

**HEARING BEFORE A PANEL
OF THE BOARD OF THE
ALBERTA GAMING, LIQUOR & CANNABIS COMMISSION**

**IN THE MATTER OF the *Gaming, Liquor and Cannabis Act*
Revised Statutes of Alberta 2000, Chapter G-1
current as of June 27, 2018
and the Regulation**

and

**Fine Vine Imports Inc.
o/a Fine Vine Imports
19011 93 Avenue NW
Edmonton, Alberta
T5T 5P7**

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| DATE OF HEARING: | November 27, 2018 |
| HEARING PANEL: | Ms. B. Ritzen, Panel Chair Mr. B. Wyatt, Panel Member Ms. G. MacLeod, Panel Member |
| LICENSEE REPRESENTATIVES: | Mr. N. G., President |
| REGULATORY SERVICES DIVISION: | Ms. T. H., Hearing Officer |

DECISION OF THE HEARING PANEL

I. Jurisdiction and Preliminary Matters

As a result of receiving an Incident Report dated June 25, 2018, the Regulatory Services Division of the Alberta Gaming and Liquor Commission imposed an administrative sanction under Section 91(2) of the *Gaming and Liquor Act*, without a hearing on Fine Vine Imports Inc. operating as Fine Vine Imports (“the Agency”).

The Agency subsequently requested 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 contravention:

Section 81(e) Gaming and Liquor Regulation: Directly or indirectly make or offer to make a loan or advance or give or offer to give money, a rebate, a concession or anything of value to a liquor licensee or to an employee or agent of that licensee.

Some of the evidence before the Hearing Panel references the *Gaming and Liquor Act*. On June 27, 2018, the *Gaming and Liquor Act* was amended by Bills 6 and 26, changing, among other things, the name of the statute to the *Gaming, Liquor and Cannabis Act* and the name of the corporation to the Alberta Gaming, Liquor and Cannabis Commission (“AGLC”). Also effective June 27, 2018, the Gaming and Liquor Regulation was amended by Alberta Regulation 13/2018, changing the name to Gaming, Liquor and Cannabis Regulation (AR143/96) along with other amendments.

All relevant provisions, including section numbers, remain in effect under the new *Act* and Regulation. Accordingly, any reference to legislation in this decision will be to the *Act* and Regulation currently in effect (“the *Act*” and “the Regulation”).

The Agency and the Hearing Panel were provided with a hearing file containing the Incident Report and various documents pertaining to the alleged contravention which occurred on approximately July 24, 2017. The Agency confirmed receipt of the hearing file and the Notice of Hearing. These documents were collectively entered into evidence as Exhibit #1.

In its Response to the Notice of Administrative Sanction (“the Response form”), the Agency ticked the box indicating that the facts were admitted but that a hearing was requested because it has a defence of due diligence. The Agency reiterated that position before the Hearing Panel. However, during the course of the hearing, it became apparent that, although the facts were admitted, the primary issue was not due diligence; the issue was whether those admitted facts established a contravention. There is no box on the Response form which deals with this scenario. The Panel recommends that the Regulatory Services Division amend the Response form accordingly.

II. The Issues

- A. Did an officer, director or employee of the Agency make or offer to make a loan or advance or give or offer to give money, a rebate, a concession or anything of value to a liquor licensee or to an employee or agent of that licensee (“the Contravention issue”)?
- B. Did the Agency take all reasonable steps to prevent its officer(s), director(s) or employee(s) from contravening Section 81(e) of the Regulation (“the Due Diligence” issue)?

III. Evidence

A. Contravention Issue

Regulatory Services Division

Much of the evidence in relation to this issue was contained in the Incident Report and was admitted by the Agency. The key aspects of that evidence are:

1. On July 24, 2017, the AGLC received an anonymous complaint that a local Brazilian restaurant was taking bids from liquor agencies who wished to appear on its new wine/liquor menu; the complainant alleged that the restaurant manager was saying that only those agencies offering the highest “kickback” would appear on the menu for all three restaurant locations;

2. As a result of receiving this information, an investigation was commenced. On July 26, 2017, the online wine/liquor menu for the restaurant was reviewed; there were sixteen liquor agencies represented on that menu;
3. The AGLC inspector contacted the restaurant manager who initially denied the allegations;
4. A review of the September 2017 online wine/liquor menu ("the September menu") for the restaurant showed that only four liquor agencies, including the Agency, were represented;
5. Letters were sent by the AGLC to the four agencies requesting information pursuant to Section 100 of the Act;
6. The information received from the Agency pursuant to that demand included several emails. These emails showed that on three separate occasions, the restaurant contacted the Agency directly to have faulty products replaced;
7. In November of 2017, the restaurant manager admitted to the AGLC that he had initiated and entered into a volume based rebate program with the agencies appearing on his September menu. He supplied spreadsheets showing the total number of bottles ordered for the time period between June and September 2017. The spreadsheets also showed which products qualified for a 10-1 rebate and which ones qualified for a 12-1 rebate as well as the dollar value associated with each rebate;
8. No rebates were actually received by the restaurant;
9. Forecasted rebates related to the Agency were \$1,257.09;
10. On January 25, 2018, AGLC Inspectors met with the President of the Agency, Mr. G.. Mr. G. confirmed that the restaurant manager had demanded that the Agency participate in a rebate program. Mr. G. advised that he had hoped that the rebate arrangement would not apply to the Agency as it is the only supplier of Brazilian wine;
11. Mr. G. admitted to replacing the faulty products directly instead of requiring the restaurant to file a claim through Connect Logistics Services.

