



**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: Champion Pizza Inc.
dba Yadi's Eatery
1181 Granville Street
Vancouver, BC V6Z 1M1

Case: EH11-171

For the Licensee: No Appearance

For the Branch: Peter Mior

General Manager's Delegate: A. Paul Devine

Date of Hearing: June 6, 2012

Place of Hearing: Vancouver, BC

Date of Decision: September 6, 2012

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Licensee operates a facility in the Entertainment District of Vancouver known as "Yadi's Eatery." The licence for the facility located at 1181 Granville Street in Vancouver is in the name of Champion Pizza Inc. The establishment operates under a Food Primary Licence No. 303772 ("Licence"). The licence permits the sale and consumption of all types of liquor with a primary focus on the service of food.

The hours of sale for liquor service are from 9:00 a.m. to 1:00 a.m. from Sunday to Thursday and from 9:00 a.m. to 2:00 a.m. on Friday and Saturday.

The licence is, as are all liquor licences issued in the province, subject to the terms and conditions explained in the publication "Food Primary Terms and Conditions - Guide for Liquor Licensees in British Columbia" (the "Guide").

The Liquor Control and Licensing Branch ("Branch") specified its allegations and proposed penalties against the Licensee in a Notice of Enforcement Action (NOEA) letter dated February 8, 2012. The Branch alleges that during the early morning of November 4 and November 5, 2011, the Vancouver Police conducted an undercover operation in response to complaints of loud music and patrons consuming liquor in soft drink cans after liquor service hours. On each of these occasions, the undercover officers were either served or observed the sale of liquor after the hours of service specified in the licence issued to the Licensee for the restaurant. The Branch proposes a penalty of \$2,000 for each offence, for a total penalty of \$4,000.

The Licensee disputed the allegations and penalties proposed in the NOEA, and so I was appointed as a Delegate of the General Manager to hear the matter. A hearing was scheduled for June 6 and 7, 2012. Although notified of the hearing dates by mail and by email, the Licensee did not attend the hearing as scheduled. Nor did the Licensee call to advise that it could not attend the hearing. The start of the hearing was delayed in the event the Licensee was held up. After waiting for 15 minutes and without any word from the Licensee, the hearing began, and the Branch introduced the evidence as described below.

EXHIBITS

EXHIBIT 1: Branch's book of documents

EXHIBIT 2: Notice of Hearing

EVIDENCE

The Branch alleges that on November 4 and 5, 2011, the Licensee breached section 44(1)(b) of the *Liquor Licensing and Control Regulation* ("Regulation"). Three Vancouver police officers were called by the Branch as witnesses, and gave evidence about the undercover operation at the restaurant operated by the Licensee during the early morning on November 4 and 5, 2011.

Constable A

Constable A testified that she and another Vancouver police officer attended at the restaurant early on the Friday morning of November 4, just prior to the 1 a.m. time when liquor service was supposed to end. Upon their arrival, they ordered two rum drinks and pizza. At 1:09 a.m., they were served two more rum and coke drinks. At 1:37 a.m. they ordered two more rum and Coke drinks. These were served in pop cans with straws. The constables confirmed that the cans she received from the staff member contained alcohol.

One of the staff members of the restaurant cleared the glasses from their table, and said that they had to be cleared away. While at the restaurant, the Constable noticed that other patrons were being served alcohol, including Kokanee beer. She testified that the police officers departed the restaurant at a pre-arranged time.

Constable B

Constable B testified that she and Constable C attended at the restaurant at 1:45 a.m. on the following morning, just prior to the 2 a.m. time until which the restaurant was authorized to sell liquor. Two drinks were ordered prior to the time scheduled for the termination of liquor service. Later, at 2:20 a.m., two further liquor drinks were ordered from the staff at the front counter of the facility. Constable B confirmed that her drink contained alcohol. Two males sitting with the police officers purchased four drinks in shot glasses from the front counter at 2:30 a.m. They offered two glasses to the officers, and said that they contained tequila. Constable B tasted the drink that she was offered, and confirmed that it contained tequila.

