 35 of the *Liquor Control and Licensing Act* (the *Act*) by allowing minors in the premises.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

Section 35 A person who holds a licence under this *Act* or who sells liquor under the *Liquor Distribution Act*, or the person's employee, must not authorize or permit a minor to enter on or to be on premises where liquor is sold or kept for sale except

- (a) if the minor is accompanied by a parent or guardian on premises where liquor is sold exclusively for consumption off the premises,
- (b) with lawful excuse, or
- (c) in prescribed circumstances.

ISSUES(S)

1. Should the licensee be answerable to two enforcement actions, or only one (redundancy)?
2. Did the licensee act with due diligence such that its actions are a complete defence to the allegations?
3. Is a penalty warranted and if so, what is the appropriate penalty to be imposed?

EXHIBITS

Exhibit No. 1: Book of Documents (branch)

Exhibit No. 2: Employee Warning Record (licensee)

Exhibit No. 3: Doorman Duties (licensee)

EVIDENCE

The branch called a compliance and enforcement officer (C&E officer). He testified as follows:

- He attended at the establishment at 1:15 a.m. on August 5, 2005.
- He was in the presence of a police constable who saw two females who looked to be very young.
- The constable asked the females for identification, and each produced it. Their dates of birth were 08/23/88, and 06/02/88 each was therefore not yet 19 years of age.
- The minors indicated that they had been in the establishment for forty minutes and had not been asked for identification at the door or at any time while inside.
- While the C&E officer was inside the establishment he observed the doorman refusing entry to persons without identification and those who were underage.

The C&E officer identified all of the documents in the branch's Book of Documents with which he was involved.

The branch called a second C&E officer. She testified as follows:

- She attended at the establishment at 1:15 a.m. on August 5, 2005.
 - While inside the red-lined area she noticed a male who she thought was young looking. She requested identification of that male.
 - The male produced identification that indicated a birth date of 12/12/86, and confirmed that he was not yet 19 years of age.
 - The minor indicated that he was not asked for identification at the door when he entered, or at any time afterwards.
-

- The C&E officer recommended enforcement action "because there were three minors identified as being in the establishment."
- The branch recommended a suspension rather than a monetary penalty because; "we want to make sure the message is there. In a larger establishment who makes lots of money, we need to work harder to convey the message. The staff could use a break [during suspension] to think about it and maybe they will take this more seriously."

The C&E officer identified the remaining documents in the branch's Book of Documents (those with which she was involved).

The licensee called the general manager of the establishment. He testified as follows:

- The establishment is operated as a single unit, even though there are two licenses.
 - There is a single front door and the establishment has one name.
 - There is no division between the two licensed areas but for a "raised floor" on one side of the room.
 - The establishment is carefully managed and has been so for many years.
 - The doormen are thoroughly trained and there is a strict "no minors" policy in place.
 - There is a published document called *Doorman Duties* (Exhibit No. 3), which is provided to each doorman and which indicates the need to check all patrons for identification.
 - The doorman on duty at the relevant time had been appropriately trained and had "signed off" on his policies.
 - He thought the licensee had "an airtight door."
 - The door manager turned in an incident report (Exhibit No. 2) in which he acknowledged that he was alerted to the presence of two minors at the door. He admitted them and took full responsibility for allowing their entry.
-

- The door manager was immediately "fired" for choosing to ignore the policy.
- He has been the principal of this establishment since 1982 and has not been charged with any contraventions or offences in all of that time.

SUBMISSIONS

The licensee submitted the following:

There should have only been one alleged contravention. Three minors were in the establishment because the doorman was not following the required policy. The fact that one of them was on one side of the room and two were on the other side does not call for two separate allegations of contravention because the room carries two licenses. This was only one incident.

Management did all that it could to ensure compliance with the rules. There was a good policy in place with respect to minors. There was good training in place for the doormen. There was a written policy form. The door manager was alerted to the fact that minors were attempting to gain admission on this occasion and he chose to ignore the policy. He let them in. Then in writing, he admitted to violating policy. He was fired immediately. Management cannot protect itself from an employee ignoring what they are trained to do.

The recommended penalty is too severe. The establishment has a completely clean history of compliance. They have been in business in that location for twenty-three years with no allegations of contravention. The licensee has always cooperated fully with the police and the branch. There were twenty visits by the authorities during 2005 and no contraventions were been found. No penalty should be imposed. If a penalty is imposed, it should be the minimum monetary penalty for one offence, as a suspension adversely affects many employees who

have not done wrong. A suspension is a more severe penalty relative to a monetary one to this Licensee.

The branch submitted the following:

The licensee admitted that there were minors in the premises.

The licensee admitted that the door manager knew the patrons were minors and allowed them in.

There were multiple minors in the premises. The minors were particularly young.

Allowing minors to remain in a licensed premise is a significant public safety issue. The proposed penalties are appropriate and necessary to obtain voluntary compliance.

ANALYSIS AND DECISION

Redundancy

The licensee argued that the two allegations are redundant in that there was but one offence. The licensee submitted that the doorman had ignored policy and allowed minors into the establishment.

