

**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 Latina Fiebre Inc.
o/a Fiebre Latina
1832A – 36 Street SE
Calgary, Alberta
T2B 0X6**

concerning alleged contraventions

DATE OF HEARING:	June 26, 2015
HEARING PANEL:	Mr. W.J. Anhorn, QC, Panel Chair Mr. B.C. Shervey, Panel Member Mr. W.A. Clark, Panel Member
LICENSEE REPRESENTATIVES:	Ms. C., Director/Shareholder
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 January 21, 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 Latina Fiebre Inc. operating as Fiebre Latina, Calgary.

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 71(3) *Gaming and Liquor Act*: Permit consumption of liquor during unauthorized hours.

The licensee and the Hearing Panel were provided with a hearing file containing the incident report dated January 21, 2015 and various documents pertaining to an alleged incident occurring at the premises on January 18, 2015. Ms. C. confirmed she received the incident report dated January 21, 2015 and Notices of Hearing dated March 10, 2015 and June 11, 2015. She

admits the facts contained in the incident report but wishes to present further facts not in the incident report. 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. Ms. C. represented Latina Fiebre Inc.

II. The Issue

Did the licensee permit consumption of liquor during unauthorized hours?

III. Evidence

Inspector B. – evidence led by Mr. H.

Inspector B. is an Inspector with the AGLC in the Calgary office. He conducted an operating check of the premises on January 18, 2015 at 3:20 a.m. with Inspector M.. The Inspectors were in the area and noticed many lights on inside the premises and several cars in the parking lot. Given it was quite late at night, and the history of the premises, they decided to stop and conduct a check.

Upon entry, lighting was dim, music was playing and approximately ten patrons were observed inside the premises. Inspector B. noticed empty alcohol bottles on many of the tables and several patrons had alcohol in their possession. Inspector B. observed a young male and female at the bar who were both holding Corona beer bottles. The female had a bottle of Corona beer that was approximately half full. The male had a bottle of Corona beer that was approximately one sixth full. Inspector B. also observed a female patron seated directly in front of the main service bar and noted she was in possession of a bottle of Smirnoff Ice that was approximately seven eighths full.

Inspectors B. and M. watched the female at the bar consume from the bottle of Corona beer on multiple occasions. There was also a young male patron in the corner of the premises seated alone. He was holding a bottle of Miller Genuine Draft beer that was approximately half full. The Inspectors watched this male consume his beer as quickly as he could.

Inspector B. located Ms. C. and advised what he observed. Ms. C. indicated she was the only one working and a patron had ordered food, so she was in the kitchen cooking. She stated she was aware of the time but was too busy working in the kitchen to clear the alcohol from the patron areas. Ms. C. advised Inspector B. she could not afford to hire more staff and she had been cleaning up prior to a patron ordering food.

Inspectors B. and M. had been conducting checks of other premises in the area prior to attending Fiebre Latina. The cars in the parking lot and the lights on inside the premise alerted the Inspectors that a check might be in order. The AGLC has received numerous public complaints about after hours liquor service at this premises and the premises does have a noted history of serving after hours.

The patrons did not appear to be in a hurry to leave the premises when the Inspectors arrived. Inspector B. did not notice any staff members working in the premises until he located Ms. C. in the kitchen. There were two patrons consuming liquor and four patrons in total who were in possession of liquor. Inspector B. believes some of the liquor may have been served after 2:00 a.m., given that a couple of the patrons had an almost full beverage in front of them. The Inspectors did not observe Ms. C. attempting to clear any of the alcohol when they arrived at the premises.

Inspector B. – cross-examined by Ms. C.

Ms. C. did not have any questions for Inspector B..

Inspector B. – questioned by the Panel

Some patrons had alcohol in front of them but the Inspectors did not observe those patrons specifically consuming alcohol. Only the two patrons were noted to have been consuming alcohol. They Inspectors were at the premises for a total of ten

minutes. Inspector B. located Ms. C. in the kitchen and she was the only staff member on duty and would have served the liquor to the patrons. In Inspector B.'s opinion, Ms. C. was aware the patrons were in possession of the liquor.

The regulations require that there is to be no liquor service after 2:00 a.m. with all liquor cleared by 3:00 a.m. The premises is a minors allowed operation, so patrons are permitted to be in the premises after 3:00 a.m. but all liquor must be removed from the patron areas at that time. The premises is a small business located in a strip mall. The AGLC does not take issue with patrons being inside the premises after 3:00 a.m. The premises is free to operate 24 hours a day but liquor service must cease at 2:00 a.m. with all liquor cleared by 3:00 a.m.

Ms. C.

Ms. C. provided the Panel with a handwritten statement from patrons who were at the premises on January 18, 2015, prior to the Inspector's arrival. The statement was entered into evidence by Ms. C. as Exhibit 2. Ms. C. does not dispute the evidence provided by Inspector B.. However, it was very quiet at the premises until approximately 1:30 a.m. Patrons began arriving at the premises around 2:00 a.m. The patrons requested food, so she had to go back into the kitchen to cook for them. She made a customer three tacos and the customer was unhappy with the tacos. Ms. C. went back into the kitchen to re-make the tacos for the customer.

