



**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: Huber Developments Ltd., et al – Joint Venture
(Radium), dba Rocky Mountain Cold Beer, Wine
& Spirits (Radium)
7493 Main Street
Radium Hot Springs, BC V0A 1M0

Case: EH13-048

For the Licensee: Joseph K. Huber

For the Branch: Cristal Scheer

General Manager's Delegate: George C.E. Fuller

Date of Hearing: Written Submissions

Date of Decision: October 28, 2013

**Liquor Control and
Licensing Branch**

Mailing Address:
PO Box 9292 Stn Prov Govt
Victoria BC V8W 9J8
Telephone: 250 952-5787
Facsimile: 250 952-7066

Location:
Fourth Floor, 3350 Douglas Street
Victoria BC
<http://www.pssg.gov.bc.ca/lclb/>

INTRODUCTION

The Licensee, Huber Developments Ltd., et al – Joint Venture (Radium) (the “Licensee”) owns and operates an establishment known as Rocky Mountain Cold Beer, Wine & Spirits (Radium). The Licensee holds Licensee Retail Store Licence number 195260. The authorized representative of the Licensee is Joseph K. Huber.

According to the terms of its Licence, the Licensee may sell liquor from 9:00 a.m. to 11:00 p.m., seven days a week. The Licensee is, as are all liquor licences issued in the Province, subject to the terms and conditions contained in the publication "Guide for Liquor Licensees in British Columbia" (the "Guide").

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalty are set out in the Notice of Enforcement Action (the "NOEA") dated April 25, 2013.

The Branch alleges that on February 22, 2013, the Licensee contravened Section 33(1)(a) of the *Liquor Control and Licensing Act* (the "Act") by selling, giving or otherwise supplying liquor to a minor. The proposed enforcement action outlined in the NOEA is a \$7,500 monetary penalty. The proposed monetary penalty falls within the penalty range set out in item 2, Schedule 4, of the *Liquor Control and Licensing Regulation* (the "Regulation") for a first contravention of this type. The range of penalties for a first contravention of this type is a ten to fifteen day licence suspension and/or a \$7,500 to \$10,000 monetary penalty.

The Licensee does not dispute that the contravention occurred, however, it disputes the proposed penalty. The Branch and the Licensee agreed that the hearing would take place by way of written submissions.

RELEVANT STATUTORY PROVISIONS

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

33 (1) A person must not

(a) sell, give or otherwise supply liquor to a minor.

ISSUES

1. Did the contravention occur?
2. If so, has the Licensee established a defence to the contravention?
3. If the contravention is proven, what penalty, if any, is appropriate?

EXHIBITS

The following documents were submitted and were considered:

- Exhibit No. 1:** The Branch's book of documents; tabs 1 to 14 inclusive.
- Exhibit No. 2:** Letter dated September 6, 2013 from the representative of the Licensee, Joseph K. Huber, to the Branch Registrar.
- Exhibit No. 3:** Letter dated February 28, 2013, from a Manager of the Licensee to an employee of the Licensee warning the "offending employee" of the consequences in the event of a further contravention.
- Exhibit No. 4:** Letter dated May 21, 2012 from a consultant to the Manger of the Licensee regarding "sale of product to minors and the defence of due diligence".

Exhibit No. 5: Copies of reminder posters; excerpts from an Employee Pass-on Book.

Exhibit No. 6: Copy of ID/month/year reference notice.

EVIDENCE—THE BRANCH

As previously noted, the Licensee does not dispute that the contravention occurred as alleged. It is deemed, therefore, to accept the facts as put forward by the Branch with respect to the issue of whether the contravention occurred. The Licensee has, however, made submissions in respect of the appropriateness and fairness of the monetary penalty which the Branch has recommended and also raises a defence of due diligence. Accordingly, the evidence may be summarized as follows.

This proceeding arises out of an inspection conducted under the "Minors As Agents Program" ("MAP"). These types of inspections are utilized by the Branch in order to monitor compliance with the Act's prohibition against selling liquor to persons under the age of nineteen ("Minors").

The Branch has hired 17 and 18 year old minors, who appear young, as agents to carry out these compliance inspections. No attempt was made to hide the minor's age or otherwise deceive the Licensee. The MAP is intended to test and ensure that liquor is not being sold to minors.

On February 22, 2013, MAP inspections were conducted to test compliance of several Licensee Retail Stores, Government Liquor Stores and Rural Agency stores in the East Kootenay region. Liquor Inspectors A and B were the Branch staff members accompanying the minor agent on this date (the "Inspection Team"). At the start of the

shift, Minor Agent #48 was photographed and identification was viewed which confirmed that the Agent was under nineteen years of age.

At approximately 8:43 p.m. on February 22, 2013, Inspector B entered the establishment and engaged in small talk with the female employee of the Licensee. Within a minute, Minor Agent #48 entered the establishment, obtained a six pack of a product known as "Bombay Coolers", and placed it on the counter in front of the female employee of the establishment.

The female employee then completed the sale of the Bombay product and Minor Agent #48 departed the establishment at 8:47 p.m. At no time during this transaction did the employee of the Licensee ask Minor Agent #48 for any identification. Inspectors A and B both returned to the establishment, identified themselves and issued Contravention Notice B019879 to the female employee.

SUBMISSIONS – THE BRANCH

The Branch says that the contravention has been proven and that the recommended penalty is appropriate and necessary in the circumstances, in order to ensure future compliance by this Licensee with respect to Section 33(1)(a) of the Act.