The singular event presumably occurred over the course of one evening. I find that any one minor in the establishment can lead to an allegation of a contravention, and indeed it is not inconsistent with the legislation for multiple contraventions to be pursued for multiple minors in a single evening. I also find that it is not inconsistent with the legislation for multiple contraventions to be alleged or found for contraventions in more than one licensed area, which make up a single establishment.

Each set of such allegations must be viewed keeping in mind the particular facts of the case. In this instance, I find on the evidence that the branch considered the allegations to relate to a single incident involving a single establishment. One of the C&E officers testified that; "there were three minors identified as being in the establishment." This was stated with respect to the branch's procedure for deciding if enforcement action should be taken. Though in contrast to the branch's decision to pursue two independent allegations, it is indicative of a holistic approach to the events of August 4/5, 2005, and to the establishment as a single entity.

Although the branch has alleged that a contravention has occurred in one licence or another predicated upon the area in which a minor is standing, I find that it would be a single contravention, not two, if that minor crossed the imaginary line to the other licence occupying the room. In further support of this position is the fact that one of the allegations relates to two minors. I find that had there been only one licence in the establishment, a single Contravention Notice would have likely been issued for three minors on the premises.

Accordingly, I find on the facts that the two contraventions alleged in this instance represent a duplication.

The licensee acknowledged that Section 35 was contravened, but the licensee was not specific as to which allegation it was acceding. For the purpose of establishing a licence history, a contravention must be recorded with respect to a particular licence. I find in the absence of any argument from the parties, that the duplication of the allegations requires the lesser contravention to be dismissed. As NOEA EH05-118 alleges two minors and proposes a two day suspension, and NOEA EH05-114 alleges one minor and a one day suspension, I dismiss the latter.

Due diligence

The licensee argued that it acted with due diligence in the management and training of its staff, and that a conscious breach of policy by an experienced staff member cannot be anticipated.

Although in principle, this defence is available, I find that it must fail in this case. The licensee's submission with respect to due diligence relates only to the door manager. I accept the licensee's evidence in that regard. However, the issue is not whether the licensee exercised due diligence with respect to a single employee, but within the establishment as a whole. There was no evidence to indicate that there was any system for double-checking patrons inside the establishment. The licensee's witness indicated that he thought they had an "airtight door". That is insufficient. Two of the minors were very young, and I accept the evidence of the C&E officer that they looked very young. They were served by staff inside the establishment and were not asked for identification at that time, and very likely would have been seen by other staff inside the establishment during the time they were present. The licensee has an ongoing obligation to ensure that minors are not in the licensed premises. Having passed through the door, patrons are not exempt from scrutiny. I find there is no evidence that the licensee had advised its staff inside the premise to be on the lookout for minors, and therefore, the licensee did not do all that it could to ensure minors did not occupy the premises.

I find that a contravention of Section 35 of the *Act* has been proven with respect to NOEA EH05-118.

PENALTY

Pursuant to Section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulation* and/or the terms and conditions of the

licence, I have 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 minimums set out in Schedule 4 of the *Regulation*.

The branch recommended a two day suspension for the contravention relating to Primary Liquor Licence No. 006259 in NOEA EH05-118.

The C&E officer testified for the branch as to why the recommended penalty was a suspension rather than a monetary one. She said:

"We want to make sure the message is there. In a larger establishment who makes lots of money, we need to work harder to convey the message. The staff could use a break [during suspension] to think about it and maybe they will take this more seriously."

I find that the reasoning described is not appropriate for this procedure. It is not part of the branch's mandate to penalize the staff of the licensee. Rather, the branch may penalize the licensee, who according to the terms of the licence and the applicable legislation is responsible for the actions of its staff. How the licensee deals with its own staff is to be left to the licensee.

The licensee expressed its preference for a monetary penalty. It indicated that there are up to fifty employees who would suffer for a contravention for which it has accepted responsibility, if a suspension was ordered.

The licensee also sought relief from any penalty, or in the alternative a minimal penalty, as it has no history of contravention or allegation of contravention in twenty-three years of operation.

I have no evidence to dispute the licensee's history as submitted. I also accept the branch's submissions that allowing minors to be in a licensed establishment is a serious offence, which potentially involves significant public safety issues.

The range of penalty for a first contravention of Section 35 of the *Act* in accordance with Schedule 4 of the *Regulation* is one (1) to three (3) days suspension and/or a monetary penalty of \$1,000-\$3,000.

I find that a monetary penalty of \$3,000 is appropriate.

ORDER

Pursuant to Section 20(2) of the *Act*, I order the licensee to pay a monetary penalty in the amount of three thousand dollars (\$3,000) relating to Liquor Primary Licence No. 006259 relating to NOEA EH05-118. The monetary penalty must be paid no later than the close of business on February 11, 2006.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: January 12, 2006

cc: Delta Police Department

Liquor Control and Licensing Branch, Surrey Regional Office
Attn: Mike Clark, Regional Manager

Liquor Control and Licensing Branch
Attn: Sonja Okada, Branch Advocate