Ms. C. is aware she must remove all alcohol by 3:00 a.m. but she was busy in the kitchen and she was the only employee working. The business does not provide her with enough income to hire additional staff. She previously had one staff member but because the Inspector's continued to attend the premises, the staff member quit. Ms. C. was not serving alcohol at the time the Inspectors arrived. The patrons could have brought in their own alcohol and she would not have noticed because she was busy in the kitchen.

When the Inspector came into the premises she was getting ready to clear all the bottles. It was the only free time she had since the patrons began arriving at 2:00 a.m. She is a small business owner trying to make a living and pay her bills. Patrons know they can attend the premises and have fun. She could not ask the patrons to leave because otherwise she would have no income. It isn't that she doesn't understand the rules she just didn't have time to clear the bottles. She cannot afford to pay the fine.

Ms. C. – cross-examined by Mr. H.

Until the patrons who provided the statement came into the premises, she had not had any customers that evening. She understands that last call is at 2:00 a.m. and all liquor must be removed by 3:00 a.m. She admits she made a mistake but she did not have the time to remove the empties. She is now closing at 2:00 a.m. if there are no customers in the premise at that time. If there are patrons, she stays open.

The patrons in question arrived at the premises just prior to 2:00 a.m. The patrons know she closes at 3:00 a.m. The Inspectors have not been at the premises to conduct another inspection since January 18, 2015 because they know she has not been busy. Her customers expect her to serve them, so she had no choice but to cook for them when they ordered food. She does sell Corona, Miller Genuine Draft and Smirnoff Ice at the premises.

She believes she was able to properly supervise the patrons and premises from the kitchen because it is an open kitchen. She knows she can trust her patrons while she is in the kitchen, as they are regular customers. Sometimes her regular customers bring friends with them she does not know but she knows they are good people. Patrons can be very tricky; they order beer before 2:00 a.m. but then keep the beer full until 3:00 a.m., so they can continue to have a good time. She is now trying to close by 2:00 a.m. and is having fewer problems because she is closing earlier.

IV. Summation

Mr. H.

The matter before the Panel is a contravention of Section 71(3) of the *Gaming and Liquor Act* which states "no person may consume and no liquor licensee or employee or agent of a liquor licensee may permit a person to consume liquor on a

licensed premises when the sale and consumption of liquor in those premises are prohibited under the regulations". The regulations specifically state that consumption is from 10:00 a.m. to 2:00 a.m. and all liquor must be removed by 3:00 a.m.

The evidence provided by Inspector B. was clear. As a result of a routine operating check, the Inspectors entered the premises at 3:20 a.m. and found ten patrons inside. No staff members were observed supervising the premises, clearing any of the tables or attempting to remove liquor from the patrons. During the course of their inspection, the Inspectors observed four patrons in possession of open liquor and further observed two of those patrons consuming from that liquor. The evidence provided by Inspector B. also suggests some of that liquor may have been recently served, as one of the bottles of Smirnoff Ice was still 90% full.

After the Inspectors located Ms. C. in the kitchen, she advised that she was fully aware of what time it was but had no time to clear any of the tables because she was too busy cooking in the kitchen. It is the opinion of the CSR Division that the premises was not being properly supervised, if the lone staff member responsible for the supervision of the premises was also the cook.

Ms. C.'s justification provided to the Panel for not removing the liquor is unreasonable. The licensee could have closed the premises prior to 3:00 a.m. or cleared the liquor from the patron areas before proceeding to the kitchen to make any food. More staff could have been employed to ensure the premises operated with the care and control required of a liquor licensee in the province of Alberta. Ms. C. advised the Panel that she cannot afford to hire a cook. Ms. C. could hire a supervisor or server if she intends to fill the role of the cook. Ms. C. has been operating the premises for over two years, is ProServe certified and should be more than aware of her responsibilities as a liquor licensee.

As noted in the Incident Report Addendum, the incident in question is the licensee's third violation of Section 71(3) of the *Gaming and Liquor Act*. On May 12, 2013 six or more patrons were served liquor or permitted to consume liquor after 3:00 a.m. A \$1000 fine was paid by the licensee. On July 13, 2013 another violation of the legislation occurred, which proceeded to a hearing. The Panel found that a violation of the legislation occurred and offered a reduced penalty of \$1000. The fine was paid by the licensee.

The matter before the Panel is for a violation of the same section of the legislation, with two or more patrons consuming alcohol. The \$6000 administrative sanction or 24 days suspension is consistent with the Administration Sanction Guidelines for a third violation. The CSR Division respectfully submits that a \$6000 fine be imposed by the Panel, as this is a third violation of Section 71(3) of the *Gaming and Liquor Act*. It is clear to the CSR Division that this licensee does not wish to improve the premises to avoid future violations or is being ignorant to what is required of her. The explanations provided by Ms. C. for breaching the legislation are unreasonable and the CSR Division does not believe a reduction in the penalty is warranted.

