

**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 Savoury Milonga Dance Café Ltd.
o/a Savoury Milonga Dance Café
402 – 2 Avenue South
Lethbridge, Alberta
T1J 0C3**

concerning alleged contraventions

DATE OF HEARING:	May 19, 2015
HEARING PANEL:	Mr. W.J. Anhorn, QC, Panel Chair Ms. T.L. Lawrence, Panel Member
LICENSEE REPRESENTATIVES:	Mr. G., Board Approved Manager
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 3, 2015, 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 Savoury Milonga Dance Café Ltd. operating as Savoury Milonga Dance Café Ltd., Lethbridge.

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 5.5.8 Licensee Handbook: Failure to request proof of age from a person who appears to be under 25.

The licensee and the Hearing Panel were provided with a hearing file containing the incident report dated March 3, 2015 and various documents pertaining to alleged incidents occurring on January 22, 2015 and February 5, 2015. Mr. G. confirmed he received the incident report dated March 3, 2015 and Notice of Hearing dated April 27, 2015. He does not dispute the facts contained in the incident report but wishes to present a due diligence defence. The incident report and hearing file were entered into evidence by the CSR Division as Exhibit 1.

Mr. H. presented the case on behalf of the CSR Division. Mr. G. represented Savoury Milonga Dance Café Ltd.

II. The Issue

Did the licensee fail to request proof of age from a person who appears to be under 25?

III. Evidence

CSR Division – excerpted from the incident report dated March 3, 2015

On Thursday, January 22, 2015 Agent Ga. entered the premises and observed one patron and one female and one male staff member inside. A “No Minors” sign was observed at the entrance. “Under 25” signage was prominently posted within the premises. Door control was not in effect. Agent Ga. seated himself at a table located in the centre of the premises. A male server greeted Agent Ga.. The male server was not wearing a name tag. Agent Ga. ordered one bottle of Molson Canadian beer. Rather than a bottle of Molson Canadian beer, the male server returned with one pint of beer. Agent Ga. paid for the beer and a receipt was not provided. At no time was Agent Ga. asked for proof of age. Agent Ga. then exited the premises without identifying himself. On February 5, 2015 Agent Ga. identified the board approved manager, Mr. G., as being the server during the audit.

On Thursday, February 5, 2015 Agent R. entered the premises and observed three patrons and one female and one male staff member inside. A “No Minors” sign was observed at the entrance. “Under 25” signage was prominently posted within the premises. Door control was not in effect. Agent R. seated himself at a table located in the centre of the premises. A female server greeted Agent R.. The female server was not wearing a name tag. Agent R. ordered on bottle of Molson Canadian beer. Rather than a bottle of Molson Canadian beer, Agent R. was served a bottle of Bud Light beer. Agent R. paid for the beer and a receipt was not provided. At no time was Agent R. asked for proof of age. Agent R. contacted Inspector W. via BlackBerry Messenger and advised him that identification had not been requested. Agent R. remained in the premises.

Inspector W., together with Agent Ga., entered the premises. Inspector W. identified himself as an AGLC Inspector to the female server. Inspector W. advised the server that two separate U25 audits has been completed at the premises. The server confirmed that she served Agent R. one bottle of Bud Light beer. The server stated Agent R. appeared to be 22 years of age. The female server was asked why she did not request identification from the Agents and she stated “I didn’t ask him”. The board approved manager, Mr. G., was present at the time and admitted he was on duty and recalled serving Agent Ga. on January 22, 2015.

Mr. G.

Mr. G. agrees with the facts contained in the incident report but has additional information he wishes to present to the Panel. Mr. G. was responsible for failing the first audit on January 22, 2015. He misjudged the Agent’s age. With respect to the second audit conducted on February 5, 2015, Mr. G. recognized Agent R. from Agent R.’s employment as a security guard at Park Place Mall in Lethbridge. Mr. G. knew Agent R. was over 18 years of age.

Mr. G. is responsible for checking the identification of all patrons at the premises because his wife, who is the female server who served Agent R., does not speak English. Mr. G. gave his wife permission to serve the beer to Agent R. on February 5, 2015.

Mr. G. – cross-examined by Mr. H.

The staff member who served Agent R. during the second audit was Mr. G.’s wife. Mr. G. is solely responsible for requesting identification from patrons. Agent R. passed Mr. G. upon entry to the premises and he recognized him from the mall. Mr. G. is at the premises at all times with his wife; they are the only two employees. They encounter many problem patrons because of the area of Lethbridge the premises occupies. Accordingly, Mr. G. takes full responsibility for requesting identification; he does not want to task his wife with requesting identification from problem patrons.

Mr. G. is aware that security companies in Alberta do not hire anyone under the age of 18. He did not request identification from Agent R. when he attended the premises in the past because he knows he is over the age of 18.

