



**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: Sliderz Community House Inc.
dba Sliderz Community House
235 Bernard Avenue
Kelowna, BC V1Y 6N2

Case: EH14-030

For the Licensee: Darren Bates

For the Branch: Peter Mior

General Manager's Delegate: Nerys Poole

Date of Hearing: Written Submissions

Date of Decision: October 14, 2014

**Liquor Control and
Licensing Branch**

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INTRODUCTION

Sliderz Community House Inc., dba Sliderz Community House, operates a restaurant (the "restaurant") under Food Primary Licence number 305536 (the "licence"). The restaurant is located at 235 Bernard Avenue in Kelowna, BC.

The licence specifies hours of liquor service daily, from 9:00 a.m. to midnight. The licence person capacity is 30 inside the restaurant and 11 on the patio.

The licence 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").

The principal and sole owner of Sliderz Community House Inc. is Darren Bates (the "Licensee"), who signed the written submission on behalf of the corporate Licensee.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalties are set out in the Notice of Enforcement Action dated May 26, 2014 (the "NOEA").

The Branch alleges that on Sunday, February 23, 2014 (business day of Saturday, February 22, 2014), the Licensee contravened section 44(3) of the *Liquor Control and Licensing Regulation* (the "Regulation"), by allowing a person to consume liquor in the licensed establishment beyond ½ hour after the time stated on the licence for the hours of liquor service. The proposed penalty is a four day licence suspension. Item 26, Schedule 4 of the Regulation sets out a range of penalties for a first contravention of this type: a four to seven day licence suspension and/or a \$5,000 to \$7,000 monetary penalty.

The Branch also alleges that on Sunday, February 23, 2014 (business day of Saturday, February 22, 2014), the Licensee contravened section 42(2) of the Regulation by allowing consumption in the licensed establishment of liquor that was not purchased from or served by the licensee. The proposed penalty is a four day licence suspension. Item 28,

Schedule 4 of the Regulation sets out a range of penalties for a first contravention of this type: a four to seven day licence suspension and/or a \$5,000 to \$7,000 monetary penalty.

The Licensee does not dispute that the contraventions took place. The Licensee agreed to a written submission hearing and thus agreed that the contraventions occurred as alleged in the NOEA and that the Licensee is not pursuing a due diligence defence to the contraventions. The Licensee only disputes the proposed penalties in this hearing.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Regulation, B.C. Reg. 244/2002

Time

44 (3) Unless otherwise authorized by the general manager, a licensee must not allow a person to consume liquor in the licensed establishment beyond 1/2 hour after the time stated on the licence for the hours of liquor service.

Consumption of liquor in licensed establishments

42 (2) A licensee must not allow consumption in the licensed establishment of liquor that was not purchased from or served by the licensee.

ISSUES

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

EXHIBITS

Exhibit 1: The Branch's book of documents, tabs 1 to 11.

Exhibit 2: Licensee's written submission, dated July 17, 2014 (5 pages).

FACTS

The following facts are undisputed and are set out in the NOEA.

On Sunday, February 23, 2014 at approximately 4:40 a.m. a liquor inspector attended the Sliderz Community House. Upon entering the patio, the liquor inspector recognized the principal of the corporate licensee, Darren Bates, who was standing at the front door speaking to a female. The liquor inspector also observed patrons inside the restaurant. When the liquor inspector questioned Darren Bates about whether the patrons and he were consuming alcohol, Mr. Bates' initial response was "no." Mr. Bates was holding a pint glass that appeared to contain some type of beer mixed with clamato juice. When asked again if he was drinking alcohol, Mr. Bates responded by saying he had a sip of beer.

The liquor inspector then entered the restaurant and observed approximately 15 patrons inside seated at the bar and the tables. There were numerous cans of Kokanee beer on the bar and tables, also a few short glasses containing both dark liquid and a lighter coloured liquid. The liquor inspector observed one patron consuming from a can of Kokanee beer.

The liquor inspector then advised Mr. Bates that he would be receiving a contravention notice and he would be in touch with him. The liquor inspector exited the restaurant at 4:45 a.m.

At 5:21 pm on February 23, 2014, the liquor inspector received an email from Mr. Bates in regard to the inspection (Exhibit 1, tab 4). The email states: "None of the beers you saw on the counter were sold, my friends brought their own cans." Mr. Bates in this email also apologized for his lack of judgement and stated that he took full responsibility for what the liquor inspector witnessed on the Sunday morning.