Constable C

Constable C confirmed the evidence of her fellow officer. She said that the restaurant was not busy at the time they were present. At 2:35 a.m. they were told by a staff member that they had to finish their drinks within 15 minutes. They asked if he was kicking them out and the staff member said "no." The officers left at 2:45 a.m.

Liquor Inspector A

Liquor Inspector A testified that there had been prior observations in March 2011 of the Licensee serving liquor after hours. As a result, the Licensee attended a Compliance Meeting on May 3, 2011. The Licensee made specific commitments at the Compliance Meeting to comply with the liquor service hours posted on its licence, not to sell liquor outside of these service hours, and to clear glassware from patrons within one half hour of the end of the liquor service hours. The Inspector testified that the business licence of the Licensee was suspended for 20 days by the City of Vancouver as result of selling liquor after hours.

The Inspector pursued enforcement action because the Licensee was not coming into voluntary compliance. The Licensee was in violation twice in two days. Its actions resulted in a high risk of intoxication for its patrons, and constituted a disturbance to local residents and businesses. A mid-range monetary penalty for a first contravention was recommended for each breach of the Regulation.

ANALYSIS AND DECISION

The Branch has the onus of establishing the offences as alleged in the NOEA. In the absence of contrary evidence, I am completely satisfied on hearing the evidence of three Vancouver police constables that the offences as alleged took place. Their evidence conclusively establishes that liquor was sold by the Licensee after the conclusion of the hours specified in its licence on November 4 and 5, 2011. The offences of selling liquor after the end of the Licensee's service hours contrary to section 44(1)(b) of the *Regulation* on the morning of November 4 and the morning of November 5, 2011 are both made out.

The defence of due diligence is available to the Licensee but there was no evidence called to establish that the Licensee was duly diligent. The onus is on the Licensee to establish due diligence, and so this defence fails.

PENALTY

I turn now to consider penalty. Pursuant to section 20(2) of the *Liquor Control and Licensing Act* ("Act"), having found that the Licensee has contravened the *Act*, the *Regulation*, and/or the terms and conditions of the licence, I may do one or more of the following:

- Take no enforcement action
- Impose terms and conditions on the licence or rescind or amend existing terms and conditions
- Impose a monetary penalty on the licensee
- Suspend all or any part of the licence
- Cancel all or any part of the licence
- Order the licensee to transfer the licence

I am not bound to order the penalty proposed in the Notice of Enforcement Action. 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*. I am not bound by the maximums and may impose higher penalties when it is in the public interest.

The primary goal of the Branch in bringing enforcement action and imposing penalties is to achieve voluntary compliance. The factors that are considered in determining the appropriate penalty include whether there is a proven history of compliance, a past history of warnings by the branch and/or police, the seriousness of the contravention, the threat to the public safety, and the well being of the community.

There was no record of a proven contravention of the same type for the Licensee at this establishment within the preceding 12 months of these incidents. The Licensee had, however, attended a Compliance Meeting because of allegations of this type of misconduct. The Licensee made commitments to observe the hours of liquor sales as set out in its liquor licence, and failed to meet those commitments on two days in a row. The manner in which liquor was sold to the police officers after hours suggests that this was a common business practice for the Licensee.

I am in agreement with the Inspector that a mid--range penalty is appropriate given the history of difficulty with compliance for this Licensee, and in view of the fact that the Licensee had attended a Compliance Meeting at which its obligations under its Food Primary Licence were clearly explained.

I conclude that in all of the circumstances, a penalty of \$2,000 for each offense is appropriate.

ORDER

Pursuant to section 20(2) of the *Act*, and Schedule 4 of the *Regulation*, I find that the Licensee is required to pay a monetary penalty of the sum of Four Thousand Dollars (\$4,000) to the General Manager of the Liquor Control and Licensing Branch on or before October 9, 2012.

Signs satisfactory to the General Manager showing that a monetary penalty has been imposed will be placed in a prominent location in the establishment by a Liquor Control and Licensing Branch inspector or a police officer.

Original signed by

A. Paul Devine
Enforcement Hearing Adjudicator

Date: September 6, 2012

cc: Liquor Control and Licensing Branch, Vancouver Office
Attention: Donna Lister, Regional Manager

Liquor Control and Licensing Branch, Vancouver Office
Attention: Peter Mior, Branch Advocate