

Northwest Territories Liquor Licensing Board

IN THE MATTER of Woodland Wok & Grill, Licensed Premises, and Licence # 2014-B-06

AND IN THE MATTER of the *Liquor Act* S.N.W.T. 2007, c.15 ("the Act") and the *Liquor Regulations*, R-069-2008 ("the Regulations");

AND IN THE MATTER of a hearing before the Liquor Licensing Board;

REGARDING:

Licence Holder **506580 NWT LTD** operating the Licensed Premises known as
Woodland Wok & Grill

The Liquor Licensing Board, having conducted a hearing on the 4th day of June 2014 in the City of Yellowknife, has found:

The Licence Holder has failed to comply with:

Count #1: Section 113(1) of the Regulations; "Unless authorized by the Board, the holder of a premises licence shall only buy liquor for sale, service and consumption in its licensed premises from (a) a liquor warehouse located in the same community as the licensed premises; (b) if there is no liquor warehouse in the same community, a liquor store located in that community; or (c) if there is no liquor warehouse or liquor store in the same community as the licensed premises, any liquor warehouse."

Count #2: Section 44(2) of the Regulations; "The holder of a Class B licence shall present a patron with a written, dated statement of account that shows

- (a) the charges for the individual items of food purchased;
- (b) the charges for the individual items of any liquor purchased;
- (c) subtotals for all food and all liquor purchased;
- (d) a total for the whole account; and
- (e) the name and address of the establishment or licence holder."

* Jun 20-14
Sent Registered mail to licensee - HMaha

ORDER

IT IS HEREBY ORDERED pursuant to section 30 of the Act:

1. Regarding Count #1, The Licence Holder shall pay a compliance penalty in the amount of five hundred dollars (\$500) on or before July 4, 2014.
2. Regarding Count #2, The Licence Holder shall pay a compliance penalty in the amount of two hundred fifty dollars (\$250) on or before July 4, 2014.
3. The Licence Holder shall provide Liquor Enforcement proof of its compliance with section 44(2) of the *Liquor Regulations* by June 14, 2014.

Dated at the City of Yellowknife, this 10th day of June 2014.



Colin Baile, Chairperson, on behalf of and with the concurrence of the other panel members.

Northwest Territories Liquor Licensing Board

IN THE MATTER of Woodland Wok & Grill, Licensed Premises, and Licence # 2014-B-06

AND IN THE MATTER of the *Liquor Act* S.N.W.T. 2007, c.15 ("the Act") and the *Liquor Regulations*, R-069-2008 ("the Regulations");

AND IN THE MATTER of a hearing before the Liquor Licensing Board;

REGARDING:

Licence Holder **506580 NWT LTD** operating the Licensed Premises known as
Woodland Wok & Grill

Reasons for Decision

Liquor Licensing Board Case #: 2014-001

Date of Inspection: July 12, 2013 to March 12, 2014

Heard at Yellowknife, NT on the 4th day of June 2014 via teleconference

Appearances:

Anne Walker – Counsel for the Government of the Northwest Territories

Somphet Inthavong – Representing the Licence Holder

Yen Ten Chen – Representing the Licence Holder

Panel Board Members:

Colin Baile, Wayne Smith, Albert Monchuk, Adelle Guigon

Agreed Statement of Facts

The Board accepted the Agreed Statement of Facts. The Statement is summarized as including the following:

- Mr. Somphet Inthavong and Mr. Yen Ten Chen are the owners of 506580 NWT Ltd. which operates the Woodland Wok & Grill at #8 – 66 Woodland Drive, Hay River, Northwest Territories.
- 506580 NWT Ltd is the Licence Holder of a Class B – food primary license.

