

**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 1258798 Alberta Ltd.  
o/a Orlando's #1 Pizza and Steak  
15163 – 121 Street NW  
Edmonton, Alberta  
T5X 3C8**

**concerning alleged contraventions**

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<b>DATE OF HEARING:</b>	December 15, 2014
<b>HEARING PANEL:</b>	Mr. J.P. Hansen, Panel Chair Ms. S.L. Green, Panel Member
<b>LICENSEE REPRESENTATIVES:</b>	Mr. R., Director/Shareholder
<b>COMPLIANCE AND SOCIAL RESPONSIBILITY:</b>	Mr. H., Hearing Officer

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**DECISION OF THE HEARING PANEL**

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**I. Jurisdiction and Preliminary Matters**

As a result of receiving an incident report dated October 8, 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 1258798 Alberta Ltd. operating as Orlando's #1 Pizza and Steak, 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 violations:

- 1. Section 5.3.18 Licensee Handbook: Licensee and/or staff consuming liquor, or being under the influence of liquor or drugs, while on duty;**
- 2. Section 68(1)(b) *Gaming and Liquor Act*: Selling or providing liquor on an unauthorized day or during unauthorized hours; and**

**3. Section 5.3.6(a) Licensee Handbook: Selling or serving more than two standard sized drinks to one patron at one time after 1:00 a.m.**

The licensee and the Hearing Panel were provided with a hearing file containing the incident report dated October 8, 2014 and various documents pertaining to an alleged incident occurring on September 28, 2014. Mr. R. confirmed he received the incident report dated October 8, 2014 and Notice of Hearing dated November 17, 2014 and does not dispute the facts contained in the incident report but wishes to present a due diligence defence. The incident report was entered into evidence by the CSR Division as Exhibit #1.

Mr. H. presented the case on behalf of the CSR Division. Mr. R. represented 1258798 Alberta Ltd.

**II. The Issues**

1. Did the licensee and/or staff consume liquor, or were they under the influence of liquor or drugs, while on duty;
2. Did the licensee sell or provide liquor on an authorized day or during unauthorized hours; and
3. Did the licensee sell or serve more than two standard sized drinks to one patron at one time after 1:00 a.m.?

**III. Evidence – excerpted from the incident report dated October 8, 2014**

*On September 28, 2014 at 1:16 a.m. Inspectors N. and G. entered the premises through the main entrance without identifying themselves. There was no door control in effect and the premises had eight patrons inside (approximately 3% of capacity). The Inspectors observed one female bartender, later identified as Ms. C., and another female employee conducting karaoke.*

**Section 5.3.18 Licensee Handbook**

*At 1:43 a.m. Inspector G. observed Ms. C. set out three shot glasses on the service bar in front of two male patrons. Ms. C. filled the shot glasses with liquor from behind the service bar. The liquor was later identified as Yukon Jack Whiskey and Peach Schnapps. Ms. C. and the two male patrons each consumed a shot. At 2:01 a.m. the Inspectors observe Ms. C. set out four shot glasses on the service bar in front of three male patrons. Ms. C. filled the shot glasses with liquor retrieved from behind the service bar. The liquor was later identified as Yukon Jack Whiskey and Peach Schnapps. Ms. C. and the three male patrons each consumed a shot.*

**Section 68(1)(b) Gaming and Liquor Act**

*At 2:38 a.m. the Inspectors observed Ms. C. serve a bottle of Miller Genuine Draft beer to a male patron. At 2:42 a.m. the Inspectors observed Mr. R. enter the premises from the back door and stand behind the service bar to begin the VLT cash out process. At 2:48 a.m. the Inspectors observed Mr. R. serve a bottle of Miller Genuine Draft beer to a male patron sitting next to Inspector N. at the service bar. At 2:49 a.m. Mr. R. asked the Inspectors if they wanted another beer. The Inspectors said yes and Mr. R. served them two bottles of Coors' Light beer.*

