



**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:	669502 B.C. Ltd. dba El Furniture Warehouse Mexican Restaurant 989 Granville Street Vancouver, BC V6Z 1L3
Case:	EH06-004
For the Licensee:	Kyle Tweeter Dan Wilson Jeff More
For the Branch:	Sonja Okada
Enforcement Hearing Adjudicator:	M. G. Taylor
Date of Hearing:	March 29, 2006
Place of Hearing:	Vancouver
Date of Decision:	May 10, 2006

## **INTRODUCTION**

The licensee, 669502 B.C. Ltd., has operated El Furniture Warehouse Mexican Restaurant (“El Furniture”) under Food Primary Licence (FP) No. 208637 since September 2004. El Furniture is located on Granville Street in the downtown entertainment district. The district has a mix of licensed establishments, hotels, businesses and residential accommodation.

In accordance with the terms of the licence the permitted hours of operation are 12:00 noon to 2:00 a.m. every day. The licensed capacity is 64 persons inside and six persons on the patio. The licence permits the sale of liquor with the primary focus on the service of food. The licence is subject to terms and conditions listed on the face of the Food Primary Liquor Licence and those contained in the Liquor Control and Licensing Branch’s (the “branch”) Guide for Liquor Licensees (the ‘Guide’).

## **ALLEGED CONTRAVENTIONS**

By Notice of Enforcement Action (NOEA) dated January 31, 2006, the Liquor Control and Licensing Branch alleged that on November 11, 2005, the licensee contravened Section 20(1)(d) of the *Liquor Control and Licensing Act* (the *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 licence.

The branch’s recommended enforcement action is a ten (10) day suspension of the liquor licence (Item 1, Schedule 4, *Liquor Control and Licensing Regulation*).

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## RELEVANT STATUTORY PROVISIONS

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

**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:

(d) the existence of a circumstance that, under section 16, would prevent the issue of a licence;

*Liquor Control and Licensing Regulation*, B.C. Reg. 244/2002 (the "Regulation")

### Food primary licenses

**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.

(2) The following terms and conditions apply to a food primary licence:

(a) minors are allowed in the establishment;

(b) liquor must not be served unless the establishment is open for service of a varied selection of food items, including both appetizers and main courses, or their equivalent;

(c) subject to limitation by the general manager, hours of liquor service must start no earlier than 9:00 a.m. and end no later than 4:00 a.m. the next day.

(3) The general manager may consider, in determining whether the primary purpose of the business carried on in the establishment is or will be the service of food during all hours of its operation, any or all of the following:

(a) kitchen equipment;

(b) furnishings and lighting;

(c) menu;

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- (d) type and hours of entertainment and games offered by the licensee;
- (e) advertising;
- (f) hours of operation;
- (g) financial records;
- (h) the ratio of receipts from food sales to receipts from liquor sales in the establishment;
- (i) any other relevant consideration that may assist in the determination.

## **ISSUES**

1. Does the evidence substantiate that the licensee was operating contrary to the primary purpose of its liquor licence?
2. If yes, has the licensee substantiated a defence of due diligence?
3. If the licensee contravened as alleged, what, if any, is the appropriate enforcement action?

## **EXHIBITS**

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|---------------|--|
| Exhibit No. 1 | Branch's Book of Documents, tabs 1 – 18                |
| Exhibit No. 2 | Three pages of photographs                             |
| Exhibit No. 3 | Package of 10 original promotional materials and menus |

## **EVIDENCE**

The branch's witnesses were five compliance and enforcement officers referred to here as C & E officers #1 - #5. Four of the C & E officers attended El Furniture on November 11, 2005, as undercover operators. The officers were paired and each pair attended independently of the others. C & E officer #5 was the officer responsible for this geographic area. She gave instructions to the undercover

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officers in a briefing session held prior to the inspection and met with them for a debriefing at the end of the night.

The licensee's witnesses were a sales associate from a food services supplier and one of the shareholders of the corporate licensee.

### ***The Branch's Evidence***

Officer #1 testified that he and his partner arrived at El Furniture on November 1, 2005, at approximately 11:15 p.m. and stood in a line-up until approximately 11:40 p.m. The officer testified that an employee was stationed at the door checking identification and monitoring the line-up. The employee announced that everyone had to be seated and they would be admitted when seats were available. The officer stated that he could hear the music from inside while he waited.

