



**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: Javce Management Ltd.
dba Patron Tacos & Cantina
265 Robson Street
Vancouver, BC V6B 2M1

Case: EH13-171

For the Licensee: Luis G. Batiz

For the Branch: Peter Mior

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

Date of Hearing: Written Submissions

Date of Decision: March 14, 2014

Ministry of Justice

Liquor Control and
Licensing Branch

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INTRODUCTION

The Licensee, Javce Management Ltd., (the "Licensee") owns and operates an establishment known as Patron Tacos & Cantina, in Vancouver, BC. The Licensee holds Food Primary Licence number 304841 (the "Licence"). The authorized representative of the Licensee is Luis G. Batiz.

According to the terms of its Licence, the Licensee may sell liquor from 11:00 a.m. to 11:00 p.m., Monday, Tuesday and Wednesday; 11:00 a.m. to midnight Thursday, Friday and Saturday; and, 11:00 a.m. to 10:00 p.m. Sunday.

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 October 17, 2013.

The Branch alleges that on September 14, 2013, the Licensee contravened section 6(4) of the *Liquor Control and Licensing Regulation* (the "Regulation") by overcrowding beyond person capacity more than occupant load. The proposed enforcement action outlined in the NOEA is a \$5,000 monetary penalty. This proposed monetary penalty falls within the penalty range set out in item 15 Schedule 4 of the Regulation for a first contravention of this type.

The Licensee does not dispute committing the contravention, nor is the Licensee pursuing a defence of due diligence. The Licensee disputes the proposed enforcement action and requests, that if any penalty is to be imposed, that it be a monetary penalty of \$5,000 without a licence suspension.

RELEVANT STATUTORY PROVISIONS***Liquor Control and Licensing Regulation, B.C. Reg. 244/2002*****Capacity**

6(4) It is a term and condition of the Licence that there must not be, in the Licensed establishment at any one time, more persons than the person capacity under subsection (1) or (3).

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

Exhibit 1: The Branch's book of documents, tabs 1 to 10 inclusive.

Exhibit 2: Letter dated November 5, 2013 from counsel for the Licensee to the Branch.

Exhibit 3: Letter dated February 7, 2013 from counsel for the Licensee to the Branch.

EVIDENCE—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 with respect to the appropriateness and fairness of the penalty which the Branch has recommended. Accordingly, the evidence may be summarized as set out below.

Facts

Patron Tacos & Cantina is a food primary establishment located on Robson Street in Vancouver, BC. On the licence, it has a "Person01" area of 59 persons, and a "Lounge Interior" area of 13 persons, for a total of 72 persons, which would represent the licence person capacity. According to the NOEA, the occupant load of the establishment is also 72 persons.

On Saturday, September 14, 2013 at approximately 8:46 p.m. a citizen complaint was received by the Vancouver Police Department indicating that the establishment was extremely overcrowded. Constables A, B, and C were dispatched and arrived at the scene at approximately 9:05 p.m. On arrival, it became clear to Constable A that the establishment was very overcrowded.

Constable A located the manager, and requested to see the liquor licence, and when reviewed noted that the person capacity totalled 72 persons. Constables A and B entered the establishment and conducted an inspection. Constable A noted that all seats were taken up by patrons and the area between tables were "jam packed" with patrons to the extent that the Constables had to turn sideways in order to move through the establishment.

Constable A conducted a count of the inside of the establishment, which totalled approximately 200 persons. Constable C conducted a count which totalled approximately 180 persons.

At 10:35 p.m. Constable A went outside of the establishment and stood on the sidewalk and from a clear and unobstructed vantage point counted the amount of people that exited the establishment, that being approximately 144 persons – double the person capacity of the establishment.

SUBMISSIONS – BRANCH

The Branch submits that the contravention of overcrowding beyond person capacity more than the occupant load has been proven on a balance of probabilities contrary to section 6(4) of the Regulation.

Three police officers independently conducted counts of patrons in the Licensee's establishment and concluded that the establishment was grossly overcrowded. In fact, the closest that the establishment came to complying with section 6(4) of the Regulation was Constable C's count of 144 – double the allowable person load for this establishment.

