



November 23, 2009

Float House Restaurant Inc.
c/o Ashleigh Drummond and Matt Curry
PO Box 1044
Ucluelet, BC V0R 3A0

Via Registered Mail and email thefloathouse@gmail.com

Dear Licensee:

**Re: The Float House Restaurant Inc, dba The Float House Restaurant, Ucluelet BC
Food Primary Licence No. 302365 Case: EH09-083**

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”) EH09-083. The NOEA was sent on October 7, 2009 to inform you that the general manager was taking enforcement action for the following alleged contravention:

That on July 22, 2009, the licensee contravened section 20 of the *Liquor Control and Licensing Act* and section 11(1) of the *Liquor Control and Licensing Regulations* by operating the licensed establishment in a manner that was contrary to the primary purpose of the business as stated on the license. The proposed penalty is \$7500 (item 1, Schedule 4 of the *Regulation*).

Background

The licensee, doing business as the Float House Restaurant located at 200 Hemlock Street in Ucluelet, British Columbia holds food primary licence #302365. The licence permits the sale and consumption of all types of liquor between the hours of 10:30 a.m. to midnight, seven days per week. The licence capacity is 43 person permitted inside and another 57 on the patio. The terms and conditions on the face of the licence are:

- For the sale and consumption of all types of liquor in establishments with a primary focus on the service of food.
- The terms and conditions to which this licence is subject include the terms and conditions contained in the publication “Guide for Liquor Licensees in British Columbia” as that publication is amended from time to time.
- Liquor may only be sold, served and consumed within the areas outlined in red on the official plan, unless otherwise endorsed or approved by the LCLB.
- Patio extension permitted as outlined in red on the official plan.
- Patron non-participation entertainment permitted.

**Ministry of Housing and
Social Development**

Liquor Control and
Licensing Branch

Mailing Address:
PO Box 9292 Stn Prov Govt
Victoria BC V8W 9J8
Telephone: 250 387-1254
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Location:
Second Floor, 1019 Wharf Street
Victoria BC

www.hsd.gov.bc.ca/lclb

In a letter dated October 7, 2009, the branch informed the licensee that there would be a telephone pre-hearing conference on October 20 at 1:30 p.m. to discuss the NOEA. The letter also advised that should the licensee fail to participate in the pre-hearing conference, the general manager may make a decision without conducting an enforcement hearing. The pre-hearing conference could not proceed because the licensee failed to participate.

When the branch registrar followed up with Mr. Curry to find out why the licensee had not joined the teleconference, he explained that he had not received the letter, but he was not interested in reconvening at another time. He said that the establishment had been closed, he was contemplating asking for the liquor licence to be cancelled, and he was in the process of dissolving the corporate licensee. He also explained that he disagreed with the fact that the branch was pursuing this enforcement action, and that what took place was as a result of the licensee acting on misinformation provided by the branch. He made it clear that he did not want to spend any more time and energy dealing with the liquor licence or enforcement matters pertaining to it.

Based on what Mr. Curry told the registrar, she concluded that the licensee was not interested in participating in an oral hearing. Instead, she wrote to the licensee on October 22 to invite him to provide a written submission on whether the contravention set out in the NOEA occurred and if so, what penalty, if any, is appropriate. He was provided with a copy of the following information, all of which I have considered for the purposes of making this decision:

1. The Notice of Enforcement Action
2. Schedule 1
3. Contravention notice #B019941
4. Liquor licence #302365
5. The red lined floor plan for the establishment
6. Compliance meeting report for May 13, 2009.
7. Complaint Tracking Forms 005956452-008 and 005956452-008 (with complainants' personal identifiers of removed).
8. GO Report 4305 2009-276 (with complaint's name removed).
9. Liquor inspector's notes for the July 22nd inspection
10. Eight photos taken of the establishment by the liquor inspector on July 22, 2009
11. *Licensee Food-Primary Terms and Conditions Guide*, pages 5-8, 26-29. The Guide as well as the legislation and hearing decisions are available online at <http://www.hsd.gov.bc.ca/lclb/resources/index.htm>
12. October 7, 2009 letter inviting licensee to pre-hearing conference.
13. A copy of the registrar's October 22, 2009 letter.