When they were allowed in, they were directed to two seats at the bar. The establishment was very busy and it appeared that every seat was occupied. He noted that peanuts were everywhere – people were throwing peanuts and having peanut fights. Everyone was having a good time. The officer observed that there was no evidence of any food, table settings or condiments. There were glasses containing liquid and pitchers of beers on the tables. Servers were walking around with trays of drinks and the bartenders were making drinks. He testified that a server asked the people beside them if they wanted a food menu. They said no and ordered drinks, which he recalled to be rum and coke. He saw that the people at the end of the bar were given a liquor menu only. He had noticed when he walked in that all the food menus were stacked on a table at entry.

Officer #1 testified that the music was loud enough that they had to lean close to each other to speak and had to raise their voices to be heard; he did not consider

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it to be dining type music. The lighting was dim, but not dark so that he could see the whole place. There was one main bartender who was the busiest person. The officer saw a couple of servers go behind the bar and saw servers picking up drink orders from the bar.

Officer #1 and his partner were in the establishment until approximately 1:00 a.m. He testified that with the exception of two or three people who were seated after them at the bar, he did not notice any other patrons admitted after them. He also testified that he did not see any activity in the kitchen and he did not see any food brought from the kitchen. He saw the bartender eating a burrito or something similar while he was working. Otherwise, the only food he saw was served to a table by the front entrance just as he was leaving.

Officer #1 testified that he had two glasses of beer and drank about half of each. He took his first glass with him to the washroom and poured out half of it. The officer did not recall seeing any signs posted in the establishment advising that patrons had to order food. He testified that during his usual inspections, he has come across a high volume of FP establishments that have been operating contrary to their licence and, accordingly, he is very familiar with what to look for. He stated that El Furniture had a busy, fun, party atmosphere and the general age group was early to late twenties. Food was available, but it was not the primary focus while he was there.

Officer #2 described the line up and the fact that the door security was asking for identification. He testified that the first thing he noticed was that there was no smell of food. Before they sat at the bar, they had to clear peanut shells from the bar and the seats. He noted that there was no food or place settings on the tables. There was a drum containing peanuts and patrons were throwing peanuts at each other. He did not notice anyone eating except the bartender. He testified that most patrons appeared to be consuming liquor. At a table behind him, he thought the patrons were at the point of becoming intoxicated.

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They were loud, taking photographs and cajoling with their server. He stated that it looked more like a bar than a restaurant. The lighting was low, the music was loud and the patrons were a young crowd.

Officer #2 testified that he did not notice any signage that told patrons of a requirement to eat. The officer looked at the various photographs and signs contained in Exhibits No. 2 and 3 and stated that he could not recall seeing any of them except the photograph collage. He testified that it is his usual practice to look for menus and signs when he inspects a food primary establishment. He acknowledged that sometimes concert promotion signs blend with the others so the official signs are not obvious.

Officer #3 stated that he had been to El Furniture once or twice before for inspections. He and his colleague arrived at approximately 10:45 p.m. on November 11, 2005. There was a line-up but they got in quite quickly. He testified there were peanuts everywhere and he had the impression of being in a saloon. They sat at a table, their server asked if they wanted beer, and they each ordered one. He observed that it was a young crowd and it seemed that everyone was drinking and having a good time. The music was loud rock and roll and the lighting was dim. He testified that servers did not seem to be asking patrons to order food and he did not see any food service, menus, cutlery, condiments or anything else to indicate it was a restaurant. He saw one food item go to the bartender. The officer testified that he walked into the kitchen three or four times and noted that no food was being prepared. The kitchen was clean and the cook was standing around.

At the table beside them, there was a group of six for at least a half hour. He heard them commenting on a hefty bill of nearly \$300.00. He did not notice any food at their table. At a table behind him, the patrons were throwing peanuts, as was the bartender.

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Officer #3 testified that he did not see any signs regarding the requirement to purchase food. Their server did not offer them menus and there was no indication that they should order food. There was no tent card on their table. He said that if there had been signs posted he "probably would have taken note of that." He testified that he ordered three beers and drank two. He and his partner left shortly after 1:00 a.m.

Officer #4 testified that she had not been to the EI Furniture before. She recalled being seated at about 11:00 p.m. on November 11, 2005, after standing in line for a short time. The establishment was full. The server came to the table and took their order for drinks. The officer described it as a 'funky' place that was more like a bar atmosphere than a restaurant. The music was loud. There was a barrel with peanuts that patrons scooped up. One patron put a scoop on their table. The officer said that peanuts were everywhere and contributed to a party atmosphere. She testified that as she went to the washroom she looked into the kitchen and saw one person cleaning. On the pass bar there was a spike with about ten chits on it.

