



**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:	E-HWA Restaurant Ltd. dba Ehwa Restaurant #4-1578 Robson Street Vancouver, BC V6G 1C2
Case:	EH08-029
For the Licensee:	Jeong Mi Kim
For the Branch:	Tania Cogan
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Place of Hearing:	Written Submissions
Date of Decision	July 11, 2008

INTRODUCTION

This hearing was conducted by way of written submissions by agreement of the Licensee and the General Manager.

The documentary evidence includes an engagement letter assigning the file to the arbitrator dated June 17, 2008, the record of a pre-hearing telephone conference dated May 30, 2008, a package of disclosure documents consisting of items disclosed by the branch to the licensee in anticipation of an enforcement hearing, and the licensee's submissions dated June 12, 2008.

The branch disclosure package includes:

- Notice of Enforcement Action dated April 18, 2008. Contravention notice B005510.
- Liquor inspector's notes dated March 1, 2008.
- 07-02 compliance meeting notes dated November 2, 2006

The licensee operates a restaurant in Vancouver with a Food Primary Licence No. 302237. The licence indicates that liquor may be sold from 9:00 a.m. to midnight, seven days per week.

The branch's allegations and proposed penalty are set out in the Notice of Enforcement Action (NOEA) dated April 18, 2008.

The record of the pre-hearing telephone conference indicates that the licensee and her daughter participated along with the branch advocate. The document confirms;

The licensee admits that the two contraventions took place, however, she believes that the proposed licence suspensions are too harsh.

THE CONTRAVENTIONS

The NOEA indicates that the contraventions are:

- Failure to clear liquor within ½ hour after liquor service hours - *Reg. 44(1)(b)*
- Allow to consume beyond ½ hour after liquor service hours - *Reg. 44(3)*

During a routine compliance check at 12:50 a.m. on Saturday March 1, 2008, two liquor inspectors entered the restaurant and observed liquor present on most of the occupied tables. There were approximately 25 patrons in the establishment. The inspectors also observed customers consuming liquor 20 minutes beyond the time at which liquor must be removed from patrons.

A single contravention notice (CN) identifies each of the alleged contraventions.

The contraventions occurred on March 1, 2008, at 12:50 a.m. Each contravention carries a proposed penalty of four (4) days suspension. The engagement letter confirms that the branch proposed that the suspensions be served consecutively, for a total of eight (8) days.

RELEVANT STATUTORY PROVISIONS

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

Time

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

(a) liquor primary licensees and liquor primary club licensees must ensure that patrons are cleared from the licensed establishment within 1/2 hour after the time stated on the licence for the hours of liquor service, and

(b) food primary licensees must ensure that liquor is taken from patrons within $\frac{1}{2}$ 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).

(2) Unless otherwise authorized by the general manager, if a licensee has been issued a licence, other than a food primary license, in respect of an establishment, the licensee must not allow patrons to enter the licensed establishment during the hours when liquor service is not allowed by the licence.

(3) Unless otherwise authorized by the general manager, a licensee must not allow a person to consume liquor in the licensed establishment beyond $\frac{1}{2}$ hour after the time stated on the licence for the hours of liquor service.

(4) A person must not consume liquor in a licensed establishment beyond the time allowed for consumption under subsection (3) in that licensed establishment.

(5) A reference to time in this regulation or in a licence is a reference to the local time observed at the place of the licensed establishment.

ISSUE

The licensee has acknowledged that the contraventions occurred as alleged. The issues therefore are:

1. Whether a penalty is required under the circumstances of this case, and if so, what penalty is appropriate?

SUBMISSIONS

Branch

For the contravention of *failure to clear*, the branch submits:

The failure by the licensee to take liquor from patrons in a food-primary licensed establishment gives patrons the opportunity to continue consuming liquor while the restaurant remains open, even though the hours of liquor service have ended. This in turn, can result in a shift in focus in the establishment's operation.

For the contravention of *allow to consume beyond ½ hour after liquor service hours*, the branch submits:

The hours when a licensed establishment may sell liquor are determined, in part, by community standards. Patrons who consume liquor and leave an establishment after the licensed hours of liquor service may disturb nearby residents and businesses.

