



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:	RRRJ Holdings Ltd., dba SIP 1117 Granville Street Vancouver BC V6Z 1M1
Case:	EH08-131
Enforcement Hearing Adjudicator	Sheldon M. Seigel
Date of Hearing	By written submissions
Place of Hearing	Victoria, B.C.
Date of Decision	February 24, 2009

INTRODUCTION

This hearing was conducted by way of written submissions by agreement of the Licensee and the General Manager. The Branch and the Licensee provided evidence and submissions with respect to the contravention and recommended penalty.

The Licensee is the owner of an establishment that holds Food Primary Licence #159811 in the City of Vancouver, British Columbia, with liquor sales permitted from noon to 2:00 am, seven days a week. The licence is, as are all liquor licences issued in the province, subject to the terms and conditions contained in the publication *Food Primary Licence Terms and Conditions: A Guide for Liquor Licensees in British Columbia (Guide)*.

CONTRAVENTION

The Vancouver City Police conducted a licensed premise check after midnight on October 26, 2008 (business day of October 25, 2008). As a result, the Branch made allegations and recommended enforcement action as set out in the Notice of Enforcement Action (NOEA) dated December 2, 2008. The Branch alleges that on October 26, 2008, the Licensee contravened s. 20 of the *Liquor Control & Licensing Act (Act)* and s. 11 of the *Liquor Control & Licensing Regulation (Regulation)* by operating the licensed establishment in a manner that was primary purpose of the business as stated on the licence. The proposed penalty is a \$7500 monetary penalty (item 1, Schedule 4 of the *Regulation*).

The Licensee admits that the contravention occurred as alleged, but provides submissions as to penalty.

RELEVANT STATUTORY PROVISIONS

See Appendix "A"

ISSUE

Is a penalty warranted for the acknowledged contravention, and what is the appropriate penalty?

EVIDENCE

The Licensee provided written submissions dated January 15, 2009. The Branch provided written submissions dated January 22, 2009. The Branch also provided a package of enforcement action materials related to the contravention, which materials were shared with the Licensee prior to the Licensee's submissions.

SUBMISSIONS

The Branch submits that the establishment was clearly operating as a bar, and not as a food primary establishment at the time of the inspection, and consequently a minimum monetary penalty is required to establish future compliance.

The Licensee submits that it is a valuable member of the community and operates in a difficult place and time. It submits that the contravention was a "wake up call" for a dedicated group of owner/managers and the catalyst for an immediate reconsideration of business practices in order to assure future compliance with the regulatory scheme and Branch requirements.

The Licensee further submits that it is having a difficult financial time and would have trouble raising the \$7,500 recommended penalty within the usual time

frame required by the Branch. The Licensee submits that if a \$7,500 penalty were to be assessed, that it would be reasonable to allow ninety days for payment.

ANALYSIS AND DECISION

The Licensee's submissions neither claim nor establish a defence to the contravention.

I find that the Licensee contravened the *Act* and *Regulation* by operating contrary to the establishment's primary purpose as stated on its licence.

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 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 Branch's primary goal in bringing enforcement action and imposing penalties is to achieve voluntary compliance with the *Act*, *Regulation*, and the rules contained in the *Guide*. Among the factors that are considered in determining the appropriate penalty is whether there is a past history of warnings by the branch and/or the police, the seriousness of the contravention, the threat to the public safety and the well being of the community.

Food primary establishments must have as their primary purpose the service of food during all hours of operation. Restaurants offer liquor service as an accompaniment to food, rather than as the primary activity. It is contrary to the public interest for the Branch to allow restaurants to operate as bars. The current liquor licensing process requires public and local government input into licence applications for liquor-primary establishments but not for restaurants. Obtaining a liquor licence for a restaurant and then operating as a bar circumvents this process. Restaurants operating as bars tend to be associated with community complaints around late night noise, intoxication and other behaviour contrary to community standards and the public interest.

I find nothing in the Licensee's submissions that persuades me that a penalty should be averted. The licence requirements are intended primarily for the protection of the public, and nothing in the Licensee's actions prior to the date of the contravention demonstrate that the public interests were adequately considered. I am moved, however, by the Licensee's rehabilitative efforts post contravention, and I see no reason why a penalty should be fatal to the Licensee's economic interest.

Schedule 4, item 1 of the *Regulation* sets out penalties for a first contravention of this kind including a licence suspension of 10-15 days and/or a monetary penalty of \$7,500- \$10,000. The Branch recommended a monetary penalty of \$7,500 and described that penalty as the minimum for this contravention.

The Licensee has requested that if a monetary penalty of \$7,500 is assessed, it would like payment to be due not before 90 days post decision. The Branch typically requires monetary penalties to be paid at approximately 30 days post decision. I am aware of the fact that the enforcement process has already been extended by some 45 days since the Licensee's acknowledgement of the contravention.