SUBMISSIONS – THE LICENSEE

The Licensee acknowledges the commission of the contravention and says that it takes its responsibility to follow the Act very seriously as indicated by its issuing of a written warning to the offending employee. In fact, the Licensee says that, had it known all of the facts surrounding the contravention at the time, the employee would have been immediately terminated.

As evidence of its purported vigilance with respect to liquor rules and regulations, the Licensee says that it had implemented certain procedures, prior to the contravention, in order to reduce the possibility of staff committing contraventions. Those measures included the following:

1. Orientation including a full review of the "Serving it Right" program with the employee. Since this particular contravention, the job outline clearly reinforces that any contravention of the Act will result in immediate termination.
2. A reference log containing all LCLB communications, reminders and updates is kept on premises. New updates and/or information received from the LCLB must be read and signed off by each employee. (A sample communication is attached to the Licensee's submission as Exhibit 4 in these proceedings).
3. LCLB posters outlining ID requirements are posted, along with customized reminders (A sample of such photos are attached to the Licensee's submissions as Exhibit 5 in these proceedings).
4. A daily employee Pass-on log book is maintained to record and share information between staff. Included in this log book are occurrences of attempted purchases by underage clients for failure to produce ID, in order to ensure all employees are aware of problematic clients. Management uses this book to highlight operational reminders. (Photos of examples of an entry in the pass-on log book are set out in Exhibit 5 in these proceedings).
5. Weekly discussions are conducted with employees to reinforce the importance of following the ID procedures. A monthly notice is posted next to the cash register to ensure quick reference for the month and year for ID to be valid. (A photo of such directive is found at Exhibit 6 in these proceedings).

The Licensee submits that, although a \$7,500 monetary penalty would create some financial difficulties for the Licensee, it would prefer a suspension of its liquor licence for a period of 10 to 15 days. The Licensee says that such a penalty would provide a very strong message to all of the Licensee's employees as they would suffer the consequences of a suspension also. The Licensee feels that its management and employees need to understand the seriousness of this contravention in order to ensure that there are no future compliance difficulties regarding the requirements of the Act.

In the event that I should agree to such a substituted penalty, the Licensee submits that it would accept the timing of the implementation of a suspension.

ANALYSIS AND DECISION

Contravention

The Licensee has admitted to the contravention. Having considered all of the evidence and the submissions filed in these proceedings, I find that on February 22, 2013 the Licensee contravened Section 33(1)(a) of the Act and the terms and conditions of the Licence by selling, giving or otherwise supplying liquor to a minor.

Due Diligence

The Licensee is entitled to a defence to 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 the existence of procedures to identify and deal with problems, it must ensure that those procedures are consistently acted upon and problems are dealt with accordingly.

As previously noted, the Licensee has certainly made some efforts to attempt to ensure that its employees do not run afoul of the provisions of the Act, Regulation and terms and conditions of its Licence. On the totality of the evidence, however, I am not convinced that the measures taken by the Licensee go far enough in order to allow the Licensee to claim the benefit of due diligence, and I so find.

PENALTY

Pursuant to Section 20(2) of the Act, having found that the Licensee has contravened the Act, the Regulation 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 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 and/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 to do so. 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 to achieve compliance with the Act, Regulation, and terms and conditions of the Licence. Among the factors that I have considered in determining the appropriate penalty in this case are: whether there is a past history of warnings by the Branch and/or the police, the seriousness of the contravention, the threat to public safety and the well-being of the community.

Item 2 of Schedule 4 of the Regulation, sets out penalties for first contraventions of Section 33(1)(a) of the Act, a licence suspension of ten to fifteen days and/or a monetary penalty of between \$7,500 and \$10,000. The Branch has recommended a \$7,500 monetary penalty, which is the minimum penalty for this particular contravention.

There can be no doubt but that a contravention of Section 33(1)(a) of the Act is at the high end of the seriousness scale and, therefore, this contravention should be dealt with accordingly. The consumption of liquor by minors can lead to a host of social ills.

Although the measures initiated by the Licensee in this case did not cross the threshold required in order to allow it to claim the benefit of due diligence, in my view those measures can be properly considered by me in determining an appropriate penalty.

Taking into consideration all of the above, and in particular the significant efforts made by this Licensee prior to the contravention occurring, I am satisfied that a suspension of ten days would be reasonable and appropriate in this case, instead of a monetary penalty of \$7,500.

ORDER

Pursuant to Section 20(2) of the Act, I order a suspension of Licensee Retail Store Licence number 195260, for a period of ten (10) consecutive days, to commence at the close of business on Thursday, November 28, 2013 and to continue each succeeding business day until the suspension is completed.

To ensure that this order is effective, I direct that the liquor licence be held either by the Branch, or the Radium Hot Springs RCMP Detachment, from the close of business on November 28, 2013 until the Licensee has demonstrated to the Branch's satisfaction that the suspension has been served.

I further order that signs satisfactory to the General Manager notifying the public that the Licence is suspended will be placed in a prominent location in the establishment by a Branch inspector, or a police officer, and must remain in place during the period of suspension.

Original signed by

George C.E. Fuller
General Manager's Delegate

Date: October 28, 2013

cc: Liquor Control and Licensing Branch, Victoria Office
Attention: Gary Barker, Regional Manager

Liquor Control and Licensing Branch, Vancouver Office
Attention: Cristal Scheer, Branch Advocate