



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: Sabor Foods Ltd.
dba BG Urban Grill Whistler
8-4314 Main Street
Whistler, BC V0N 1B4

Case: EH14-132

For the Licensee: Hamid Azani

For the Branch: Cristal Scheer

General Manager's Delegate: Daniel M. Graham

Date of Hearing: Written Submissions

Date of Decision: March 4, 2015

**Liquor Control and
Licensing Branch**

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INTRODUCTION

Sabor Foods Ltd. (the "Licensee") operates the BG Urban Grill Whistler (the "Establishment") under Food Primary Licence 303658 (the "Licence"). The Establishment is located at #8-4314 Main Street, in Whistler, BC.

The Licence specifies hours of liquor service daily, seven days a week, from 9:00 a.m. to midnight. The Licence is, as are all liquor licences in the province, subject to the terms and conditions contained in the publication *A Guide for Liquor Licensees in British Columbia* (the "Guide").

Hamid Azani, principal of the corporate Licensee (the "principal"), represented the Licensee for the purposes of this hearing.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalty are set out in a Notice of Enforcement Action dated October 14, 2014 (the "NOEA"). The Branch alleges that on Saturday, September 27, 2014 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 sanction is a \$7,500 monetary penalty. This proposed monetary penalty falls within the penalty range set out in item 2, schedule 4 of the *Liquor Control and Licensing Regulation* (the "Regulation"). 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.

On October 30, 2014 the Licensee advised the Branch that the Licensee was admitting the contravention as alleged and, by agreeing to proceed by way of written submission, the Licensee chose not to make out a due diligence defence. The Licensee is disputing the proposed penalty of a \$7,500 monetary penalty.

For the purposes of this hearing, and in accordance with section 3 of the Regulation, the General Manager has delegated to me the powers, duties and functions provided to the General Manager by section 20 of the Act and sections 65-69 of the Regulation.

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.

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

**Schedule 4
Enforcement Actions**

Minors

Item	Contravention	Period of Suspension (Days)			Monetary Penalty
		First Contravention	Second Contravention	Subsequent Contraventions	
2	A breach of section 33 of the Act (<i>Selling liquor to minors</i>)	10-15	20-30	30-60	\$7,500-\$10,000

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 12 inclusive.
- Exhibit 2: The Licensee’s two-page written submission of December 17, 2014 with attachments.

FACTS

The Licensee does not dispute the contravention and therefore accepts the facts as laid out in the NOEA (Exhibit 1, tab 1). The following is a summary of the facts from the NOEA.

On September 27, 2014, two liquor inspectors and a minor agent conducted a Minors as Agents Program ("MAP") inspection of the Establishment. MAP inspections are used to test compliance with the Act's prohibition against selling or supplying liquor to persons under the age of 19.

Prior to going to the Establishment, the minor agent was photographed and his identification was viewed and photocopied. The minor agent was 17 years old on the date of the contravention. (Exhibit 1, tab 6)

At about 5:08 p.m. on September 27, 2014 the minor agent entered the outdoor patio of the Establishment and sat down at a vacant table near the entrance to the patio. The liquor inspectors observed the minor agent from an unobstructed viewing point about 30 feet away. At about 5:09 p.m. the minor agent ordered a Corona beer from a female server. A few minutes later a second female server (the "second server") placed a bottle of Corona beer in front of the minor agent and then departed. At no time was the minor agent asked for identification to verify his age. After being served the Corona beer, the minor agent left the Establishment.

After exiting the Establishment, the minor agent returned to a designated spot and completed an observation sheet and statement (Exhibit 1, tab 5).

At 5:19 p.m. the liquor inspectors spoke to the principal and advised him of the contravention. The inspectors paid for the Corona beer and a receipt was issued. (Exhibit 1, tab 4) One of the inspectors completed Contravention Notice #B011837 (Exhibit 1, tab 2) and read it to the principal. The principal signed the Contravention Notice on behalf of the Licensee, and the inspectors left the Establishment at about 5:38 p.m.

SUBMISSIONS – BRANCH

Through the book of documents (Exhibit 1), including the NOEA, the Branch submitted that the elements of the contravention have been established by the evidence. The Branch's position is that the recommended monetary penalty of \$7,500 is appropriate to reinforce the seriousness of the contravention.

SUBMISSIONS – LICENSEE

In its written submission dated December 17, 2014 the Licensee wrote that the purpose of the written submission is not to dispute that the contravention occurred, but to ask for leniency with respect to the monetary penalty. The Licensee submitted that the principal has been a part or full owner of the Establishment since it opened in 2009 and he is very proud that there have never been any "issues" related to the Licence.

The Licensee went on to state that:

- The principal and his managers diligently try to ensure that all staff strictly follows the guidelines and rules regarding service of alcohol.
- Staff are regularly reminded to make sure they check identification for anyone who looks to be under 30 years old, and are reminded not to over-serve patrons who may already be intoxicated.

