

Northwest Territories Liquor Licensing Board

IN THE MATTER of Yellowknife Pizza Hut Ltd., Licensed Premises, and Licence # 2011-B-09

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 a hearing before the Liquor Licensing Board;

REGARDING:

Yellowknife Pizza Hut Ltd.

Licence Holder

and

Yellowknife Pizza Hut

Licensed Premises

The Liquor Licensing Board, having conducted a hearing on the 7th day of December 2011 in the City of Yellowknife, has found:

The Licence Holder has failed to comply with:

Section 46(1)(c) of the Regulations; “No holder of a premises licence shall sell, serve or allow the consumption of liquor in the licensed premises while the polls are open on the day fixed for... an election for a member of the Legislative Assembly of the Northwest Territories, if the licensed premises are located within the electoral district where the election is being held.”

ORDER

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

1. The Licence Holder shall pay a compliance penalty in the amount of five hundred dollars (\$500) on or before January 7, 2012.

Dated at the City of Yellowknife, this 5th day of January 2012.

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

Northwest Territories Liquor Licensing Board

IN THE MATTER of Yellowknife Pizza Hut Ltd., Licensed Premises, and Licence # 2011-B-09

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REGARDING:

Yellowknife Pizza Hut Ltd.

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and

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Licensed Premises

Reasons for Decision

Liquor Licensing Board Case #: 11-012

Date of Inspection: October 3, 2011

Heard at Yellowknife, NT on the 7th day of December, 2011

Panel Board Members:

Colin Baile
Wayne Smith
Stanley Jones
Albert Monchuk

Appearances:

Erin Delaney – Counsel for the Government of the Northwest Territories (Enforcement)
Phat Vodoan – Representing the Licence Holder

Preliminary Matters

At hearing, the parties submitted an Agreed Statement of Facts.

Enforcement Evidence

Counsel for the Government of the Northwest Territories (“Enforcement”) submitted an Agreed Statement of Facts. A summary of the Statement included:

- On October 3, 2011 the Territorial Election was held. Between 1856 hours and 1920 hours on that day, Inspector Kerry Nicholson conducted a liquor inspection of the Licensed Premises.
- On September 30, 2011, the Liquor Enforcement Office had sent a reminder letter by fax to all Licence Holders reminding them of the regulations regarding the sale or service of liquor on election day.
- Inspect or Nicholson observed from the front entrance a clear glass wine decanter on a table occupied by two female patrons.
- During the initial inspection, Inspector Nicholson observed the beer fridge was locked and a copy of Enforcement’s reminder notice was taped to the fridge door.
- The Inspector observed during a walk around the floor area that the wine decanter he had previously seen had been removed. He asked the on-site supervisor for a copy of that table’s receipt. It showed one glass of wine had been purchased.
- When asked by the Inspector if she had served wine to the patrons at the table in question, the server replied she had not. The Inspector questioned why the table’s receipt show the purchase of wine. The server advised wine had been ordered but not served and had not taken it off the bill.
- The Inspector then asked the two patrons if they had ordered and drank wine that night. One of the patrons answered in the affirmative.

- The Inspector spoke again to the server and supervisor. He asked why the server had lied about serving liquor. The server admitted she had been scared.

Enforcement also submitted at hearing:

- A copy of the Notice of Hearing and proof of service;
- Three photographs depicting a glass wine decanter; the Enforcement notice posted on the beer fridge door; and an open fridge showing a box of wine.
- A copy of a receipt showing the purchase of wine
- A copy of the Enforcement notice; and
- A copy of Inspection Report #40570.

Analysis

We find the charge of non-compliance is made out.

We accept the events of October 3, 2011 are as described in the submitted Statement of Facts. The Licence Holder’s representative has agreed to the facts before the Board.

A glass of wine was clearly served to a patron on the day in question. This action is in violation of section 46 of the *Regulations*.

We shall next address the submissions and considerations regarding penalty.

PENALTY

Summary of Enforcement’s Submissions

- Recom
mend a \$500 compliance penalty and no suspension of the Liquor License.
- Mitigat
ing factors include this being the Licence Holder’s first offence; the Licence Holder agreed the non-compliance did occur; and, proactive steps were taken to prevent it from happening by posting the Enforcement reminder notice.
- Both
the server in question and Mr. Vodoan have since taken the Server Training Course offered by Enforcement.
- The
server did initially lie about the incident but later did admit to serving the wine.

The Representative of the Licence Holder agreed with Enforcement’s submissions.

Penalty Analysis

We have considered all of the facts and submissions. We acknowledge there are several mitigating factors. The most significant of these factors are:

- This is
the Licence Holder’s first offence.
- The
Licence Holder did attempt to avert this event by posting the Enforcement reminder notice for staff to see.
- The
Licence Holder’s conduct since the inspection.

We have however given appropriate weight to the fact the server initially attempted to deceive the Liquor Inspector.

An order shall issue pursuant to section 30 of the *Act* that:

1. The
Licence Holder shall pay a compliance penalty in the amount of five hundred dollars (\$500) on or before January 7, 2012.

Dated at the City of Yellowknife, this 5th day of January 2012.

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