

**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 Licensee:  
Leonard John Hoskins, Mark Hoskins  
Hoskins Corporation Inc.  
o/a Diablos Bar & Grill  
120, 920 – 36 Street NE  
CALGARY, Alberta  
T2A 6L8**

**concerning alleged contraventions**

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<b>DATE OF HEARING:</b>	January 28, 2014
<b>HEARING PANEL:</b>	Ms. T.L. Lawrence, Panel Chair Mr. W.J. Anhorn, Q.C., Panel Member
<b>LICENSEE:</b>	Mr. K., Board Approved Manager Ms. K., spouse
<b>COMPLIANCE AND SOCIAL RESPONSIBILITY (CSR):</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 December 9, 2013, the Compliance and Social Responsibility (CSR) Division of the Alberta Gaming and Liquor Commission (AGLC) imposed an administrative sanction under Section 91(2), *Gaming and Liquor Act* (GLA), without a hearing on Leonard John Hoskins, Mark Hoskins, Hoskins Corporation Inc., o/a Diablos Bar & Grill, Calgary.

The Licensee subsequently applied for a hearing under Section 94(1), GLA. A Hearing Panel of the Board met to hear the following alleged violations:

1. **Permit consumption of liquor during unauthorized hours, Section 71(3) GLA**
2. **Sell, offer to sell or provide liquor on an unauthorized day or during unauthorized hours, Section 68(1)(b) GLA**

The Licensee and the Hearing Panel were provided with a hearing file containing the incident report dated December 9, 2013 and various documents pertaining to an alleged incident occurring on the premises of Diablos Bar & Grill, Calgary on November 17, 2013. Mr. H. presented the case on behalf of the CSR Division. Mr. K. represented Leonard John Hoskins, Mark Hoskins and Hoskins Corporation Inc.

The Chair confirmed with Mr. K. he admitted the facts set out in the incident report, but had a due diligence defence and wished to speak to penalty. The incident report was entered into evidence as Exhibit #1.

## II. The Issue

Did the licensee:

- permit consumption of liquor during unauthorized hours?
- sell, offer to sell or provide liquor on an unauthorized day or during unauthorized hours?

## III. Evidence - excerpted from incident report dated December 9, 2013

*“At 0238 hours on November 17, 2013 two inspectors attended the premises known as Diablos Bar & Grill. The main entrance door was locked and as the exterior windows were covered with an opaque material they could not see in, however, they could hear voices coming from inside the premises. The inspectors departed the area.*

*Section 71(3) GLA*

*At 0314 hours the inspectors returned to the premises and found the main entrance door unlocked. Upon entry at 0315 hours they noted 14 patrons in the premises and a male standing behind the service bar. Four of the patrons were seated at a table near the entrance, one of whom was observed consuming from a bottle of Bacardi Breezer.*

*Section 68(1) GLA*

*At 0315 hours a male (later identified as bartender E.) was observed dispensing draught beer from behind the service bar. He handed a pint glass of beer to a male standing on the other side of the service bar (later identified as cook J.). An inspector approached the service bar and asked E. if he worked at the premises. After E. received confirmation he was speaking to an inspector E. said he was a patron. The pint of beer was retrieved from J. by E. and immediately poured into the sink.*

*A female, Y.K. (identified as the wife of the Board Approved Manager) appeared from a back room and asked what was going on. An inspector identified himself and asked if she knew what time it was. She indicated it to be 0320 hours by looking at a clock located on the wall above the service area. She said she was in the back office performing administrative duties and was not aware of what was happening in the bar. The two males, E. and J. were identified from a schedule as being staff who were off duty at 0200 hours and 0300 hours, respectively. K. said the service bar was closed between 0100 and 0130 hours. E. exited the premises while the inspector was speaking to K..*

*K. determined it was E. behind the service bar. K. said she would terminate E. employment effective immediately. K. then asked the patrons to leave the premises.*

*The inspectors asked for a copy of the premises' video surveillance and departed the premises at 0336 hours.”*

## Evidence of Mr. K.

Mr. K. stated on the day in question he was not working but he has spoken with the parties involved in the incident. He has been in the hospitality business for 25 years and this is the first time he has come in front of the AGLC Board. The premises had only been open for a week at the time of the incident; this being their first Saturday night/Sunday morning.