Mr. G. is familiar with the letter dated November 4, 2013 from the Director of the CSR Division regarding the Under 25 Program. When Mr. G.'s wife took her ProServe training, they sat down together and discussed her obligations as a server. This is the first licensed premises they have owned and they have learned their lesson. In the future, they will request identification from all patrons.

IV. Summation

Mr. H.

The AGLC takes the issue of minors trying to obtain liquor very seriously. It is often difficult to tell if a person is of legal age just by looking at them, so licensees must ask for proof of age in order to eliminate any situation where a purchaser of liquor is potentially a minor. That is why the AGLC implemented this policy and the policy is regulated. Every individual in the liquor industry must assume responsibility for ensuring liquor is not served to minors and the CSR Division believes the AGLC took reasonable and sensible steps in this matter. The Under 25 Program is well publicized and the AGLC supplies signs and pamphlets to licensees advising them of their responsibilities. The AGLC advised licensees that audits would be undertaken, as set out in the November 4, 2013 letter from the Director of the CSR Division.

During two separate audits conducted at the premises, the Agents, who were 20 and 22 years of age, were not asked for identification from Mr. G. or Ms. A. when liquor service was requested and ultimately provided. During both of these audits, the premises was not busy and a clear violation of the policy occurred. Section 121 of the *Gaming and Liquor Act* states "if an employee or an agent of a licensee contravenes a provision of this Act, the licensee is deemed also to have contravened the provision unless the licensee establishes on a balance of probabilities that the licensee took all reasonable steps to prevent the employee or agent from contravening the provision".

Mr. G. advised the Panel the reason he did not request identification from Agent R. was that he was known to Mr. G., even though he confirmed he has never requested Agent R.'s identification in the past. Mr. G. indicated that because Agent R. is known to work for a security company, it automatically eliminates the need to request identification in a minors prohibited premises.

The CSR Division finds it difficult to understand that Mr. G. is the sole person responsible for requesting identification in the premises when Mr. G.'s wife herself greeted the Agent, spoke to the Agent, took his liquor service order and ultimately provided him with liquor service. The CSR Division does not believe a reasonable explanation was provided to the Panel as to why Mr. G. and his wife did not act responsibly when there was a requirement to do so.

The CSR Division is of the opinion that more could have been done to prevent the contraventions from occurring. It appears Mr. G. has taken steps to rectify the situation, and has learned from his mistakes, and the CSR Division is encouraged by those steps.

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

Mr. G.

Mr. G. acknowledged the circumstances and indicated it taught them a valuable lesson and they have learned from their mistakes. They now request identification from all patrons. Mr. G. wishes they had been notified by the AGLC following failure of the first audit, so they could have taken preventative measures to prevent failing a second audit.

V. Finding

The Panel makes a finding of a violation of Section 5.5.8 Licensee Handbook: Failure to request proof of age from a person who appears to be under 25.

Mr. G. did not dispute the facts outlined in the incident report. The Panel is of the opinion there was an obvious violation of Section 5.5.8 of the Licensee Handbook, resulting from failure by both Mr. G. and Ms. A. to request identification from the AGLC Agents.

Mr. G. submitted that in the second incident, identification was not requested as Agent R. was personally known to him and he knew he was over the age of 18. The Panel is prepared to give Mr. G. the benefit of the doubt in this instance but the first circumstance represents a clear violation, for which no reasonable explanation was offered. To the contrary, the licensee freely admitted a mistake was made and was sincerely apologetic. Mr. G. impressed the Panel as someone who was genuinely remorseful and one who has learned a valuable lesson.

The original administrative sanction offered by the CSR Division was \$750, which is a significant monetary penalty to a small business owner, such as is the case here. Mr. G. advised the Panel he has learned from this incident and has taken the necessary corrective action. Identification is now requested from all patrons when liquor service is requested. As a result, the Panel is confident the likelihood of a reoccurrence is remote.

The imposition of penalty in each case is predicated by its own unique facts and circumstances, while at the same time trying to maintain some consistency in approach. In every case, deterrence (both specific and general) is the primary consideration in determining the appropriate penalty. Specific deterrence means imposing a penalty which will be instructive and discourage the specific offender from repeating the improper conduct.

General deterrence means imposing a penalty which will discourage others within the industry from breaching the regulations or Board policies. The purpose is to try to educate and bring home to others within the industry there are serious consequences for violating the regulations/policies, particularly where the policy (as is the case here) has a strong public safety or social responsibility component. The Panel wants to ensure that in each individual case the penalty is appropriate and sufficient not only to act as a deterrent to the licensee but at the same time, as warning to others that there are consequences for improper behavior.

VI. Penalty

In the present case, taking into account the honest and straightforward approach taken by the licensee, the apparent genuine remorse and the nature of the business operations, the need for the imposition of a monetary penalty as a specific deterrent is not necessary. The Panel is of the view that a warning will suffice.

Signed at St. Albert this 29th day of June, 2015.



W.J. Anhorn, QC, Hearing Panel Chair