The officer testified that one of the patrons at the neighbouring table was shocked by the amount of their bill. The officer had not seen any signs of food at their table. The only food the officer saw was peanuts. She testified that she and her colleague were not offered menus and she did not see any menus. She testified that she did not see signs about the requirement to eat and that if there had been signs posted she would have noticed them.

Officer #5 testified that she had been to the EI Furniture many times. On November 11, 2005, she had a meeting with the undercover officers and they discussed the establishments they would be inspecting and what they should be watching for. She had put EI Furniture on the list because she was concerned about previous alleged contraventions. She had received complaints from

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licensees in the area and the police had questioned her about EI Furniture because it did not appear to be a restaurant.

At the debriefing after the inspections, Officer #5 took the officers notes and receipts. She testified to the administration of the file and the branch's steps in bringing this enforcement action.

By letter dated November 14, 2005, the branch's regional manager requested that the licensee provide "all receipts for food and beverage between the hours of 11:00 p.m. on November 11, 2005, and 1:00 a.m. on November 12, 2005." Officer #5 held a Compliance Meeting with the licensees concerning another issue on November 22; they brought the requested receipts with them. At that meeting, the officer served them with a Contravention Notice for November 11, 2005, and advised them that a Notice of Enforcement Action would be sent.

When Officer #5 went through the receipts, she could not find a corresponding amount for either set of officers. She was also concerned that the amount of food shown in the receipts did not accord with the officers' evidence. Accordingly, she testified that she was concerned that the receipts were not accurate and she decided that it was appropriate to take enforcement action. In any event, the liquor to food ratio was very high for a restaurant.

The officer testified that she had held a Compliance Meeting with the licensees and their staff on May 11, 2005, to discuss the branch's concern that they were not operating as a restaurant. She suggested that they turn down the music and turn up the lights so it looked less like a bar. She also advised them to monitor the patio to control patrons. She talked with them about an appropriate ratio of food to liquor service. She advised the staff to watch for minors and she suggested that they have regular staff meetings. The licensees agreed to follow

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all of her suggestions and agreed that the chef would work during all liquor service hours.

Since that meeting, the officer had issued one CN for failing to request identification from persons who appear under 25 years old. The November 22, 2005, Compliance Meeting was for that CN.

The officer looked at the documents in Exhibits No. 2 and 3. She noted that a licensee can post many signs but they will not be effective unless staff enforce them. One of the signs offers to provide the third drink free if patrons purchase a food order for \$7.00 or more. The officer voiced her concern about the legality of the 'third drink free' offer. She testified that she would have a concern about the image created by another poster that shows people drinking out of their shoes, and by the poster that suggests it is necessary to have identification to enter the restaurant. In her view, those signs are suggestive of a party, not a restaurant.

The officer did not recall seeing the signs in EI Furniture. She recalled that there was an 'ID' tent card the licensee had shown her. She did not recall seeing the signs 'All Patrons Must Eat Food' but acknowledged they might have been there.

The officer testified that she recommended enforcement action for the November 11, 2005, incident because she had had many discussions with the licensees about the requirement of serving food at all times. The police have raised concerns about this establishment. Concerning the proposed penalty of a licence suspension, the officer stated that this would allow the licensees to remain open and serve food. The alternative is a minimum \$7,500 monetary penalty. The officer acknowledged that the licensees have improved their operation and they are trying to improve more.

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### ***The Licensee's Evidence***

#### ***Sales Associate***

A sales associate of the licensee's food services supplier, who has 21 years experience in the restaurant industry, testified that he has had a contract to supply EI Furniture since they opened. He compared their food purchases with other similar operations and testified that this licensee's purchases are approximately \$500 per week higher than some others in the same area. He stated that EI Furniture had been running approximately \$2,000 per week and that, in his view, they pay more attention to food than many others; they use good quality ingredients. He was aware that they had brought in an executive chef to produce menus. He was also aware of the changes they had made in their late night offerings. In comparison with some of his other accounts on Davie and Denman Streets, in the heart of the West End, he considers EI Furniture to be an important account.

The sales associate testified that he has brought his children to the restaurant in the afternoon. He has eaten there in the evening and has passed through on his way home from sports events.