Ms. C.

Ms. C. is barely surviving financially and cannot afford to hire any staff. If she had a pay cheque she would pay the fine. She does understand her responsibilities as a liquor licensee but she did not have time to clear the empties because she was cooking and serving food.

Ms. C. cannot afford to pay a \$6000 fine, so she would be forced to serve the suspension. The business does not pay her that much. She needs to pay her rent, so she cannot stay closed for long. The suspension in lieu of the \$6000 fine is 24 days. Ms. C. would like the Panel to consider a suspension of not more than 10 days; she cannot afford to stay closed any longer than that. Her only mistake was not clearing the bottles after 3:00 a.m. She may be able to pay a \$1000 fine slowly but that's all she can do.

V. Finding

The Panel makes a finding of a violation of Section 71(3) *Gaming and Liquor Act*: Permit consumption of liquor during unauthorized hours.

The matter before the Panel is a contravention of Section 71(3) of the *Gaming and Liquor Act* which states “no person may consume and no liquor licensee or employee or agent of a liquor licensee may permit a person to consume liquor on a licensed premises when the sale and consumption of liquor in those premises are prohibited under the regulations”. The regulations specifically state the sale of liquor (unless otherwise authorized) is permitted between 10:00 a.m. and 2:00 a.m. and that consumption of liquor may continue after “last call” until 3:00 a.m. The expectation of the AGLC at that time is licensees must call upon their patrons to finish their drinks and immediately thereafter remove all unconsumed liquor from the tables.

This requirement is fundamental to an effective liquor regulatory regime and must be strictly enforced. The seriousness of the violation is best evidenced by the severity of the penalty.

The licensee admitted the facts set out in the incident report and did not take issue with the evidence provided by Inspector B.. The licensee did not provide the Panel with a reasonable explanation for violating the legislation, other than the fact she was alone and was busy in the kitchen preparing food for some of the patrons. The licensee should be well aware of her responsibilities as a liquor licensee and must ensure this fundamental regulation is satisfied. If Ms. C. is unable to adequately supervise the patrons and premises while preparing food in the kitchen, there is an expectation she hire additional staff to assist her.

VI. Penalty

Following a finding there was a violation of Section 71(3) of the *Gaming and Liquor Act*, the matter of the appropriate penalty or sanction was addressed. The CSR Division provided the Panel with evidence of the prior record of the licensee, which indicated two prior infractions of the identical offense (consumption by multiple patrons after hours) and it appears the licensee was provided with considerable leniency in the past. In May 2013 the licensee accepted an administrative sanction and paid a fine of \$1000, which reflected a reduction from a multiple patron offense to a single patron. In July 2013 the licensee, following a hearing before this administrative tribunal, was assessed a penalty of \$1000 or 4 day suspension, notwithstanding the administrative sanction offered at the time was \$3000 or a 12 day suspension.

The administrative sanctions under this section provide for increased penalties for cases involving multiple patrons, as opposed to a single patron. This reflects the seriousness of the violation and the need for more aggravated penalties where multiple patrons are involved. The increased penalties for second and third offenses reflect the need for progressive fines to act as a deterrent to the specific licensee and to demonstrate to others that this type of repeated conduct has consequences.

The severity of the fine in this case may have some dire consequences, particularly given the fact the licensee appears to be a small business owner. However, the evidence clearly indicates this licensee has been given the benefit of considerable leniency in the past, which nonetheless appears not to have been instructive. The imposition of a substantial fine will hopefully send a clear message to the licensee and others that this type of conduct will not be tolerated. As a reflection of some empathy towards the licensee, time for payment of the fine will be extended and the licensee will be afforded the unusual opportunity to pay the fine by way of installments.

In accordance with Section 91(2) of the *Gaming and Liquor Act*, the Panel imposes the following penalty for a violation of Section 71(3) *Gaming and Liquor Act*:

Penalty: A \$6000 fine - **OR** - a 24 day suspension of Class A liquor licence 771980-1. The fine is to be paid within two months of the date of this decision or on or before Thursday, September 24, 2015 or the suspension served commencing Friday, September 25, 2015 and continuing until the close of business on Sunday, October 18, 2015.

Alternatively, the fine may be paid in 6 installments of \$1000, as follows:

1. \$1000 on or before Monday, August 17, 2015
2. \$1000 on or before Tuesday, September 15, 2015
3. \$1000 on or before Thursday, October 15, 2015
4. \$1000 on or before Monday, November 16, 2015
5. \$1000 on or before Tuesday, December 15, 2015

6. \$1000 on or before Friday, January 15, 2016

If the licensee chooses to pay the fine by way of installments and an installment is not paid on time, Class A liquor licence 771980-1 will be suspended for the full period of 24 days, following the date of the missed installment.

Signed at St. Albert this 24th day of July, 2015.

A handwritten signature in black ink, appearing to be 'W.J. Anhorn', written over a horizontal line.

W.J. Anhorn, QC, Hearing Panel Chair