SUBMISSIONS – LICENSEE

The Licensee asks for leniency in the imposition of a penalty for the contravention of section 6(4) of the Regulation. The Licensee bases this plea largely on the fact that the establishment has a blemish-free compliance history. Specifically, the Licensee indicated that it had not committed any serious contraventions under the Act or the Regulation, such as: serving alcohol to minors, over serving alcohol to patrons, or serving alcohol outside of established hours. A further factor that led to the commission of the contravention was the fact that the principal of the Licensee operated under the wrong interpretation of liquor licensing rules. Once the owner became aware of the contravention, they took immediate steps to comply with the rules.

The Licensee said that he did not count how many people were in the establishment but, when the police arrived, all the seats in the restaurant were occupied. As well, he estimated there were at least 40-50 people standing and those individuals were not being served alcohol by staff.

In the Licensee's view, the establishment was not unsafe nor did it increase the risk of death or serious injury. Furthermore, there were no late night disturbances, and there were no parking problems or traffic flow issues since no alcohol was served to the individuals without assigned seating. There was no negative impact on the surrounding areas of the establishment's neighbourhood. The Licensee believed that, as long as

people could move freely and the people standing were not disturbing the clients with tables, they were within the rules of the liquor licence.

Accordingly, in light of all of the positive attributes, the Licensee believes that a penalty is not warranted in this case. In the event that the \$5,000 monetary penalty is ordered, the Licensee requests that the monetary penalty be paid in two monthly instalments of \$2,500 each.

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 September 14, 2013 the Licensee contravened section 6(4) of the Regulation and the terms and conditions of the Licence.

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.

The onus is upon the Licensee to prove this defence on a balance of probabilities. The Licensee here, expressly advised that it did not wish to present a defence of due diligence. I find, therefore, that the Licensee has not established the defence 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 a 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.

Licensees are obligated to comply with the regulation and the terms and conditions of their license. Enforcement actions are intended to both address the Licensee's non-compliance, and to encourage future compliance by way of deterrents. Overcrowding is considered a serious contravention, as the range for possible penalties and licence suspensions attests.

There can be no doubt but that overcrowding is, in and of itself, a very serious matter. When alcohol is added to that mix, however, the results can very quickly become lethal.

The public interest in community standards is also relevant to the contravention of overcrowding. Maximum capacity levels are established during the licensing process and these maximums are set so as to reduce the risk of negative impact on neighbourhoods and communities. Allowing Licensees to exceed their approved capacity effectively negates this community input.

What is most disturbing about this particular case is the sheer number of patrons by which the Licensee exceeded its lawful capacity, as referred to earlier in this decision. It would appear that this Licensee carried on its business in wanton disregard for the limitations placed upon its licence and, therefore, a penalty is clearly warranted.

There is no record of any proven contravention of the same type for this Licensee at this establishment within the 12 months prior to this incident. Therefore, I find this to be a first contravention for the purposes of reviewing the range of applicable penalties under Schedule 4 of the Regulation. Item 15 Schedule 4 of the Regulation provides that the penalties for first contraventions of this type are: a four to seven day licence suspension and/or a \$5,000 to \$7,000 monetary penalty.

Having found that a penalty is warranted, I am bound to follow the minimums set out in Schedule 4 of the Regulations. I find that a minimum \$5,000 monetary penalty is reasonable and appropriate for this contravention. The Act requires that monetary penalties be paid within 30 days. Therefore, this monetary penalty will be due and payable in full on the date given in this order, with no option for installments.

ORDER

Pursuant to Section 20(2) of the Act, I order that the Licensee pay a monetary penalty in the sum of \$5,000 to the General Manager of the Liquor Control and Licensing Branch, and I direct that this monetary penalty be paid to the General Manager on or before April 14, 2014.

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 Licensing Branch inspector, or a police officer.

Original signed by

George C.E. Fuller
Enforcement Hearing Adjudicator

Date: March 14, 2014

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

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