

**HEARING BEFORE A PANEL
OF THE BOARD OF THE
ALBERTA GAMING AND LIQUOR COMMISSION**

**IN THE MATTER OF the Gaming and Liquor Act
Revised Statutes of Alberta 2000, Chapter G-1
current as of November 1, 2010
and the Regulation**

and

**IN THE MATTER OF Ale Yard Tap & Grill Ltd.
o/a Ale Yard Tap & Grill
13310 – 137 Avenue
Edmonton, Alberta
T5L 4Z6**

concerning alleged contraventions

DATE OF HEARING:	May 30, 2014
HEARING PANEL:	Mr. J.P. Hansen, Panel Chair Ms. S.L. Green, Panel Member
LICENSEE REPRESENTATIVES:	Mr. S., Director
COMPLIANCE AND SOCIAL RESPONSIBILITY:	Mr. H., Hearing Officer

DECISION OF THE HEARING PANEL

I. Jurisdiction and Preliminary Matters

As a result of receiving an incident report dated March 31, 2014, the Compliance and Social Responsibility (CSR) Division of the Alberta Gaming and Liquor Commission (AGLC) imposed an administrative sanction under Section 91(2) of the *Gaming and Liquor Act*, without a hearing, on Ale Yard Tap & Grill Ltd. operating as Ale Yard Tap & Grill, Edmonton.

The licensee subsequently applied for a hearing under Section 94(1) of the *Gaming and Liquor Act*. A Hearing Panel of the Board of the AGLC met to hear the following alleged violation:

Section 82(2)(a) Gaming and Liquor Regulation: Liquor licensee or employee or agent of the licensee directly or indirectly borrowing or receiving as a gift from any liquor supplier or liquor agency money, an advance of money, or any thing of value.

The licensee and the Hearing Panel were provided with a hearing file containing the incident report dated March 31, 2014 and various documents pertaining to alleged incidents occurring in September 2012. Mr. S. confirmed he received the incident report dated March 31, 2014 and Notice of Hearing dated May 6, 2014. He advised the Panel he agreed with the facts set out in the incident report but wished to speak to penalty. The incident report was entered into evidence by the CSR Division as Exhibit #1. An invoice from Ale Yard Tap & Grill in the amount of \$2199.96 with attached supporting documentation, together with an invoice from Yolo Marketing Group Inc. in the amount of \$92.16, was entered into evidence collectively as Exhibit #2.

Mr. H. presented the case on behalf of the CSR Division. Mr. S. represented Ale Yard Tap & Grill Ltd.

II. The Issue

Did the licensee or employee or agent of the licensee directly or indirectly borrow or receive as a gift from any liquor supplier or liquor agency money, an advance of money, or any thing of value?

III. Evidence – excerpted from the incident report dated March 31, 2014

In October 2012, in response to complaints received by the AGLC, Inspectors were assigned to investigate allegations pertaining to the provision and acceptance of inducements in the liquor industry. As a result of the investigation and interviews with the Calgary and area representatives of Diageo Canada Inc. (Diageo), it was determined that Ale Yard Tap & Grill received menu contents and entertainment (band support) from Diageo in September 2012.

Inspector F. contacted Mr. S. and informed him that based on the information provided by Diageo, items of value totaling \$2292.12 were identified as being provided to Ale Yard Tap & Grill. The items of value were paid for by a representative of Diageo and allocated to the premises. Mr. S. advised he was not aware that Diageo could not pay for menu contents or entertainment.

Evidence of Mr. S.

Mr. S. is aware of the inducement regulations and he adheres to those regulations and all AGLC legislation and policies. The Diageo representative and the manager of the Ale Yard Tap & Grill made the arrangements for the entertainment. A band was hired to promote a new Captain Morgan Rum product. Diageo reimbursed Ale Yard Tap & Grill for the cost of the band because it was a Diageo product that was being promoted. It was simply an oversight on the part of Ale Yard Tap & Grill.

The invoice from Yolo Marketing Group Inc. is misleading because the invoice states it was for menu printing when it was actually for tent card printing. Tent cards are commonly provided by liquor representatives to licensees. Mr. S. believes the mislabeling of the invoice was an oversight on the part of Diageo or Yolo Marketing Group Inc.

Mr. S. – cross-examined by Mr. H.

Mr. S. has been involved in the liquor industry since 1998. He is aware he can contact the AGLC if he has questions regarding the legislation and/or policies. In this case, Mr. S., nor his manager, contacted the AGLC prior to entering into negotiations with Diageo to ensure what was being proposed was, in fact, permitted.