- The Licence Holder received this license by way of transfer on April 5, 2013. Shortly after this date, Liquor Enforcement informed the owners of their responsibility to reconfigure the cash register to separate liquor purchases from food purchases. They were also provided copies of the Class B Handbook and the *Liquor Act and Regulations*.
- On March 21, 2014, Liquor Enforcement received information that the Licence Holder had been purchasing liquor for the licensed premises from the Hay River Liquor Store and not the Liquor Warehouse. No authorization had been given to the Licence Holder to do so by the Board.
- Liquor Enforcement received two receipts for liquor purchased by the Licence Holder from the liquor store. The receipts were dated March 13, 2014 and March 20, 2014 with the amounts being \$109.74 and \$155.68 respectively.
- Liquor Commission records show the Licence Holder purchased from the Commission between March 21, 2013 and July 12, 2013, liquor in the amount of \$2,379.37.
- On March 26, 2014, Liquor Enforcement conducted an inspection of the licensed premises. No receipts for liquor purchases were available at that time. It was noted the cash register invoices did not separate alcohol and food purchases.

At hearing, the Licence Holder's representatives agreed with the submitted statement of facts.

Analysis

We find the charges of non-compliance are made out.

Section 113(1) of the *Liquor Regulations* states:

Unless authorized by the Board, the holder of a premises licence shall only buy liquor for sale, service and consumption in its licensed premises from

(a) a liquor warehouse located in the same community as the licensed premises;

The Board has not authorized the Licence Holder to purchase liquor from other than the Commission's warehouse. The Licence Holder has agreed it regularly purchased liquor from the Liquor Store in Hay River for use in the licensed premises. We find the Licence Holder is non-compliant with section 113(1) of the *Liquor Regulations*.

Section 44(2) of the *Liquor Regulations* states:

The holder of a Class B licence shall present a patron with a written, dated statement of account that shows

- (a) the charges for the individual items of food purchased;
- (b) the charges for the individual items of any liquor purchased;
- (c) subtotals for all food and all liquor purchased;
- (d) a total for the whole account; and
- (e) the name and address of the establishment or licence holder.

On March 26, 2014, the Liquor Inspector observed the Licence Holder's cash register invoices did not show separate amounts for food and liquor sales. The Licence Holder agreed to this infraction. We find the Licence Holder is non-compliant with section 44(2) of the *Liquor Regulations*.

PENALTY

Summary of Enforcement's Submissions

- The Licence Holder was given a copy of the Act, Regulations and a Class B Handbook.
- The Licence Holder was aware of the requirement to purchase liquor from the Liquor Commission's Warehouse.
- Based upon two estimates of the Licence Holder's liquor purchases, the revenue lost for its failure to pay the requisite 5% tax required of all Licence Holders was between \$245.47 and \$262.96 per year.
- The Licence Holder has been cooperative throughout the process and did accept the Agreed Statement of Facts.
- The Licence Holder is now purchasing all its liquor from the Warehouse.
- A penalty of \$500 is recommended.

The License Holder did not make any submissions.

Penalty Analysis

Regarding Count #1

The Licence Holder knew, or should have known the statutory requirement to purchase its liquor from the Liquor Commission's Warehouse. It did, for a time do so, however began to purchase liquor from the Liquor Store instead. We considered the submissions from

Enforcement and the mitigating and aggravating factors. The avoidance of paying the requisite 5% tax impacts on the Liquor Commission's administration of the salient sections of Liquor Act. We find the Licence Holder failed to pay approximately \$250 of tax. In addition to paying this amount, we find an additional \$250 is an appropriate amount as a deterrent. The Licence Holder shall pay a non-compliance penalty of \$500 on or before July 4, 2014.

Regarding Count #2

We considered Enforcement's submissions. Keeping records showing the separate revenue for food and liquor sale goes beyond simply bookkeeping. As noted in section 13(2) of the *Liquor Regulations*, a Class B Liquor License is intended for a business whose primary source of revenue is the sale of meals. Without records of sales that differentiate between food and liquor sales, the business would be unable to show its eligibility for a Class B license. A non-compliance penalty of \$250 shall be paid on or before July 4, 2014. Additionally, the Licence Holder shall provide to Liquor Enforcement proof of compliance with section 44(2) of the *Liquor Regulations* on or before June 14, 2014.

Dated at the City of Yellowknife, this 10th day of June 2014.



Colin Baile, Chairperson, on behalf of and with the concurrence of the other panel members.