For the contravention of operating the establishment contrary to its primary purpose in contravention of the *Act* and *Regulation*, I find a total \$7,500 monetary penalty appropriate. In the circumstances, I find that payment of the monetary penalty shall be made in three instalments as follows:

- \$2,500 payable by the close of business on March 27, 2009
- \$2,500 payable by the close of business on April 24, 2009
- \$2,500 payable by the close of business on May 22, 2009

ORDER

Pursuant to Section 20(2) of the *Act*, I order the Licensee to pay a monetary penalty of seven thousand five hundred dollars (\$7,500) relating to Food Primary Licence #159811 in respect of action #EH08-131. The monetary penalty must be paid on the following schedule:

- \$2,500 payable by the close of business on March 27, 2009
- \$2,500 payable by the close of business on April 24, 2009
- \$2,500 payable by the close of business on May 22, 2009

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: February 24, 2009

cc: RCMP Vancouver Detachment

Liquor Control and Licensing Branch, Vancouver office
Attn: Donna Lister, Regional Manager

Liquor Control and Licensing Branch, Vancouver office
Attn : Peter Mior, Branch Advocate

APPENDIX 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;
- (e) the suspension or cancellation of a municipally, regionally, provincially or federally granted licence, permit or certificate that the licensee is required to hold in order to operate the licensed establishment.

(2) If the general manager has the right under subsection (1) to take action against a licensee, the general manager may do any one or more of the following, with or without a hearing:

(a) [Repealed 1999-36-13.]

(b) impose terms and conditions on the licensee's licence or rescind or amend existing terms and conditions on the licence;

(c) impose a monetary penalty on the licensee in accordance with the prescribed schedule of penalties;

(d) suspend all or any part of the licensee's licence in accordance with the prescribed schedule of licence suspensions;

(e) cancel all or any part of the licensee's licence;

(f) order the licensee to transfer the licence, within the prescribed period, to a person who is at arm's length from the licensee.

(2.1) The general manager may, if he or she is satisfied that it is in the public interest to do so,

(a) impose a monetary penalty under subsection (2) (c) that is greater than the amount provided for in the prescribed schedule of penalties, or

(b) suspend a licensee's licence under subsection (2) (d) for a period longer than that provided for in the prescribed schedule of suspensions.

(2.2) The general manager must, in taking action against a licensee under subsection (2.1), take into account

(a) the licensee's entire compliance history in respect of the matters referred to in subsection (1), and

(b) the particular circumstances giving rise to the taking of action by the general manager.

(2.3) The general manager may not impose a monetary penalty referred to in subsection (2.1) (a) that is greater than the following amounts:

(a) \$50 000 for a contravention of section 38 (1), and

(b) \$25 000 for any other reason referred to in subsection (1) of this section for taking action against the licensee.

(2.4) If a corporation is liable to a monetary penalty imposed under this section in respect of a contravention of this Act or the regulations, an employee, officer, director or agent of the corporation who authorizes, permits or acquiesces in the contravention is also liable to the penalty.

(2.5) A person on whom a monetary penalty has been imposed under this section must pay the penalty whether or not the person

(a) has been convicted of an offence under this Act or the regulations, or

(b) is also liable to a fine for an offence under this Act or the regulations.

(2.6) A monetary penalty imposed under this section must be paid within 30 days after the date on which the notice referred to in subsection (4) (a) is provided to the licensee or within any longer period specified by the general manager.

(2.7) All monetary penalties received by the general manager under this section must be paid into the consolidated revenue fund.

(3) Despite subsection (2) (d), (e) and (f), the general manager must suspend, cancel or order the transfer of a licence held by a person who has been convicted of a prescribed number of prescribed offences under the laws of Canada or British Columbia.

(4) On taking action against a licensee under subsection (2), the general manager must

(a) provide the licensee with written notice of the action in accordance with the regulations,

(b) set out in the notice the reasons for taking the action,

(c) set out in the notice the details of the action including

(i) if a monetary penalty is imposed, the amount of the penalty and the date by which the penalty must be paid, and

(ii) if a suspension is imposed, the period of the suspension and the dates on which the suspension must be served, and

(d) [Repealed 2002-48-37.]

(4.1) For the purposes of any hearing referred to in subsection (2), the general manager, by summons, may require a person

(a) to attend as a witness, at a place and time mentioned in the summons, which time must be a reasonable time from the date of the summons, and

(b) to bring and produce before the general manager all documents, writings, books, deeds and papers in the person's possession, custody or power touching, or in any way relating to, the subject matter of the hearing.

(4.2) A person named in and served with a summons referred to in subsection

(4.1) must attend before the general manager and answer on oath, unless the general manager directs otherwise, all questions touching the subject matter of the hearing, and produce all documents, writings, books, deeds and papers in accordance with the summons.

(4.3) When the general manager exercises a power under subsection (4.1), a person who fails or refuses to comply with subsection (4.2) is liable, on application to the Supreme Court, to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

(5) [Repealed 1999-36-14.]

Liquor Control and Licensing Regulation

[includes amendments up to B.C. Reg. 213/2007, June 21, 2007]

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.

(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;

(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.