



**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: Sentinel Peak Holdings Ltd.
dba No. 5 Orange Street Hotel
205 Main Street
Vancouver, BC V6A 2S7

Case: EH10-011

For the Licensee: Wayne D. Murdoch

For the Branch: Olubode Fagbamiye

Enforcement Hearing Adjudicator: Sheldon Seigel

Date of Hearing: Written Submissions

Date of Decision: July 26, 2010

**Ministry of Housing
& Social
Development**

Liquor Control and
Licensing Branch

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INTRODUCTION

The licensee operates an establishment located at 205 Main Street in Vancouver, BC under Liquor Primary Licence No. 021660. The licence indicates that liquor may be sold from 11:00 a.m. to 1:00 a.m., Monday through Saturday and 11:00 a.m. to midnight on Sunday.

The licence is, as are all liquor primary licences issued in the province, subject to the terms and conditions contained in the publication *Liquor Primary Licence Terms and Conditions: A Guide for Liquor Licensees in British Columbia* (Guide).

The branch's allegations and proposed penalties are set out in the Notice of Enforcement Action (NOEA) dated March 09, 2010.

The licensee admits that the contravention took place, but disputes that the proposed penalty is appropriate. The branch and the licensee agree that the hearing will take place by way of written submissions.

THE ALLEGED CONTRAVENTION

The branch alleges that on Wednesday, December 9, 2009, at approximately 10:00 p.m. the licensee contravened s. 35 of the *Liquor Control and Licensing Act*, R.S.B.C., 1996, c.267 (the "Act") by permitting a minor in a liquor primary premises.

The proposed penalty for contravening s. 35 of the *Act* is a four (4) day licence suspension, which is within the range of penalty indicated in item 3, Schedule 4 of the *Liquor Control and Licensing Regulation* (Regulation) for a first contravention of this kind.

RELEVANT STATUTORY PROVISIONS

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

- 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 in prescribed circumstances.

ISSUES

1. Did the licensee contravene the *Act* as alleged?
2. Was the licensee duly diligent?
3. If the contravention occurred and the licensee was not duly diligent, is a penalty warranted in the circumstances of this case?
4. If a penalty is warranted, what penalty is appropriate?

EVIDENCE

Exhibit No. 1: The Branch Book of documents, with covering letter dated April 8, 2010.

Exhibit No. 2: The branch's submissions dated June 21, 2010.

Exhibit No. 3: The licensee's submissions with covering letter dated June 16, 2010.

Exhibit No. 4: The licensee's reply to the branch's submissions with covering letter dated June 29, 2010.

The branch documents include the police general occurrence report and notes that set out the circumstances of the alleged contravention. The branch documents also include submissions as to why a penalty is recommended and that the appropriate penalty should be a four-day suspension.

The licensee's documents confirm that the licensee acknowledges that the contravention occurred. The licensee's documents also include submissions that it acted reasonably (due diligence), that no penalty is warranted, and in the alternative that a \$5,000 monetary penalty would be appropriate.

SUBMISSIONS

The Branch

The branch submits that the elements of the contravention were clearly present, that the licensee demonstrated no evidence of reasonable systems in place to attempt to prevent such contraventions, and that the evidence indicates that the licensee is fully aware of the issue of minors attempting to gain access to the establishment. The branch also submits that the contravention is an egregious one as the minor looked particularly young, the doorman relied on another patron to determine that the minor should be allowed entry to the establishment, the minor was served liquor, became intoxicated, and was arrested and detained in police custody until sober due to the police fear that he could potentially endanger himself or others in his intoxicated state.

The Licensee

The licensee submits that a monetary penalty will be more effective at achieving voluntary compliance, serving the public interest, and accomplishing speedy application of consequences for non-compliance. The licensee submits that the doorman was in the process of denying entry to the minor who failed to produce ID as requested when a regular customer said that the minor was of age. As a result the doorman allowed the

minor entry. The licensee also submits that the issue of minors had been brought to the attention of the doorman on a regular basis and that the licensee has previously been successful in preventing minors from entering the premises during the term of the licence.