In addition to that evidence, the Regulatory Services Division called one witness:

Inspector M. W.

Inspector W. elaborated on the evidence set out above. He said that the restaurant manager had told him that he wanted to reduce the number of suppliers and that only agencies that were willing to participate in a rebate program would be on the liquor menu. The restaurant manager stated that everyone who appeared on the September menu had agreed to participate in the rebate program.

In response to the Section 100 demand for information, Inspector W. received emails from the other three suppliers whose products appear on the September menu; those emails confirmed that the suppliers had agreed to participate in the program. No such confirmation was received from the Agency. Mr. G. told Inspector W. that he had not said yes or no and that he had hoped the program would not apply to the Agency. However, based on the statement from the restaurant manager and the fact that the Agency's wines appeared on the September menu, the Inspector inferred that the Agency had agreed to the program.

The Agency

Mr. G. provided evidence on behalf of the Agency. Key aspects of his testimony are:

1. The restaurant manager asked him to participate in a rebate program. Mr. G. initially said that he would think about it. However, at a later meeting with the restaurant manager, Mr. G. told him that such a program was dishonest and that he would not participate;
2. In the past, the Agency had provided a variety of wines to the restaurant; however, the only ones that appeared on the September menu were the Brazilian wines of which the Agency is the only supplier;
3. The Agency did not agree to participate and did not participate in a rebate program;
4. The Agency did replace faulty wines. He did not know the policy but now does and has changed his practice to ensure that clients are directed to file faulty product claims with Connect Logistics Services.

B. Due Diligence Issue

No evidence was called on this issue.

IV. Summation

Regulatory Services Division

The facts set out in the Incident Report are admitted by the Agency. These facts establish that the Agency replaced faulty wines directly. Direct replacement is a thing “of value” pursuant to Section 81(e) of the Regulation, as it saves the restaurant the time and inconvenience of submitting a claim to Connect Logistics Services.

The facts also establish that there was a rebate program, which was admitted by the restaurant manager, and that the Agency participated in that program. In addition to the statement of the restaurant manager, the fact that the Agency remained a supplier on the September menu is evidence of participation. It is irrelevant that no rebates were actually paid; the offer of a rebate is sufficient. The offer of a rebate and the replacement of faulty wines are a contravention of Section 81(e) of the Regulation.

With respect to due diligence, Section 121 of the *Act* requires that all reasonable steps be taken to prevent the contravention. In this case, there is no evidence that any such steps were taken. Accordingly, the contravention and the administrative sanction imposed should be upheld.

The Agency

The only reason the Agency is on the September menu is that it is the sole supplier of Brazilian wines. That is why it is in this position.

The economic situation is difficult and a lesser fine would be appreciated.

V. Analysis

A. Contravention Issue

The Agency admitted to replacing faulty bottles of wine directly instead of requiring the restaurant to submit a claim through Connect Logistics Services. Although the Regulatory Services Division argued

that direct replacement is a thing “of value”, there was no evidence before the Panel to support that argument. Moreover, while direct replacement might be a violation of certain policies (e.g. Section 3.23 of the Liquor Agency Handbook), the Panel does not accept that it is of the same nature as the prohibitions set out in Section 81(e) of the Regulation.

With respect to the alleged inducement, the relevant facts set out in the Incident Report and confirmed by the testimony of Inspector W. which are not disputed by the Agency are that:

1. In July of 2017, the online liquor menu for the restaurant showed that sixteen agencies, including the Agency, were represented;
2. The restaurant manager demanded that liquor suppliers participate in a volume based rebate program in order to remain on the liquor menu;
3. Three other suppliers admitted to participating in the program;
4. Those suppliers and the Agency were the only ones that remained on the September menu;
5. The Agency did not admit to participating in the program; Mr. G. told Inspector W. that he hoped the program would not apply to him because he is the only supplier of Brazilian wines;
6. The restaurant manager told Inspector W. that all four suppliers who remained on the September menu participated in the program.

These facts clearly demonstrate that the restaurant demanded participation in a rebate program and that three suppliers admitted to participating in that program. However, the involvement of the Agency in the program is not so clear. In determining that the Agency participated in the program, Inspector W. relied on two facts:

1. The restaurant manager told him that all four agencies who remained on the September menu agreed to participate;
2. The Agency remained on the September menu.

However, in his testimony, Mr. G. insisted that the Agency had refused to participate in the program. Although he had initially told the restaurant manager that he would think about it, he later told him that he would not do it and that it was dishonest. Moreover, Mr. G. explained that the Agency had previously supplied a wide variety of wines to the restaurant but that the September menu only included the Brazilian wines of which the Agency is the only supplier. This explanation was not contested.

The Panel found Mr. G. to be a credible witness. The evidence he gave before the Panel was consistent with the statements he made to Inspector W. during the investigation. His assertion that the Agency did not agree to participate is supported by the absence of any documentary evidence of such an agreement (in contrast to the situation with the other suppliers, who confirmed their agreement in email exchanges with the restaurant). It is further supported by the fact that the only wines offered by the Agency which are on the September menu are the Brazilian wines of which it is the sole supplier.

The Panel accepts the evidence of Mr. G. and finds that the Agency did not agree to participate in the rebate program. Accordingly, the Agency did not contravene Section 81(e) of the Regulation.

B. Due Diligence

Given the foregoing, it is unnecessary to consider this issue.

VI. Finding

The Panel finds that there was no contravention by the Agency; pursuant to Section 94(7)(c) of the *Act*, the Panel cancels the original sanction.

Signed at St. Albert this 20th day of December, 2018.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

B. Ritzen, Hearing Panel Chair