At 0230 hours the manager on duty left and there were 2 bartenders, 3 servers and a couple of cooks still on the premises but no patrons. At that time, his wife locked the front doors and went to the back office to complete cash duties, leaving the remaining staff to clean up. He understood one of the bartenders received a call from his friends and when the friends arrived at the premises, he allowed them inside, which was not approved. Bartender E. had just poured a drink for one of his friends when the inspectors came in. E. said he did work for Diablos Bar & Grill even though he told the inspectors he was a patron. He left out the back door of the premises with his friends shortly thereafter.

They try to do due diligence by closing the premises at the appropriate time, locking the doors and having staff start clean up duties. In this instance, E. went ahead and contravened the rules. It was his last shift; he was fired, along with the cook. E.' behavior is in no way condoned. They came today to ask the Panel to take into consideration they had only been open for a week and were misrepresented by their staff. He feels the fine is harsh under the circumstances.

**Mr. K. – cross-examined by Mr. H.**

Mr. K. confirmed all staff are ProServe trained and added they brought in a liquor company to teach staff how to prepare cocktails, etc. They are careful to make sure everyone has ProServe, as they are aware of their responsibilities. He recalled talking about having an AGLC staff training seminar when the inspector came to the premises when they were first licensed, but admitted it never went past the communication at the table.

They do last call half an hour before 2 a.m. so there is ample time for patrons to drink their drinks before they lock the doors of the premises. This was the only day they had been open past 2 a.m. since they received their licence; they had been closing at 11 or 12 o'clock. They turn the lights up at 2 a.m. and turn the music down at the same time. After last call, they monitor patrons until they can get them out the door.

Ms. K. added she spoke to staff in the pre-shift meeting about it being likely AGLC would be in the premises to check on them so they should be on their best behavior. She confirmed there was only one supervisor on duty that night, the video surveillance covers the liquor service areas and it is monitored from the back office where she was doing cash out duties from 0235 to 0315 hours when the inspectors came in. She indicated while the video surveillance was in the back office, it was located behind her while she was doing cash out duties at the desk and she was not paying attention to the monitors. She could not hear anything going on in the bar while she was in the office, as it is located at the back of the kitchen. Staff was cleaning up when she went into office after locking the front doors. She recalled E. was mopping behind the bar. When she did glance at the video surveillance screen, she was surprised to see people standing in front of the bar. Of the 14 people still inside the premises, 3 were waiters, 2 bartenders, 3 cooks and a chef. They believed 3 patrons had been erroneously allowed inside by the bartender and the cook.

**Mr. K. – examined by Panel members**

Mr. K. confirmed liquor is left on the bar when the premises are closed. There is no way they can lock up the liquor dispensers or easily put the liquor inventory away when they close for the night. He also confirmed the front doors open from the inside out and the only people who have a key are the chef, his wife and his partner. The premises are alarmed.

**IV. Summation**

**Mr. H.**

There are 2 violations before the panel: 1) Section 71(3) GLA: *Permit consumption of liquor during unauthorized hours*; and 2) Section 68(1) GLA: *Sell, offer to sell or provide liquor on an unauthorized day or during unauthorized hours*. The evidence presented by the inspectors is clear; they attended the premises at 0238 hours on November 17, 2013 and heard voices coming from inside the premises. They left and returned at 0314 hours. They entered the premises and observed 4 patrons seated at a table near the main entrance, one of whom was consuming from a bottle of Bacardi Breezer.

At 0315 hours a male, later identified as a bartender, was observed behind the service bar dispensing draught beer into a pint glass, which he served to a male patron, later identified as the cook.

In the opinion of CSR, there was no information presented to the Panel which supported the Licensee took all reasonable steps to prevent violations of Section 71(3) GLA and Section 68(1) GLA and as such he recommended the original administrative sanction be upheld.