#### ***The Licensee***

The licensee testified that the kitchen is operable until closing and that the menu has a full array of food. He did not bring a copy of the menu to the hearing. He stated that their mission statement is to provide the best Mexican food in Vancouver, in a safe environment.

He stated that their target market is the college crowd and that the way they market to that clientele may leave a mistaken perception. For example, in their experience, loud music is a key to attracting the younger clientele. These days

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students study listening to music through earphones. They want loud music. The licensee provides peanuts as a complementary snack and they encourage clients to throw them about. The fact that their patrons have a memorable evening is apparent in that they return.

The licensee changes the menu on a seasonal basis. Shortly after they opened, they posted signs advising patrons that they must order food. The licensee testified that servers frequently require patrons to leave if they do not intend to order food.

The licensee submitted that their primary purpose does not alter late at night. However, since they are situated in the entertainment district, El Furniture is a destination not a pit stop, and once they have eaten, their patrons tend to stay for a number of hours. El Furniture also experiences a rush on the kitchen just before closing when people from other restaurants – employees and patrons – stop in to eat before going home.

The licensee testified that there are four chefs who work full time on varied shifts. El Furniture is open seven days a week and there is always a chef present. If a chef is late, they don't open the restaurant. There is a staff policy manual that instructs staff on how they should treat customers and outlines the rules of the liquor branch. The branch's Guide is available to staff. And he noted that the C & E officer has met with the staff to discuss legal requirements.

Following the May 11, 2005, Compliance Meeting, the licensee altered the lighting and the music volume so the establishment would not resemble a nightclub. He testified that they try to keep the clientele happy by striking a balance between the needs of the young clientele and the requirements of the food primary licence.

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Concerning the financial records, the licensee testified that these are <sup>[1]</sup>. The receipt report provided to the branch includes any orders that the servers closed between 11:00 and 1:00 a.m. It is not based on when the customer ordered or when the customer left. He suggested that the bills for the two sets of officers would not have shown up in the receipts provided because they paid after 1:00 a.m. He also explained that the officers paid cash and cash goes to a different account, which would have shown in the end of night receipts.

The licensee noted that by law it is not necessary for every patron at a table to consume food. Up to November 2005, the licensee had left it to the discretion of the manager to determine whether a patron should be allowed to order more alcohol. Since this alleged contravention, the licensee has implemented the policy that no patron is allowed to order a third drink without ordering food. The third drink promotion gives patrons the incentive to order food. He acknowledged the concern raised by officer #5 and said he reviewed the policy to ensure it complies with the legislation.

The licensee testified they have created a hostess station, which eventually will operate seven days a week, as part of their attempt to monitor the amount of food and alcohol at each table and the consumption of each patron at the table. The hostess will ensure that all patrons are seated at a table that has place settings. The licensee has also contracted with a renowned chef to assist the kitchen manager in redesigning the menu to make it more appealing and profitable. He stated that it is apparent that their signs are not prominent enough and that he would make them more dominant in the room.

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<sup>[1]</sup> Personal information severed pursuant to the Freedom of Information and Protection of Privacy Act.

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## **SUBMISSIONS**

The licensee submitted that the testimony from the food services representative demonstrates their commitment to provide a good quality restaurant and that they are serving large quantities of food.

Concerning this specific evening, the licensee noted the testimony of officer #1 that in the two hours he was there, only two or three new patrons entered. That suggests that the majority of the patrons had been there for a long time and had already consumed food. The bill for the table next to officers #3 and #4 is included in the receipts provided. It shows that they ordered six food dishes for a total of \$44.70, and their total bill was \$277.58. The times shown on the receipt indicate 22:13 p.m. to 0:53 a.m., which is approximately two and a half hours.

He referred to the branch's decision in *685350 B.C. Ltd. dba The Nelson*, EH05-066, September 29, 2005, in which I found that the licensee had operated contrary to primary purpose and I imposed a ten-day suspension. The licensee distinguished the facts in that case because The Nelson did not have a chef present.

The licensee submitted that the proposed ten-day suspension is excessive and that, if a penalty is required, the minimum monetary penalty is preferable.

## **ANALYSIS AND DECISION**

The branch's evidence establishes that between 11:00 p.m. and 1:00 a.m. on a Friday night, the licensee admitted at least four patrons, the officers, who were seated and served alcohol and were not even questioned about ordering food. The officers testified that they did not see any patrons being served food and they saw no accoutrements of food service. The officers testified to four or five other patrons who were seated at approximately the same time they were and

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were not served food. One officer testified that he walked into the kitchen a number of times and that he did not see food being prepared.