The principal indicated that he realizes that he needs to go further to ensure that an incident like this is not repeated at the Establishment. Accordingly, reminders about checking identification have been posted in the staff room, kitchen and bar areas. The Licensee has also developed a Responsible Beverage Service House Policy (the "Policy") package that will be reviewed with each staff member individually on a semi-annual basis. A copy of the new Policy was attached to the Licensee's submission, along with a copy of the second server's Serving It Right certificate.

With respect to the proposed enforcement action, the Licensee indicated that the second server has more than ten years' experience in the industry, and has been working part-time at the Establishment since February 2014. The Licensee argued that while it does not take the contravention lightly, it feels that the second server's "momentary lapse in

judgement” does not warrant such a large monetary penalty, especially in the context of the Licensee having an otherwise clean compliance history. The Licensee stated that it has been working hard to keep the business afloat, and requested that the proposed monetary penalty be waived as it could have a crippling effect.

Alternatively, the Licensee submitted that in lieu of a monetary penalty a 10 day suspension of the Licence should be imposed, during a period of time mutually agreed to between the Licensee and the Branch.

REASONS AND DECISION

Contravention

The Licensee admits the contravention. That admission, along with the evidence and submissions filed in these proceedings, demonstrate on the balance of probabilities that, with reference to section 33(1)(a) of the Act:

- A person (the Licensee, acting through its employee, the second server)
- sold liquor (a bottle of Corona beer)
- to a minor (the minor agent).

Accordingly, I find that on September 27, 2014 the Licensee contravened section 33(1)(a) of the Act by selling, giving or otherwise supplying liquor to a minor.

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 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.

In requesting the hearing by written submission, the Licensee agreed that the contravention occurred and that the Licensee was not pursuing a due diligence defence.

The Licensee has presented evidence of steps it has taken toward due diligence after the contravention occurred, but very limited evidence of efforts made by the Licensee to exercise due diligence before the contravention occurred. In these circumstances, I therefore find that the Licensee has not established due diligence and I turn 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.

The Branch has consistently maintained that the sale of alcohol to minors is a significant public safety issue and a high priority for enforcement. The NOEA outlines why the Branch considers this a significant public safety issue:

- The effects of alcohol on growing bodies and developing minds
- The effects on individuals and society of irresponsible drinking behaviour learned at an early age
- A minor's lack of capacity to metabolize alcohol in the same manner as an adult; therefore, liquor has a more intoxicating effect on minors, and
- Liquor is a significant factor in many crimes committed by youth, including serious driving offences, assault, sexual assault, and theft

In this case the facts are that the Licensee's employee served alcohol to a 17 year old individual without any request for identification. Other than a reference to the second server obtaining Serving It Right certification and verbal reminders about checking for

identification, the Licensee has provided no evidence of any training being provided to its staff, or of any steps taken to supervise and monitor its operations sufficiently to ensure that staff are applying their training appropriately.

Based on the seriousness of this public safety contravention, the fact that an employee served beer to a 17 year old without any request for identification, and the limited evidence of the training of employees and procedures in place at the Establishment, I find that a penalty is warranted.

The factors that I considered in this case in determining the appropriate penalty include: consideration of 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.

There is no record of a proven contravention of the same type for the Licensee at the 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.

There is no evidence before me of any other compliance issues involving the Licensee. The NOEA states "No compliance history found" and "No compliance meetings found." Accordingly, I conclude the Licensee had a clean compliance record prior to the contravention that is the subject of this hearing.

The Licensee has submitted that if I don't accede to its request to waive the proposed penalty, that I impose instead a 10 day suspension of the Licence. The Licensee has cited financial concerns as a basis for this request, but has not provided any documentary evidence with respect to this.

In consideration of:

- The serious public safety concerns related to selling alcohol to minors
- The Licensee's previously clean compliance record
- The remedial steps the Licensee has taken after the contravention occurred

I find a 10 day Licence suspension to be reasonable and appropriate to achieve the Branch's objectives with respect to general and specific deterrence.

The Licensee has requested an opportunity to essentially negotiate the dates of the suspension with the Branch staff. The Licensee did not avail itself of the opportunity to identify proposed dates in its written submissions. In my view procedural fairness does not require that an additional opportunity be provided to make further submissions on this matter.

ORDER

Pursuant to section 20(2) of the Act, I order a suspension of the Licence for a period of 10 days to commence at the close of business on Friday, April 10, 2015 and to continue each succeeding business day until the suspension is completed.

To ensure this order is effective, I direct that the Licence be held by the Branch or the local police from the close of business on Friday, April 10, 2015 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 police officer, and must remain in place during the period of suspension.

Original signed by

Daniel M. Graham
General Manager's Delegate

Date: March 4, 2015

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

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