Applicable Statutory Provisions

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

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

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.

Issues

1. Did the licensee contravene section 20 of the *Act* and section 11 of the *Regulation*?
2. If so, what penalty, if any, is warranted?

Particulars of Allegation

On July 22, 2009, in response to public concerns about noise and overcrowding at the establishment, a multi-agency inspection team composed of a branch liquor inspector, a District of Ucluelet bylaw officer and a Worksafe BC compliance officer conducted an inspection of the establishment.

At approximately 9:15 p.m., and after observing the establishment for some time from the outside, the inspection team entered the premises. The liquor inspector observed patrons seated at large rectangular tables along the southeast corner of the restaurant, listening to a live entertainer. A large number of patrons stood in an area, normally used for the movement of staff and patrons, between the tables and the service bar. Many were ordering drinks from the service bar.

The large number of people inside the premises made moving around difficult. Patrons were observed holding mixed drinks, bottled beer, draft beer and small sake glasses. The liquor inspector observed only one full plate of food and one empty plate inside the premises. He did not observe any food being served. The team was unable to get to the kitchen area because of the crowded conditions.

The compliance officer for Worksafe BC asked a staff person for food, and she told him that he would have to come to the bar. She later rethought this plan, took his order, and brought his plate of sushi a short time later.

The team observed that the patio contained patrons standing and walking around with drinks. There was no food or serving ware visible on the patio tables.

The liquor inspector exited the establishment briefly. There was now a staff person controlling access to the establishment, and there was a lineup of people waiting to enter. He was allowed to reenter only after he identified himself as a liquor inspector. The noise level on the patio was high, with patrons yelling and talking loudly.

The inspector asked the licensee for a copy of sales receipts. The receipts revealed that 63.9% of the day's sales had been liquor and beverages and 36.1% food.

The inspector informed the licensee that the establishment was operating contrary to the primary purpose of its liquor licence, and that the number of patrons needed to be reduced and the noise level on the patio lowered. The inspection team left at 10:35 p.m.

The inspector met with the licensee on July 23 to discuss what had occurred the night before.

On September 12, 2009, contravention notice B019941 was issued to the licensee for operating contrary to the primary purpose.

Licensee's Response

The deadline provided by the registrar for making a submission was Friday, November 6. The licensee sent a letter by way of email on November 11, 2009, and I have considered that in my deliberations. In his letter, the licensee says that he would like to surrender his liquor licence. He also writes that his letter is his complaint regarding the liquor inspector. He does not provide any evidence to refute what is alleged or to substantiate a defence of due diligence.

Decision and Reasons

I find, based on the information contained in the NOEA, and absent any defence or evidence to the contrary from the licensee, that on July 22, 2009, the licensee contravened section 20 of the *Liquor Control and Licensing Act* and section 11(1) of the *Liquor Control and Licensing*

Regulations by operating the licensed establishment in a manner that was contrary to the primary purpose of the business as stated on the license.

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.

I have reviewed the branch's records for the licence and for the licensee. The licensee was granted this licence in June 2008. The branch's records reveal that a compliance meeting was held between the liquor inspector and the licensee on May 13, 2009 to discuss community complaints and how to control noise and ensure that the establishment is not operating contrary to the primary purpose of a food primary liquor licence.

The licensee has no previous, proven contraventions of this same type in its compliance history. Therefore, the July 22, 2009 contravention is a first contravention for the purposes of the penalty schedule. Item 1 of Schedule 4 of the *Regulation* provides for a 10-15 day licence suspension and/or a \$7500-\$10,000 penalty for a first contravention of this type.

I find that a monetary penalty of \$7500 is appropriate in the circumstances.

Order

Pursuant to Section 20 (2) of the *Act*, I order the payment of a seven thousand five hundred dollar (\$7500) monetary penalty by the licensee to the general manager on or before Wednesday, December 23, 2009.

Yours truly,

Original signed by

Bruce Edmundson
Deputy General Manager
Compliance and Enforcement Division

cc Clerk/Secretary, Village of Ucluelet
Ucluelet R.C.M.P.
LCLB Vancouver Island Regional Manager
LCLB Manager, Licensing Administration