On February 25, 2014, the liquor inspector, together with a second liquor inspector, met with Mr. Bates at the Kelowna branch office and discussed the issues arising from the incident on February 23, 2014. The liquor inspectors issued a contravention notice to Sliderz Community House, citing sections 44(3), 42(2) and 42(3). The NOEA does not

cite section 42(3) and thus the alleged contravention of this section was dropped from any enforcement action.

SUBMISSIONS – BRANCH

Contravention of section 44(3) – Consuming liquor beyond ½ hour closing time

The branch submitted the book of documents marked as Exhibit 1. The NOEA at tab 1 outlines the elements of the contravention of section 44(3) of the Regulation, as follows:

- Patrons were consuming liquor beyond 12:30 a.m. (half hour after closing)
- Patrons were observed consuming cans of beer and what appeared to be liquor from short glasses
- Patrons were located within the red-lined area
- The liquor inspector observed numerous cans of Kokanee beer and short glasses on the tables
- The licensee was in attendance and there was a staff member behind the bar

The Branch sets out its reasons for the proposed enforcement action, stating that the proposed four day suspension is within the range set out in the Schedule for a first contravention of this type. The Branch notes that the Licensee and staff had observed the consumption yet took no action to control it or remove the alcohol, instead allowing the contravention to happen. A licence suspension will send a clear concise message throughout the community that non-compliance will not be tolerated.

Contravention of section 42(2) – allowing consumption of liquor not purchased or served by the Licensee

The NOEA outlines the elements of the second alleged contravention. The Licensee stated that the patrons were consuming bottles of beer that the Licensee had not purchased from the Liquor Distribution Branch.

The purpose of prohibiting the consumption of liquor not purchased in the establishment is to ensure the quality of liquor and to prevent over-consumption in licensed establishments.

The Branch sets out its reasons for the proposed enforcement action, stating that the proposed four day suspension is within the range set out in the Schedule for a first contravention of this type. The Branch notes that the Licensee admitted that he knew the contravention was taking place yet neither the Licensee nor his staff made an attempt to have the patrons remove the alcohol that was not purchased by the Licensee.

SUBMISSIONS – LICENSEE

As noted, the Licensee agrees that the contraventions occurred. In his written submission, the Licensee notes that, as of the date of his submission (July 17, 2014), he had owned and run his first restaurant for less than a year. He acknowledges that he has learned the lesson of 100% compliance with the rules and that the reason for the stiff penalties is to enforce 100% compliance with the liquor regulations. He also notes that having a liquor licence is a privilege and not a right. He accepts full responsibility for the consumption of beer on February 23, 2014. He states that he was watching the Olympic gold medal game with a few friends who had come to join him. He admits that he was “naïve to the implications of breaking the rules.”

The Licensee states that he had never done anything contrary to his food primary liquor licence before the date of February 23, 2014. He says the incident was more than just a lesson for him; it was an eye opener about the importance of the rules and the consequent negative effect on his business of not complying.

Since the incident, he has initiated a number of procedures to ensure 100% future compliance. He submitted some photos to show the locking procedures he has introduced to ensure all alcohol is secured at the end of the licence hours. He has also installed an 8 camera security system and software on an ipad which automatically cuts into any music to announce “last call” procedures for lock down, which include numbered bar keys which are monitored by the camera and placed in the drop safe at the end of each day’s liquor service hours.

The Licensee further states that he has learned from his mistakes and has made every effort to verify his trust of employees with video and procedural backups. He admits that he was the one that broke the rules. He states that any financial fine will severely impact his chances of staying open. If a suspension is ordered, he requests that this occur sometime in November or January to alleviate the effect on his business. As his restaurant is located on the main tourist street, the summers are busiest and they do not have a lot of traffic after October. The licensee concludes with the statement: "we have learnt from our mistakes and WILL NOT repeat them, EVER." (capitals in original)

REASONS AND DECISION

Contravention

The Licensee admits the contraventions occurred. I therefore find that the Licensee has contravened sections 44(3) and 42(2) of the Regulation.

Due Diligence

The Licensee is entitled to a defence if it can be shown that it was duly diligent in taking reasonable steps to prevent the contraventions 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.