Mr. S. – questioned by the Panel

Diageo did not provide any customized menu printing. Mr. S. believes the invoice was mislabeled as menu inserts and should have been labeled as tent cards. He is unable to provide the Panel with a sample of what was provided by Diageo.

Ale Yard Tap & Grill does not have regular live entertainment; it is not a part of their regular business. They only have live entertainment for special events like St. Patrick's Day. In the case of special events, Ale Yard Tap & Grill pays for the band. Diageo was looking for a venue to launch a new Captain Morgan product so the Ale Yard Tap & Grill provided the venue.

Mr. S. is not the operations manager of the premises and is not at the premises on a regular basis. He knew of the launch event but was not aware of the specific details. The operations manager had a number of years of experience in the business and was the AGLC Board Approved Manager at the time of the inducement. The operations manager has since moved on to other employment.

IV. Summation

Mr. H.

This particular incident began as part of a widespread investigation conducted by the AGLC Inducement Task Force, which was created in mid October 2012. With respect to the evidence contained in the incident report, there are two relevant invoices in question. The first invoice is from Yolo Marketing Group Inc., billed to and paid for by Diageo, for menu contents which were provided to the licensee. The licensee advised the Panel that the invoice was mislabeled and was for tent cards not menu inserts. However, there was no specific evidence provided by the licensee to suggest the invoice was not, in fact, for menu contents. Liquor and food menus are essentially to the operation of a licensed premises, as outlined in Section 5.2.1 and 5.4.5 of the Licensee Handbook.

The other invoice provided to the Panel was from Ale Yard Tap & Grill for a "Boneyard Band" and was paid for by a representative of Diageo. A band is considered a form of entertainment that cannot be paid for by a liquor agency representative or supplier, as it is an item of value.

The licensee has been involved in the operation of licensed premises for a number of years now and would have received a letter of warning from the AGLC with respect to the relevant legislation and board policy pertaining to the provision and acceptance of inducements. It is the position of the CSR Division that violations of the legislation occurred and the licensee should be held accountable.

The CSR Division respectfully requested that, at a minimum, the original administrative sanction previously offered be upheld, which is the value of the inducement, but asked the Panel to consider imposing a higher penalty to act as a deterrent for future licensees.

Mr. S.

This is Ale Yard Tap & Grill's first offence and they have been told by AGLC Inspectors that they run a good operation. Mr. S. feels the penalty is overly harsh given the circumstances. Mr. S. has taken the incident personally and now has a heightened awareness surrounding the acceptance of an inducement. He considers the hit to his reputation and the reputation of the premises a deterrent, not a fine. He believes the penalty should be reflective of the reduction in penalty Diageo received following its Board hearing, which was 30 percent. Mr. S. has not yet seen a return on his investment in Ale Yard Tap & Grill since it opened approximately a year ago. The premises has been operating a loss each month so the administrative sanction offered by the CSR Division is substantial.

V. Finding

With respect to the invoice from Yolo Marketing Group Inc., the Panel does not make a finding of a violation of Section 82(2)(a) of the Gaming and Liquor Regulation:

The Panel accepts the evidence of Mr. S. that the invoice from Yolo Marketing Group Inc. was for tent cards not menu printing or inserts. Tent cards are a permitted, non-essential item pursuant to Section 8.2.12 of the Licensee Handbook. Accordingly, there was no violation of Section 82(2)(a) of the Gaming and Liquor Regulation with respect to the invoice from Yolo Marketing Group Inc.

With respect to the invoice from Ale Yard Tap & Grill for entertainment, the Panel makes a finding of a violation of Section 82(2)(a) of the Gaming and Liquor Regulation:

Although Mr. S. did not specifically engage in the negotiations with Diageo for the live band, he is ultimately responsible for ensuring his manager is well briefed and knowledgeable on AGLC legislation and policies. The manager, nor Mr. S., contacted the AGLC to determine if what was being offered by Diageo was permitted under the legislation.

VI. Penalty

While the Panel recognizes that Mr. S. has been in business for many years and Ale Yard Tap & Grill has not had any prior infractions, licensees have a responsibility to know the legislation under which they operate. The licensee or the manager should have called the AGLC to verify that what was being offered by Diageo was permitted under the regulation.

As a result, in accordance with Section 91(2) of the *Gaming and Liquor Act*, the Hearing Panel imposes the following penalty for a violation of Section 82(2)(a) of the Gaming and Liquor Regulation:

Penalty: A \$2199.96 fine to be paid within 6 months of the date of this decision or on or before June 12, 2015.

Signed at St. Albert this 12th day of December, 2014.



J.P. Hansen, Hearing Panel Chair