



**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: Encore Promotions Inc.
dba Heartbreakers
1192 5th Avenue
Prince George, BC V2L 3K9

Case: EH12-067

For the Licensee: Adriano Spoletini

For the Branch: Peter Mior

Enforcement Hearing Adjudicator: Edward Owsianski

Date of Hearing: Written Submissions

Date of Decision: August 10, 2012

**Liquor Control and
Licensing Branch**

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INTRODUCTION

The licensee, Encore Promotions Inc. operates Heartbreakers, a liquor primary establishment located in Prince George, BC (the licensed establishment). The licensee holds Liquor Primary Licence No. 031589 for liquor sales at the licensed establishment from 9 a.m. to 3 a.m. seven days per week. The licensed establishment has a maximum capacity of 400 persons. 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."

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The branch's allegation and proposed penalty is set out in the Notice of Enforcement Action (the "NOEA") dated May 28, 2012. The branch alleges that on February 5, 2012, the licensee contravened section 43(2)(b) of the *Liquor Control & Licensing Act (the Act)* by permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied. The proposed penalty is a five day suspension penalty (item 11 of Schedule 4, *Liquor Control and Licensing Regulation*).

Item 11 of Schedule 4 of *the Regulation* provides a range of penalties for a first contravention of this type of a licence suspension for 4 - 7 days and/or a monetary penalty of \$5000 - \$7000.

The licensee does not dispute that the contravention took place, just the penalty proposed. It was agreed that this hearing would take place by way of written submissions.

RELEVANT STATUTORY PROVISIONS***Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267*****Drunkenness**

43 (1) A person must not sell or give liquor to an intoxicated person or a person apparently under the influence of liquor.

(2) A licensee or the licensee's employee must not permit

(a) a person to become intoxicated, or

(b) an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

ISSUES

1. Did the contravention occur?
2. If so, what penalty, if any, is warranted?

EXHIBITS

1. Branch's book of documents, tabs 1 - 10.
2. Licensee's written submission dated June 18, 2012, faxed June 27, 2012.
3. Licensee's written submission dated June 18, 2012, faxed July 4, 2012.
4. Letters from branch registrar dated May 22 and 29, 2012.
5. Email correspondence between branch registrar, licensee and branch advocate dated July 11 and 12, 2012.

EVIDENCE & SUBMISSIONS

The branch's evidence and submissions are summarized as follows:

On February 5, 2012, at approximately 12:50 a.m. two police officers conducting a licensed premises check of the licensed establishment observed a female patron sitting on a bar stool at the bar. She was slumped over the bar and appeared to be passed out. When awakened by the officers she exhibited signs of intoxication; slurred speech, smelled strongly of liquor and was unable to stand or walk on her own. She was subsequently arrested for public intoxication. In being escorted from the premises she was staggering, tripping and falling and had to be supported by the officers. She was subsequently incarcerated and released when sober.

A NOEA was prepared by the area liquor inspector with a recommendation for a five day suspension penalty. The inspector provided reasons for his recommendation. The intoxicated patron was in clear view of staff who were not monitoring the condition of the patron and took no action to remove the patron from the establishment. The patron was arrested and detained for her own safety. The suspension will reinforce to the licensee and staff the importance of being vigilant to ensure intoxicated persons are not permitted to remain in the establishment and will send a clear message to the community and other licensees that this type of behaviour is not permitted.

The licensee's evidence and submissions were made by the authorized representative for the corporate licensee.

The licensee representative and his wife were present in the licensed establishment that night but do not recall anyone being removed in handcuffs by police officers. The officers did not advise them of the incident until over a month later at which time the security video was no longer available and it was too late for staff to recall the incident.

They have measures in place to prevent this type of contravention. Staff at the front entrance check patrons for identification and sobriety. Intoxicated persons are not permitted entry. Patrons inside are monitored and requested to leave if they are observed to be intoxicated. Staff are instructed and trained in their responsibilities and nightly reports are made of any incidents.

In the circumstances no penalty should be imposed.

REASONS AND DECISION

The licensee has admitted the contravention. Having considered all of the evidence and the submissions, I find on a balance of probabilities that on February 5, 2012, the licensee permitted an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied. That on its face is a contravention of section 43(2)(b) of the *Liquor Control & Licensing Act (the Act)*.

DUE DILIGENCE

The licensee is entitled to a defence to the allegations of the contravention, if it can be shown that it was duly diligent in taking reasonable steps to prevent the contravention from occurring. The licensee must not only establish procedures to identify and deal with problems, it must ensure that those procedures are consistently acted upon and problems are dealt with.

Here, there is some evidence that the licensee has a process in place to advise and remind employees that intoxicated persons are not permitted entry nor to remain in the licensed establishment.

Taking a look at the evidence as a whole, I find that the licensee's program was not sufficient to reasonably ensure compliance with the law relating to the prohibition against permitting an intoxicated person to remain in the licensed establishment. Here, the police officers observed and identified the patron as being intoxicated. The patron was in plain view, passed out and slumped over the bar. Despite this no action was taken by any of the staff or the licensee representative to have the intoxicated patron removed.

In conclusion, I find that the licensee is not entitled to the benefit of the defence of due diligence and that the licensee may be said to have "permitted" the contravention.

In conclusion, I find on a balance of probabilities that on February 5, 2012, the licensee contravened section 43(2)(b) of the *Liquor Control & Licensing Act (the Act)* by permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

PENALTY

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:

- 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

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 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 to do so, and 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 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.

There is no record of prior proven contraventions, offences or enforcement actions of the same type for this licensee for this licence within the year preceding this incident. I therefore find this to be a first contravention for the purposes of Schedule 4 and calculating a penalty.

Each case is considered individually on the circumstances of the case. In the circumstances of this case, I am satisfied that the licensee has not successfully or sufficiently stressed upon its employees the need to fully and conscientiously carry out their duties. Permitting intoxicated patrons to remain in a licensed establishment can lead to serious public safety issues. All reasonable measures to ensure both general and specific deterrence within society at large should be undertaken. Giving consideration to all of the evidence and submissions, and the seriousness of the contravention, I find that a penalty is necessary to ensure future voluntary compliance.

Any penalty imposed must be sufficient to ensure compliance in the future. Schedule 4 of the Regulations provides a range of penalties for a first contravention of this type. The branch has proposed a five day licence suspension for a first contravention of this type. In the circumstances here, I find that the five day licence suspension is necessary, appropriate and reasonable.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of Liquor Primary Licence No. 031589 for a period of five (5) days to commence as of the close of business on Friday, September 14, 2012, and to continue each succeeding business day until the suspension is completed.

To ensure this Order is effective, I direct that Liquor Primary License No. 031589 be held by the branch or the RCMP Prince George Detachment from the close of business on Friday, September 14, 2012 until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: August 10, 2012

cc: Liquor Control and Licensing Branch, Surrey Office
Attention: Michael Clark, Regional Manager

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