



March 19, 2010

0708901 B.C. Ltd.
c/o Shagufta Gulnaz Mohammed
2966 4th Avenue
Port Alberni, BC V9Y 2C1

VIA REGISTERED MAIL

Dear Licensee:

**Re: 0708901 B.C. Ltd., dba Beaufort Hotel, Port Alberni BC
Liquor Primary Licence No. 139354**

Case: EH09-129

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”) Case No.EH09-129 issued to the above named licensee.

ALLEGED CONTRAVENTION and PROPOSED PENALTY

The branch alleges that on November 3, 2009, the licensee contravened section 73(2)(a) of the *Liquor Control & Licensing Act* (the *Act*). Section 73(2)(a) of the *Act* states:

Power to retain documents and inspect books and premises

73 (1) To obtain information respecting the administration or enforcement of this Act or the regulations, the general manager, a person designated by the general manager or a person within a class of persons that is designated by the general manager may

(a) require the licensee to produce any prescribed document relating to the operation of the business licensed under this Act, and ...

(2) Without limiting any other provision of this section, a licensee must

(a) promptly produce and submit for inspection any record, thing or sample requested by a person acting under the authority of this section,

...

**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
Facsimile: 250 387-9184

Location:
Second Floor, 1019 Wharf Street
Victoria BC

www.hsd.gov.bc.ca/lclb

The proposed penalty is a twelve (12) day suspension of the liquor licence (item 31 of Schedule 4 of the *Liquor Control and Licensing Regulation*).

BACKGROUND

The corporate licensee has held Liquor Primary Licence No. 139354 since 2006 for the operation of an establishment called “Jaguar’s Cabaret” located in Port Alberni. The hours for liquor sale are 7:00 p.m. to 2:00 a.m. Monday through Saturday, and 7:00 p.m. to midnight on Sunday. The capacity is 225 patrons. The licence is, as are all liquor licenses issued in the province, subject to the terms and conditions contained in the publication “*Guide for Liquor Licensees in British Columbia*.”

On November 4, 2009, the branch issued contravention notice B019949 for failure to produce requested documents contrary to section 73(2)(a) of the *Act*. It was hand delivered by the liquor inspector to the licensee’s manager at the time. The NOEA, dated December 22, 2009, was subsequently sent to inform the licensee that the general manager was taking enforcement action regarding that alleged contravention. On December 24, 2009, the NOEA was successfully delivered to Shagufta Mohammed, the licensee’s director, by way of registered mail.

In a letter dated January 4, 2010, the branch informed the licensee that there would be a telephone pre-hearing conference on January 25, 2010, at 1:30 p.m. The letter was sent to the address which is on the face of the liquor licence. 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.

On February 5, 2010, the branch wrote to the licensee advising that section 20 (2) of the *Act* permits the general manager to take action against a licensee with or without a hearing. The letter also explained that due to the licensee’s failure to participate in the pre-hearing conference, a decision regarding the alleged contravention would be made without an oral hearing. The letter invited the licensee to provide a written submission regarding the allegation and proposed penalty by no later than March 1, 2010. The letter was sent by registered mail, and Canada Post records confirm that it was received by Shagufta Mohammed on February 10, 2010.

To date, the licensee has not provided any response, in writing or otherwise, to the allegation and proposed penalty set out in the NOEA.

ISSUES

1. Did the licensee contravene section 73(2)(a) of the *Act* as alleged?
2. If so, what penalty, if any, is appropriate?

PARTICULARS OF ALLEGATION

The details of the allegation are contained in the NOEA. In view of the fact that the events alleged are unchallenged, I summarize the evidence as follows.

On September 4, 2009, the branch liquor inspector visited the licensed establishment which is called Jaguar's Cabaret. He went to the establishment because a letter he had mailed to the licensee had been returned by Canada Post as undelivered, and his attempt to reach the licensee by phone had been unsuccessful as the number that the licensee had previously provided was no longer in service. During the September 4 visit, the inspector met with the licensee's son who said that he was the new resident manager. The inspector advised him that the licensee must update its contact information with the branch as well as formally apply for approval of any new resident manager.

On September 16, 2009, the liquor inspector sent to the establishment address (4963 Angus Street) a registered letter requesting a current and functioning phone number, mailing address, as well as the name of a contact person or resident manager for Jaguar's. Canada Post eventually returned this letter to the branch because delivery had been refused by the licensee on October 5.

On October 6, the liquor inspector telephoned the licensee. She declined to discuss the matter with him and asked him to deal with her son. The inspector spoke with her son that same day and advised him that the licensee needed to apply for branch approval if the son was going to act as the licensee's resident manager. He also advised the son that a second written request for contact information as well as a contravention notice would be sent by mail to the licensee.