*At 2:50 a.m. eight Lebanese males and one Lebanese female entered the premises through the back door. One of the patrons was smoking a cigarette and Mr. R. got visibly upset and yelled at the patron that he is not allowed to smoke inside and must leave. The Inspectors overheard Mr. R. yelling at the patron that he will lose his liquor licence if he does not leave the premises.*

*At 2:51 a.m. the Inspectors observed Ms. C. pouring Grey Goose vodka into glasses and in the process, emptied the bottle. Ms. Grant they retrieved another bottle of Grey Goose and free poured three more drinks. The five drinks were then placed on top of the service bar and multiple patrons were observed later carrying the glasses around the premises.*

At 2:53 a.m. the Inspectors observed Mr. R. set out four shot glasses on the service bar in front of three male patrons. Mr. R. filled the shot glasses with liquor making four separate shots which consisted of two shots of tequila, one shot of vodka and one shot of jagermeister. At 2:55 a.m. the Inspectors observed Mr. R. serve a bottle of Miller Genuine Draft beer to a male patron sitting to the left of Inspector G.. At 2:56 a.m. the Inspectors observed Mr. R. consume one of the four shots that he poured at 2:53 a.m. with the three male patrons.

### **Section 5.3.6(a) Licensee Handbook**

At 2:51 a.m. the Inspectors observed Ms. C. pouring Grey Goose vodka into two high ball glasses. Inspector N. observed Ms. C. pouring three one ounce shots of Grey Goose vodka into each glass and in the process of pouring the triple high ball drinks, emptied the bottle of vodka. Ms. C. then retrieved another bottle of Grey Goose vodka and free poured three additional glasses of an unknown amount of vodka. The five drinks were then placed on top of the service bar and individual male patrons were observed later carrying the glasses around the premises. Two male patrons would have received three ounces of vodka while the other three male patrons received an unknown amount of vodka.

At 3:00 a.m. the Inspectors observed Mr. R. taking patron's drinks and attempting to get patrons out of the premises. Some patrons were leaving and others were not. Mr. R. was actively trying to get patrons out as he kept saying "no one allowed in here after 3:00 a.m. you must go".

At 3:07 a.m. the Inspectors identified themselves to Ms. C. and Mr. R.. Ms. C. admitted to the staff consumption both times and stated that both shots consisted of Yukon Jack Whiskey, Peach Schnapps and water. Ms. C. and Mr. R. also admitted to serving alcohol up to 3:00 a.m. and both indicated they knew the policy about after hours service and that all liquor sales must end by 2:00 a.m. Mr. R. stated that Lebanese patrons come in and take over the bar and he is relieved that they saw the AGLC Inspectors because now they will listen to him when he says the AGLC is watching his premises. Mr. R. stated the Lebanese patrons feel that the bar belongs to them and therefore they can do what they want regardless of AGLC policy.

### **Evidence of Mr. R.**

Mr. R. met with two AGLC Inspectors on September 29, 2014, the day following the incidents in question, to discuss a \$3000 administrative sanction previously issued by the CSR Division. Mr. R. is Lebanese and he is dealing with Lebanese gangs and gang members in his premises. He is also dealing with drug related issues with respect to those gang members. The gang members believe they control the premises, not Mr. R. or the AGLC.

Mr. R. is afraid to go to the police because he believes the gang members will retaliate against him and his family. The gang members believe they own the area of the city where Mr. R.'s premises is located. Mr. R. previously owned a premises on Stony Plain Road and the police advised him at that time they could not babysit his business.

Mr. R. was pleased the Inspectors came to visit him at the premises on September 29, 2014 because now the gang members will believe that the AGLC does, in fact, attend the premises to conduct inspections. He is relieved because he feels the gang members will behave and listen to him now. On September 28, 2014 Mr. R. served the gang members a drink so he also offered to serve drinks to the other patrons in the premises; he did not want the other patrons to become angry.

Mr. R. recently met with the gang leader's dad and grandfather and asked that the gang stay out of his premises. Mr. R. believes he will have success and the gang will now stay out of his bar. He doesn't think the police can help him and may actually be detrimental. Mr. R. has had the tires on his car slashed by gang members outside the premises.