**Mr. K.**

Mr. K. stated they do their best when hiring staff. This is the first violation he has had since entering the hospitality business over 25 years ago and he does not condone what happened in any way. He finds it "crazy" one bad staff member can lie and turn around and run out of the premises without consequences for what he did. He assured the Panel it will not happen again as they know the rules and will uphold them.

## V. Finding

### 1. The Panel makes a finding of a violation of Section 71(3) GLA: *Permit consumption of liquor during unauthorized hours*

The evidence was clear, when inspectors came into the premises at 0315 hours, that there were patrons inside who should not have been there, one of whom was observed consuming from a Bacardi Breezer cooler. The patron should not have been allowed to consume liquor beyond 0300 hours, the legislated hour when licensed premises are to be closed.

While the licensee argued that due diligence had been exercised; with the manager being on premises, video cameras projecting into the office area and the training and directing of staff prior to the event, the Panel felt that these were not sufficient and that a violation occurred. The Panel felt it was not enough to just rely on staff and not monitor them, particularly when the ability to do so was available. The manager was on the premises and even though the security camera was playing in the manager's office, her back was turned to it and she did not look at it. Minimal monitoring of the security camera could have prevented the violation.

### 2. The Panel makes a finding of a violation of Section 68(1)(b) GLA: *Sell, offer to sell or provide liquor on an unauthorized day or during unauthorized hours*

The Panel accepted the explanation an employee took it upon himself to allow his friends to come into the premises when it was closed and the doors locked.

While the licensee argued that due diligence had been exercised; with the manager being on premises, video cameras projecting into the office area and the training and directing of staff prior to the event, the Panel felt that these were not sufficient and that a violation occurred. The Panel felt it was not enough to just rely on staff and not monitor them, particularly when the ability to do so was available. The manager was on the premises and even though the security camera was playing in the manager's office, her back was turned to it and she did not look at it. Minimal monitoring of the security camera could have prevented the violation.

The licensee also admitted that liquor was physically available and not locked up after hours as there is no lock up location available in the current layout other than the refrigerated food storage area. Physical control of the liquor could also have prevented the violation.

The Panel is satisfied that the Licensee is aware of his responsibilities and under no circumstances condoned what happened.

## VI. Penalty

The Licensee did not dispute the facts set out in the incident report and was honest and forthright when presenting his case. The Panel accepted there were some mitigating circumstances in what occurred.

In determining penalty, the Panel took into consideration the premises had only been open for a week and the Licensee had done training with staff and in the pre-shift discussion his wife told staff about the likelihood of AGLC inspectors coming into the premises to check that everything was operating as it should.

In accordance with Section 91(2) GLA, the Hearing Panel imposes the following penalty for a violation of Section 71(3) GLA

**Penalty:** A \$500 fine - **OR** - a 2 day suspension of Class A liquor licence 773469-1. The fine is to be paid within 3 months of the date of this decision or by Wednesday, May 21, 2014 or the suspension served commencing Thursday, May 22, 2014 and continuing until close of business on Friday, May 23, 2014.

Similarly, the Panel took into consideration the premises had only been open for a week and the Licensee was let down by an employee who chose to act outside of the legislation and let his friends come into the premises and in one case, had provided a bottle of Bacardi Breezer and in the other had poured a draught beer, which but for the intervention of an inspector would have been provided to a patron.

In accordance with Section 91(2) GLA, the Hearing Panel imposes the following penalty for a violation of Section 68(1)(b) GLA

**Penalty:** A \$500 fine - **OR** - a 2 day suspension of Class A liquor licence 773469-1. The fine is to be paid within 3 months of the date of this decision or by Tuesday, May 21, 2014 or the suspension served commencing Saturday, May 24, 2014 and continuing until close of business on Sunday, May 25, 2014.

The Licensee may work out a payment schedule with CSR.

Signed at St. Albert this 21<sup>st</sup> day of February 2014.

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T.L. Lawrence, Hearing Panel Chair