The Licensee has not presented any evidence to demonstrate due diligence nor has he raised a defence of due diligence. By agreeing to a written submission hearing, the Licensee agreed he would not be pursuing a due diligence defence to the contraventions. I, therefore, find that the Licensee has not established due diligence and I turn now to the question of penalty.

PENALTY

Pursuant to section 20(2) of the 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 a 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.

Is a penalty warranted for both contraventions?

On the facts of this incident, as set out in the NOEA and agreed to by the Licensee, patrons were consuming liquor long after the deadline of ½ hour after closing time. The licensee stated that the patrons were friends of the Licensee who were there to watch the Olympic gold medal hockey game. He also stated that his friends were drinking Kokanee beer from cans that they had brought to the restaurant and that his restaurant was not selling them liquor.

The Licensee has acknowledged that both the consumption of liquor after hours and the consumption of liquor that he did not sell within the establishment were contrary to the rules. I suspect the Licensee was either ignorant or somewhat naïve about the significance of these rules relating to consumption after hours and consumption of liquor not purchased in the licensed establishment.

I find that a penalty is warranted for the contravention of section 44(3)—consuming liquor beyond ½ hour closing time. I find that a penalty is not warranted for the contravention of section 42(2) because of the close connection between the two contraventions. The Licensee was allowing consumption of liquor long after the deadline imposed in the Regulation. That consumption was of liquor not purchased by

the licensee, creating an additional contravention. I suspect, when the Licensee stated in his email that his friends brought in the beer that they were consuming, that the Licensee may have been under the mistaken impression that this may have mitigated the after-hours consumption. It is clear from the Licensee's submission that he is now very aware of the rules and of the consequences of breaking the rules. The Licensee has accepted full responsibility for his failure to comply with the rules.

Having concluded that a penalty is warranted for the contravention of section 44(3), I turn to consider the following factors to determine the appropriate penalty, which include: whether there is a proven compliance history; 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.

Licensees are obliged to comply with the legislation and the terms and conditions of their licences. Enforcement action is intended to both redress the Licensee's non-compliance, and to encourage future compliance by way of deterrence. I find that the Licensee's apparent ignorance of the rules was a significant factor in the commission of the contravention here. I further find that the Licensee, since the incident, has taken measures to ensure the rules are followed with respect to the service of liquor and adhering to the closing deadline for the service. The Licensee has no history of enforcement action or of any warnings from the branch.

Item 26, Schedule 4 of the Regulation sets out a range of penalties for a first contravention of section 44(3): a four to seven day licence suspension and/or a \$5,000 to \$7,000 monetary penalty.

There is no record of a proven contravention of the same type for this Licensee at this establishment within the preceding 12 months of this incident. Therefore, I find this to be a first contravention for the purposes of Schedule 4 and calculating a penalty.

The Licensee's decision to hold a party with friends long after closing runs contrary to the purpose of closing hours for licensed establishments, which are usually determined after consideration of the nature of the neighbourhood and the community standards.

I accept the Licensee's statements that he has learned his lesson from this incident. However, I have decided to impose a penalty slightly higher than that proposed by the Branch based on the following factors in this case:

- The consumption of liquor was over four hours past the closing deadline
- The Licensee's initial response to the liquor inspector when confronted with the situation was to deny that he and his friends were consuming liquor
- The Licensee's apparent ignorance of the rules despite his being in business and having a food primary licence for about six months
- My decision not to impose a penalty for the contravention of section 42(2)

I, therefore, find that a suspension of five (5) days for a section 44(3) first contravention is reasonable and appropriate in the circumstances of this case.

ORDER

Pursuant to section 20(2) of the Act, I order a suspension of Food Primary Licence #305536 for a period of five (5) days to commence at the close of business on Friday, November 14, 2014 and to continue each succeeding business day until the suspension is completed.

To ensure this order is effective, I direct that the liquor licence be held by the Branch or the Kelowna RCMP detachment from the close of business on Friday, November 14, 2014, until the Licensee has demonstrated to the Branch's satisfaction that the suspension has been served.

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

Nerys Poole
General Manager's Delegate

Date: October 14, 2014

cc: Liquor Control and Licensing Branch, Victoria Regional Office
Attn: Jay Blackwell, A/Regional Manager

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