Licensee

The licensee submits that the contraventions occurred because it is operating under duress due to the influence of "gang extortion, violence and physical force." With respect to the specific allegations, the submission indicates that gangsters prohibit the licensee from removing alcohol from gang members disguised as patrons and demand that liquor service continue beyond the hours stipulated in the licence. The licensee indicates that it is aware of its obligations.

The licensee also submits that alternative penalties be assessed, as the proposed eight (8) day suspension would provide a considerable financial hardship.

ANALYSIS AND DECISION

The contraventions have been admitted. I find that they occurred as alleged. The only issue is penalty.

Pursuant to section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulations* 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 by the minimums set out in Schedule 4 of the *Regulations*. However, I am not bound by the maximums 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 Notice of Enforcement Action.

The terms of the licence are fixed and enforceable, and include compliance with the *Act* and *Regulation*. It is the sole responsibility of the licensee to ensure compliance with these terms while operating the establishment.

While the branch wishes to have voluntary compliance, it has the mandate to assure compliance through enforcement action if required to do so.

For the purposes of this adjudication, I must consider past contraventions, proven and alleged, as a whole, and in the context of this enforcement action. The documents disclose no previous compliance history of similar contraventions during the previous 12 months. Each of the contraventions must therefore to be treated as a first contravention.

Schedule 4 of the *Regulation* provides the range of penalty for contraventions of the *Act* and *Regulation*. The specific penalty range for a first contravention of each of these contraventions is four (4) to seven (7) days suspension, or a monetary penalty of \$5,000-\$7,000.

Gang influence is an unfortunate reality affecting some licensed establishments in the Greater Vancouver area. The licensee has disclosed evidence that credibly points to a likelihood of such influence in this case. The existence of gang pressure, however, does not excuse a licensee from its obligation to comply with the terms and conditions of a licence. The branch has an obligation to treat its licensee's equitably, and to fulfil its social mandate with consistent application of enforcement activity.

Typically, the only situation in which no penalty is assessed is when the adjudicator is satisfied that voluntary compliance with the licensee's obligations will be obtained without a penalty. In this case, I have insufficient evidence that voluntary compliance would be so obtained and therefore, I am not persuaded that the licensee should be excused from a penalty for these contraventions.

I find that a suspension is warranted.

The branch alleges that two contraventions occurred at a single moment on a single occasion. Section 44(1)(b) of the *Regulation* requires "that licensees must ensure that liquor is taken from patrons within ½ hour after the time stated on the licence." Section 44(2) requires "a licensee must not allow a person to consume liquor in the licensed establishment beyond ½ hour after the time stated on the licence." There is no evidence before me that alleges that the two contraventions arise from distinct incidents. Rather, the evidence discloses that the licensee did not take liquor from patrons as required by s. 44(1)(b), and the licensee *therefore* allowed a person to consume the liquor. I find that the contravention of s. 44(2) was a direct result of the contravention of s. 44(1)(b). As such, awarding a distinct penalty for each of the contraventions would be duplicitous. By not removing liquor from a patron by the specified time, the licensee allowed that patron/person to consume the liquor beyond that specified time. I note that both the specified time, the range of penalties provided in the *Regulation*, and the branch's recommended penalty, are identical for each of these contraventions.

I find that a four (4) day suspension for the contravention of s. 44(1)(b) - failure to clear, is appropriate. I assess no penalty for the contravention of s. 44(2) - allowing to consume beyond specified time.

ORDER

Pursuant to section 20(2) of the *Act*, I order a suspension of the Food Primary Licence No. 302237 for a period of four (4) days to commence at the close of business on Thursday July 31, 2008, 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 *Regulations*). I direct that liquor licence No. 302237 be held by the branch or the Vancouver Police Department until the licensee has demonstrated to the branch's satisfaction that the licensed establishment has been closed for four (4) days.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: July 11, 2008

cc: Vancouver Police Department - Cst. Peter Ryan
Liquor Control and Licensing Branch, Vancouver Regional office
Attn: Donna Lister, Regional Manager
Liquor Control and Licensing Branch, Vancouver Regional office
Attn: Tania Cogan, Branch Advocate