Part of the evidence before me is the package of receipts. I find these to be of some assistance but, for the most part, I find they are not reliable evidence because of the time frame. Receipts for the whole day or from, say, 5:00 p.m. to closing, would have been more helpful. The snapshot provided here does not give a full picture of the service. As I understand the evidence, any bills that were paid after 1:00 a.m. are not caught in this picture. Additionally, I accept the licensee's evidence that cash payments are not shown. For future reference, I would recommend that the investigating officer make arrangements to view the receipts for the day, or however many days would be an appropriate measure, to determine whether they are of assistance. If they are, the whole of the receipts could be included for the enforcement hearing.

There are 20 receipts that are timed from 8:40 p.m. to 1:00 a.m. Of those 20, 14 include food items and six do not. The six are timed from as early as 10:40 p.m. The 14 receipts include three that are just around the time that the first set of officers entered the establishment. The times show as 10:40, 10:51 and 11:08. If the food orders were served after those times, I would expect the officers to have seen patrons eating food and to have observed the aroma of cooking.

To the extent that the receipts conflict with the officers' testimony of time, I find that the officers' testimony is more reliable. I find as fact that there was no food service in evidence after officers #3 and 4 were seated at approximately 11:15 p.m., other than to the bartender and to one set of patrons at 1:00 a.m., and I find that there were no table settings. The bills for the officers are not shown in the receipts. That means, and I find as fact, that there were at least six sets of patrons who were served alcohol without ordering food, commencing as early as 10:40 p.m.

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I find that having a barrel of peanuts available for patrons to help themselves, does not contribute to having a primary focus on food service.

I have reviewed the receipts that included food orders. The licensee did not bring a copy of the menu to the hearing so I can only surmise from the receipts what the menu included. Most of the items cost \$7.45. Chips and salsa cost \$4.95. There is a soft taco at \$2.95. Texas Nachos are \$10.95. A Warehouse Burger cost \$7.95. One Furniture Platter was ordered at \$26.95.

The food services representative was helpful in showing that the licensee is serious about the quality of the food. However, he was not able to distinguish the comparative establishment as restaurants or bars, so his evidence does not assist me a great deal in surmising the extent of the licensee's food sales *vis a vis* what would be considered average for a restaurant of this calibre in this neighbourhood.

In Exhibit No. 3, the licensee provided a number of posters. I find that not all of these posters would have been in circulation in November 2005. However, the licensee has presented them in evidence to show the nature of their business and I have considered the details of those posters.

In the Weekly Specials, most of the prices for food items include a bottle of beer; the prices are approximately \$10.00 for both. There is coupon for 50% off any food item after 9:00 p.m., with the purchase of any beverage. Another card advises that patrons of El Furniture are required to have two pieces of identification. There is a promotion for winning tickets to the Grey Cup by purchasing select food and alcohol items. There is a promotion with a running shoe company for a burger and a beer, in a glass bearing the shoe company's logo, every Thursday for \$9.95; the poster shows a young man without a shirt, seemingly pouring a drink into another young man's mouth, from a running shoe. Two young women are drinking from shoes – it appears there are glasses in the

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shoes and they are drinking from the glasses through straws. There is also the poster previously mentioned which promises that “nobody pays for their 3<sup>rd</sup> drink” if they order a \$7.00 menu item, between 9:00 p.m. and 2:00 a.m.

Based on the preponderance of the evidence, I find that the licensee’s menu selection – both from the receipts and from the posters - gives the appearance that they serve food as an accompaniment to alcohol, which is the reverse of the purpose of a food primary licence. I appreciate that the licensee is appealing to a young college crowd and is attempting to establish a ‘good time’ atmosphere. However, I am left with the impression that the licensee is operating a pub, not a restaurant.

My concern in this hearing is what occurred on November 11, 2005. I find that when the officers were in attendance, the licensee was not operating with a primary focus on food service. It may be that the licensee operated as a restaurant earlier in the day but, if so, their focus shifted.

### **Due Diligence**

It is well accepted that the defence of due diligence applies to contraventions under the *Act*. The B.C. Supreme Court addressed due diligence in *The Plaza Cabaret v. General Manager Liquor Control and Licensing Branch*, 2004 B.C.S.C. 248, a case involving alleged illegal conduct:

[25] If a licensee is not to be responsible for unlawful conduct occurring in its establishment within the meaning of s. 36(2)(b), it must prove, on a balance of probabilities, each of two facts: that the employee was not the directing mind of the licensee in relation to that part of the licensee’s operations in connection with which the unlawful conduct arose, and, if that proof is provided, that those who were in fact responsible for that part of the licensee’s operations were duly diligent in attempting to prevent the occurrence of unlawful conduct or activities.

