



**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: Yu, Young Sill
dba Bukchigo Jangguchigo
Unit C – 341 North Road
Coquitlam, BC V3K 3V8

Case: EH13-123

For the Licensee: Yu, Young Sill

For the Branch: Peter Mior

Enforcement Hearing Adjudicator: George C.E. Fuller

Date of Hearing: Written Submissions

Date of Decision: October 17, 2013

**Liquor Control and
Licensing Branch**

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INTRODUCTION

The Licensee Yu, Young Sill, (the "Licensee") owns and operates an establishment known as Bukchigo Jangguchigo. The Licensee holds Food Primary Licence Number 305074. The authorized representative of the Licensee is Yu, Young Sill.

According to the terms of its Licence, the Licensee may sell liquor from 11:00 a.m. to midnight, 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 June 11, 2013.

The Branch alleges that on May 2, 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 10 day licence suspension. This proposed suspension 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 10 to 15 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

Supplying liquor to minors

- 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: Copy of a letter from Young Sill Yu on behalf of the Licensee to the Branch, setting out the Licensee's position in respect to the alleged contravention.

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 to the appropriateness and fairness of the penalty which the Branch has recommended. Accordingly, the evidence may be summarized as follows.

These proceedings arise 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 seventeen and eighteen 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 May 2, 2013, MAP inspections were conducted to assess compliance of licensed establishments in the lower mainland of Vancouver. Branch Inspectors A and B, and RCMP Constable C were the lead personnel accompanying the minor agent on this date (the "Inspection Team"). At the start of the shift, the minor agent ("Minor Agent #33") was photographed and identification was viewed confirming that he was eighteen years of age.

Bukchigo Jangguchigo has been issued a Food Primary Liquor Licence. This type of licence allows minors inside the establishment but it is against the law to sell, serve or supply liquor to a minor.

At approximately 7:03 p.m. on May 2, 2013, the Inspection Team arrived at the Licensee's establishment. Minor Agent #33 entered the restaurant and was followed by Inspectors A and B and RCMP Constable C. Minor Agent #33 seated himself at a table alone in the centre of the small restaurant. Constable C and Inspectors A and B seated themselves at a table immediately adjacent to where Minor Agent #33 was seated. The Inspection Team had a clear and unobstructed view of Minor Agent #33 at his chosen table.

After a short time, Minor Agent #33 was approached by a server and a conversation ensued. The server walked away and returned moments later with a Kokanee beer with the cap still on and a glass and set them down on the table and walked away. At this point Minor Agent #33 received a signal from Inspector A and promptly exited the establishment. Inspector B then advised Inspector A of the sale and took control of the table with the beer upon it. Constable C then took charge of the table while Inspector A and Inspector B identified themselves and began speaking with staff.

A Contravention Notice was issued and was signed by the manager. It was subsequently discovered, however, that the original Contravention Notice was faulty as it contained an incorrect date. Accordingly, Inspector B re-attended and served the female manager on duty with new Contravention Notice B013830.

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

In the written submission of August 12, 2013, the Licensee sincerely apologizes for having committed the contravention. By way of explanation, the Licensee submits that the restaurant would normally be run with one server and a manager during the dinner shift. Accordingly, the establishment would always have an experienced server during the dinner time, which was its busy time.

On the date in question, however, the establishment's regular server was absent for two hours at the beginning of his shift because of school commitments. Accordingly, experienced servers were not available on short notice and, therefore, the Licensee had to call up a daytime trainee to cover for a couple of hours. It was only the trainee's third day of training.

The Licensee explained that the restaurant became very busy around 6:00 p.m. and when Minor Agent #33 came into the restaurant it was almost at capacity. Making things worse, long time friends of the manager attended at the restaurant and she spent about five minutes at the table sharing greetings when Minor Agent #33 entered the restaurant. The trainee, by mistake, served beer without asking for any ID and when the manager told him to check the ID of Minor Agent #33, he had already left.

The Licensee stated in his submissions that they had no intention of selling liquor to a minor. The manager has worked there ever since the restaurant opened six years ago and she has never served liquor to a minor. The trainee was taught to check ID when serving liquor, but he was not fully trained and he made a mistake during a busy dinner shift.

Accordingly, the Licensee submits that when the contravention is placed in its proper context, the 10 day license suspension is too severe and would cause major damage to the Licensee's business.

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 May 2, 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 the problems, it must ensure that those procedures are consistently acted upon and problems are dealt with accordingly.

Here there is little evidence before me upon which I can find that the Licensee was duly diligent. The only suggestion of evidence in this regard is the statement by the Licensee that it did not intend to commit the contravention, and that, due to circumstances beyond the Licensee's control, the trainee server had only three days training at the time of the contravention.

The Licensee did not give any details with respect to the content of the Licensee's training program with regard to the serving of liquor to minors. Accordingly, it is my view that the evidence falls far short of that which would be necessary to successfully claim the defence of due diligence. Accordingly, I find that the Licensee in this case is not entitled to claim the benefit of the defense of due diligence.

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, the Regulation, and the 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 ten day suspension of the Licence, 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.

Taking into consideration all of the above, I am satisfied that a 10 day suspension is necessary in order to bring this Licensee into compliance.

ORDER

Pursuant to Section 20(2) of the Act, I order a suspension of Food Primary Licence Number 305074, for a period of 10 consecutive days, to commence on the close of business on Wednesday, November 20, 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 license be held either by the Branch, or the Vancouver Police, from the close of business on November 20, 2013 until 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
Enforcement Hearing Adjudicator

Date: October 17, 2013

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

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