Mr. R. is happy to have the AGLC Inspectors visit the premises again in the future. He intends to follow all AGLC policies and legislation from now on. He fired Ms. C. following the incidents in question and has fired several other staff members. He will be training new staff members shortly. No alcohol will be served after hours in the future. Mr. R. has a 24 hour live surveillance feed to his home so he can monitor the patrons and staff. He is a small business owner and cannot afford to hire full-time security for the premises. He is very sorry the incidents in question occurred.

#### **Mr. R. – cross-examined by Mr. H.**

Mr. R. maintains a copy of the Licensee Handbook at the premise and it is accessible to staff. He was at the premises at 2:45 a.m. on September 28, 2014 to conduct closing duties. He told the gang members he could not serve them any alcohol but they begged him. He is afraid to say no to them and calling the police does not solve the problem. The patrons do not serve themselves but they do come behind the bar to hang out with the staff. They believe they control the premises and surrounding area. Just because Mr. R. felt comfortable telling one of the gang members not to smoke in the premises does not mean he can tell the gang members they cannot have a drink. Mr. R. is not willing to risk a confrontation with one of the gang members; they know where he lives and who his children are.

#### **Mr. R. – questioned by the Panel**

Mr. R. never calls the police because he does not believe the police can solve the problem long-term. The bartender working the night of the incident had been working in the industry for 11 years. Many of Mr. R.'s staff have difficulties with alcohol addiction. Mr. R., his wife and the manager train the new staff. The gang members have only been in the premises once since they saw the Inspectors at the premises.

#### **IV. Summation**

##### **Mr. H.**

The three violations before the Panel are not representative of what the legislation demands of licensees in Alberta. Operating under the authority of a liquor licence comes with significant responsibility and that responsibility is expected by Albertans and demanded by the AGLG.

The evidence contained within the incident report from Inspectors G. and N. is quite clear. With respect to Section 5.3.18 of the Licensee Handbook, the Inspectors observed Ms. C. consume shots of Yukon Jack Whiskey and Peach Schnapps on two separate occasions during the course of their investigation. Ms. C. later admitted to the Inspectors that she knew this was wrong. The Inspectors also observed Mr. R. himself consume a shot of liquor with patrons just before 3:00 a.m.

Regarding Section 68(1)(b) of the *Gaming and Liquor Act*, the Inspectors reported six instances where either Ms. C. or Mr. R. provided liquor service to patrons after 2:00 a.m. Mr. R. himself was observed providing liquor service after 2:00 a.m. on four of those instances and at one point served the Inspectors two bottles of beer. Clearly, the Inspectors are not part of a Lebanese gang and should not have been served liquor after 2:00 a.m. Between the hours of 2:38 a.m. and 2:55 a.m., 14 liquor beverages were provided by either Ms. C. or Mr. R., some of those beverages containing several ounces of liquor product within each serving.

Finally, with respect to Section 5.3.6(a) of the Licensee Handbook, the Inspectors observed Ms. C. serve more than two standard sized drinks to a patron after 1:00 a.m., by providing two male patrons with three ounces of vodka each at 2:51 a.m. This instance occurred almost two hours after the policy allows.

Mr. R. advised the Panel he should not be held responsible as Lebanese patrons attend the premises and take over. The CSR Division respectfully disagrees with Mr. R.'s assertion, as there is no supporting evidence contained in the incident report or provided to the Panel which would support this claim. Mr. R. could have contacted the police for assistance. Section 69.1(1) of the *Gaming and Liquor Act* specifically gives police members the authority and power to remove gang members and suspected affiliates from a licensed premises. A simple call to the police would have alleviated some of Mr. R.'s issues.

The patrons were not observed by the Inspectors taking over the premises, serving themselves or operating any staff areas. Mr. R. confronted one of the patrons for smoking inside the premises; Mr. R. was not cautious or concerned when he confronted this individual. If the Panel is to believe Mr. R.'s position that he was worried about the patrons taking over the premises, a simple and reasonable step to deal with the situation would have been to request assistance from the police. The CSR Division does not believe Mr. R. took any reasonable steps to prevent the incidents in question for occurring, particularly when the licensee was involved directly.