ANALYSIS AND DECISION

The police evidence indicates that a patron was found in the establishment and that the patron was confirmed to be a minor. The occurrence report also establishes that the minor was intoxicated, belligerent, and was arrested and detained in custody. The authoring constable also speculated that the minor had in his possession automobile keys and was prepared to drive in his intoxicated state. None of this evidence is controverted. I find that a patron in the establishment at 10:00 p.m. on December 09, 2009, was a minor.

I find that by allowing the minor access to the establishment without providing identification, though he was seen and addressed by the door staff, and by allowing him to remain in the establishment without being checked again for identification by the bartenders or any number of other staff members, the licensee has authorized or permitted a minor to enter on or to be on premises where liquor is sold or kept for sale.

Subject to the defence of due diligence, I find the contravention did occur.

Due Diligence

The licensee is entitled to a defence to the finding of the contravention, if it can be shown that it was duly diligent in taking reasonable steps to prevent the contraventions from occurring. The licensee must not only establish procedures that were in place at the time of the alleged contravention to identify and deal with prospective contraventions, it must show that it took reasonable steps to ensure that those procedures were followed.

The licensee submits that the doorman who admitted the minor did so contrary to his “standing instructions and against his better judgement” and acknowledged that admitting the minor “was a breach.” The doorman apologized to the licensee and was disciplined for his conduct. The licensee also says the regular customer who vouched for the minor was barred from the establishment.

The doorman’s apology and discipline were subsequent to the contravention and not relevant to the question of whether the licensee was duly diligent in training, and supervising the doorman. The licensee has provided insufficient evidence of systems and procedures in place at the time of the contravention, or of training or supervision of employees that would allow a finding of reasonable conduct that could be interpreted as due diligence.

I find that the licensee has not been duly diligent and thus may be said to have “permitted” the contravention.

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 by the minimums set out in Schedule 4 of the *Regulation*. 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 NOEA.

The branch's primary goal in bringing enforcement action and imposing penalties is achieving voluntary compliance. 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.

The inspector thought it appropriate to pursue enforcement for the allegation, and the evidence indicates that he believes a penalty is required to assure voluntary compliance in the future. The inspector recommended a four-day licence suspension in the NOEA and indicated that he believes this suspension is necessary and appropriate to enforce the importance of checking identification in order to prevent minors from entering the licensed establishment.

There is no compliance history of prior proven contraventions of the same type for this licensee or this establishment within the year preceding these incidents. Accordingly, pursuant to the *Regulation*, Schedule 4, this is a first contravention and the range of penalties for first contraventions is a four (4) to seven (7) day suspension and/or a monetary penalty of \$5,000- \$7,500.

The licensee says a monetary penalty is more appropriate and will more effectively produce the required results, but it provides little evidence to support that proposition. The branch says a suspension is required to bring the licensee into voluntary compliance and reinforce the importance of keeping minors out of the establishment to the licensee's management and staff.

I find that a penalty is warranted to ensure voluntary compliance in the future. I find that a suspension is appropriate and that the minimum four-day suspension penalty is reasonable and required to bring about voluntary compliance in the future. I note in this regard that the evidence supports that the minor was particularly young looking and the doorman deferred his responsibility to turn away a minor to a patron of the establishment. I find the contravention represents a considerable breach of reasonably responsible conduct and it warrants enforcement action, which will have a greater impact than the monetary penalty recommended by the licensee.

ORDER

Pursuant to section 20(2) of the *Act*, I order a suspension of the Liquor Primary Licence No. 021660 for a period of four (4) days to commence at the close of business on Tuesday, August 24, 2010, 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 Primary Licence No. 021660 be held by the Branch or the Vancouver Police Department from the close of business on August 24, 2010, 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 26, 2010

cc: Vancouver Police Department
Liquor Control and Licensing Branch, Vancouver Office
Attn: Donna Lister, Regional Manager
Liquor Control and Licensing Branch, Victoria Office
Attn: Olubode Fagbamiye, Branch Advocate