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Since the *Plaza* decision, in cases assessing the evidence of due diligence, the branch has stated that a licensee must not only establish procedures to identify and deal with problems, it must ensure that those procedures are consistently acted upon and problems dealt with. As a test of due diligence, the branch has considered whether there were more steps the licensee could have taken to ensure that staff were aware of the legislative requirements and were properly trained to do the job, and whether there were more preventative measures the licensee could have taken to prevent the occurrence of the contravention. (For a discussion of due diligence factors, see for example, *Haney Hospitality Ltd. (dba Haney Motor Hotel)*, EH01-170, July 27, 2004; *Sooke River Hotel Ltd.* EH04-182, June 29, 2005; *Frontiersman Pub Inc, dba Frontiersman Cold Beer & Wine Store*, EH04-180, June 14, 2005; *365158 BC Ltd., dba Muddy Waters Pub*, EH04-177 and EH04-181, July 15, 2005.)

The officers were served by servers and the bartender who were not the directing mind of the licensee. Accordingly, I have considered the licensee's evidence on what steps the licensee has taken to ensure that staff operates the establishment according to the requirements of the licence. The licensee did not provide copies of the policy manuals or details on staff training. He stated only that the manuals instruct staff how to behave with patrons and contain information on the legal requirements. There was no evidence from the licensee on how the employees are supervised to ensure they comply. The licensee submitted that the chef is available through all hours of operation and that food could be prepared at any time.

With respect, I find the licensee's evidence of due diligence is insufficient. The licensee must establish the atmosphere of a restaurant and take steps to ensure that staff and patrons are abiding by the licence requirements. The licensee pointed to steps that they have taken since this contravention. Those steps may go to the consideration of penalty, but they do not factor in my consideration of the defence of due diligence.

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I find that the licensee has not established a defence of due diligence. Respecting Food Primary Licence (FP) No.208637, I find that the licensee, 669502 B.C. Ltd. dba EI Furniture Warehouse Mexican Restaurant, contravened of Section 20(1)(d) of the *Liquor Control and Licensing Act* and Section 11(1) of the *Liquor Control and Licensing Regulation* on November 11, 2005, by operating the licensed establishment in a manner that was contrary to the primary purpose of the business as stated on the licence.

## **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 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*.

There is no record of prior proven 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. The range for a first contravention is 10 to 15

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day licence suspension, and \$7,500 to \$10,000 monetary penalty (Schedule 4, Item 1).

The branch's primary goal in bringing enforcement action and in determining the appropriate penalty is to encourage voluntary compliance. The record indicates that this licensee attended a Compliance Meeting on similar issues in May 2005. I have given weight to this compliance history not as proof of previous contraventions, but as proof that the branch has told the licensee in the past of its concerns and has attempted to assist the licensee in achieving compliance.

The licensee pointed to the steps taken since the contravention to improve their performance. I find that the steps taken do not necessarily bring the licensee into compliance and I am not satisfied that the licensee has turned things around. In my view, the licensee requires a strong message that it must alter its operation to bring it into conformity with the terms of the food primary licence. Having considered the evidence, I am satisfied that a penalty for the contravention is necessary to ensure future voluntary compliance.

Officer #5 testified that she recommended the minimum licence suspension instead of the monetary penalty, because the licensee could remain open for food service. The licensee submitted that the monetary penalty would be preferable. I have taken into consideration that the licensee has indicated a willingness to be brought into compliance and has taken some steps in that direction. Given that, I find that the licensee's submission on penalty is appropriate and I order that the licensee pay a monetary penalty of \$7,500.

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**ORDER**

Pursuant to Section 20(2) of the *Act*, respecting Food Primary Licence (FP) No. 208637, I order the licensee, 669502 B.C. Ltd. dba EI Furniture Warehouse Mexican Restaurant, to pay a monetary penalty of Seven Thousand, Five Hundred Dollars (\$7,500) to the Liquor Control and Licensing Branch no later than May 31, 2006.

[ Original Signed]

M.G. Taylor  
2006  
Enforcement Hearing Adjudicator

Date: May 10,

cc: Vancouver Police Department – Liquor Coordinator

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

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

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