The CSR Division respectfully submitted that the original administrative sanctions previously offered be upheld.

**Mr. R.**

Mr. R. is concerned the Panel may issue higher penalties than the original administrative sanctions offered by the CSR Division. He cannot call the police because it will not help the situation. \$6000 is a lot of money and he cannot afford to pay the fine. He would like the Panel to consider imposing a lesser penalty. There is a different atmosphere at the premises now that the gang members have left.

**V. Finding**

**The Panel makes a finding of 1) a violation of Section 5.3.18 of the Licensee Handbook: licensee and/or staff consuming liquor, or being under the influence of liquor or drugs, while on duty; 2) a violation of Section 68(1)(b) *Gaming and Liquor Act*: selling or providing liquor on an unauthorized day or during unauthorized hours; and 3) a violation of Section 5.3.6(a) Licensee Handbook: selling or serving more than two standard sized drinks to one patron at one time after 1:00 a.m.**

The Panel does not find due diligence was exercised by the licensee. The licensee did not take any reasonable steps to prevent the incidents in question from occurring.

**Section 5.3.18 Licensee Handbook**

The licensee admits the facts contained in the incident report, including staff consumption of alcohol while on duty. The Inspectors observed the licensee and bartender consume shots of alcohol with patrons of the premises while performing staff related duties. The licensee does not dispute he consumed alcohol.

**Section 68(1)(b) *Gaming and Liquor Act***

The licensee personally served alcohol to patrons, including the AGLC Inspectors, after 2:00 a.m. The licensee advised the Panel he could not refuse liquor service because the patrons were known gang members and the licensee feared the gang members would retaliate if he refused service. The licensee could have barred the gang members from the premises and/or contacted the police for assistance. The licensee asked one of the gang members not to smoke inside the premises but did not refuse liquor service to the same gang members when it was requested after 2:00 a.m. The licensee received two prior administrative sanctions for the same violation and the Panel is of the opinion the licensee did not learn from these violations or make any changes to prevent future violations from occurring.

**Section 5.3.6(a) Licensee Handbook**

The licensee did not provide any evidence to dispute the evidence of the Inspectors contained in the incident report with respect to selling or serving more than two standard sized drinks to one patron at one time after 1:00 a.m. At 2:51 a.m. the Inspectors observed the bartender pour three one ounce shots of Grey Goose vodka into each of two highball glasses. The bartender also free poured three additional glasses of an unknown amount of vodka. The five drinks were then placed on top of the service bar and individual male patrons were later observed by the Inspectors carrying the glasses around the premises.

**VI. Penalty**

In accordance with Section 91(2) of the *Gaming and Liquor Act*, the Panel imposes the following penalty for a violation of Section 5.3.18 Licensee Handbook:

**Penalty:** A \$500 fine - **OR** - a 2 day suspension of Class A liquor licence 766778-1-1. The fine is to be paid within 2 months of the date of this decision or on or before Tuesday, May 5, 2015 or the suspension served commencing Wednesday, May 6, 2015 and continuing until the close of business on Thursday, May 7, 2015.

In accordance with Section 91(2) of the *Gaming and Liquor Act*, the Panel imposes the following penalty for a violation of Section 68(1)(b) *Gaming and Liquor Act*:

**Penalty:** A \$6000 fine - **OR** - a 24 day suspension of Class A liquor licence 766778-1-1. The fine is to be paid within 2 months of the date of this decision or on or before Tuesday, May 5, 2015 or the suspension served commencing Friday, May 8, 2015 and continuing until the close of business on Sunday, May 31, 2015.

In accordance with Section 91(2) of the *Gaming and Liquor Act*, the Panel imposes a warning for a violation of Section 5.3.6(a) Licensee Handbook.

Signed at St. Albert this 5<sup>th</sup> day of March, 2015.

A handwritten signature in black ink, appearing to read 'J.P. Hansen', written in a cursive style.

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J.P. Hansen, Hearing Panel Chair