On October 7, the inspector sent two letters together via registered mail to the establishment. The first letter requested a current and functioning phone number, mailing address, as well as the name of a contact person or resident manager for Jaguar's. The second letter accompanied contravention notice B019947, which was issued for the October 5 refusal to accept the branch's correspondence. Canada Post records indicate that on October 30 delivery of the October 7 package was refused by the licensee.

On November 2, 2009, after unsuccessfully trying to reach the licensee's son, the liquor inspector called the licensee. She did not want to discuss the matter with him and said that she would have her son contact him. Later that same day, the inspector was contacted by a former director of the corporate licensee who said that he was now operating the establishment and the licensee's son was no longer involved. The inspector advised him that the licensee needed to provide a written update of the contact information for the establishment and licensee.

On November 4, 2009, the inspector held a compliance meeting with the former director of the corporation and issued contravention notice B019949 for the licensee's failure, once again, to produce the requested information. The inspector advised him that providing information to the branch is a condition of the liquor licence. Compliance meeting form C005580 was signed by the former director who committed to updating the licensee contact information and receiving and responding to branch correspondence. He also agreed to complete an application for resident manager by November 6, 2009. The requested information and application were received by the branch by November 6, 2009.

I have also reviewed the following documents, all of which were provided to Shagufta Mohammed along with the registered letter she received on February 10, 2010:

1. The NOEA dated December 22, 2009 and Schedule 1 to the NOEA.
2. Canada Post receipt indicating that the NOEA and attachments were successfully delivered to Shagufta Gulnaz Mohammed at 2966 4th Avenue, Port Alberni.
3. Contravention Notice B019949.
4. Liquor Licence No. 3139354.
5. The red lined floor plan for the establishment (front and back).
6. Liquor inspector's request letter dated September 16, 2009, and Canada Post tracking record.

7. Liquor inspector's second request letter dated October, 7, 2009, as well as a cover letter accompanying Contravention Notice B019947, and the Canada Post tracking record.
8. Contravention Notice B019947 and no enforcement action recommended report regarding that notice.
9. Compliance Meeting Form C005580 for the November 4, 2009 meeting.
10. Liquor inspector's notes (3 pages).
11. Inspection Interview Sheet signed by Shagufta Mohammed on November 13, 2008.
12. August 7, 2009 letter from inspector regarding contravention notice #B019943 (failure to comply with RBS requirements).
13. The establishment's Compliance History Report as of February 4, 2010 (4 pages).
14. January 4, 2010 letter inviting the licensee to the pre-hearing conference.
15. A copy of the branch registrar's February 5, 2010 registered letter and attachments and the Canada Post tracking record confirming receipt.
16. *Licensee Liquor-Primary Terms and Conditions Guide* as of November 2009 and the *Liquor Control and Licensing Act* and *Liquor Control and Licensing Regulation*.

DECISION

I find, based on the information contained in the NOEA and the evidence otherwise provided, and absent any response from the licensee, that the licensee contravened s. 73 (2) (a) of the *Act*.

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.

For contraventions of this nature, item 31 of Schedule 4 of the *Liquor Control and Licensing Regulations* provides for a 10-15 day suspension of the liquor licence and/or a \$7500 - \$10,000 penalty.

There is no record of a proven contravention of this type having been committed within the 12 month period preceding the commission of this contravention. Therefore, this contravention is a first contravention for the purposes of determining the penalty.

The licensee has made no submission on the proposed penalty. The inspector has recommended a mid-range suspension for a first contravention of this type and provides reasons. His reasons are what he characterizes as a persistent lack of compliance by the licensee and the licensee's staff. The evidence supports that the licensee was provided with an opportunity to comply and then repeated the non-compliance. The inspector goes on to state that ignoring the Branch's requests for information is unacceptable and must be strongly deterred.

The Penalty Schedule to the *Regulations* provides for a 10 -15 day suspension for a first proven contravention. This is a significant penalty and other than cancellation this is among the highest range of suspensions for a first contravention. As a general rule, the range of penalties in the Schedule is an indicator of the seriousness attached to a particular contravention. By that measure alone this is a serious breach of the Act.

After consideration of the evidence, I agree with the recommendation as provided in the NOEA and order a 12 day suspension. A suspension is necessary to ensure future compliance.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of Liquor Primary Licence 139354 for a period of 12 days. "Business day" means a day on which the licensee's establishment would normally be open for business (section 67 of the *Regulations*). It is my understanding that the establishment is currently closed and undergoing renovations. Therefore, the dates of the suspension will be determined by the General Manager once the branch is satisfied that the establishment has re-opened for business. Once the dates for the re-opening of the business have been determined, you must contact your liquor Inspector, Brad McRobert at 250 741-3624.

Sincerely,

Original signed by

Bruce Edmundson
Deputy General Manager
Compliance and Enforcement Division
Liquor Control and Licensing Branch

cc: Port Alberni RCMP

Liquor Control and Licensing Branch, Victoria Office

Attn: Gary Barker, Regional Manager