

**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:
50 Cent Capital Investments Ltd.
o/a Houston's Public House
108 – 17 Avenue NW
Calgary, Alberta
T2M 0M6**

concerning alleged contraventions

DATE OF HEARING:	March 6, 2014
HEARING PANEL:	Mr. W.J. Anhorn, QC, Panel Chair Hon. M.J. Trussler, QC, Panel Member
LICENSEE:	Mr. W. H., Director/Shareholder
COMPLIANCE AND SOCIAL RESPONSIBILITY (CSR):	Mr. H., Hearing Officer

DECISION OF THE HEARING PANEL

I. Jurisdiction and Preliminary Matters

As a result of receiving an incident report dated January 14, 2014, 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*, without a hearing on 50 Cent Capital Investments Ltd., o/a Houston's Public House, Calgary.

The Licensee subsequently applied for a hearing under Section 94(1), *Gaming and Liquor Act*. A Hearing Panel of the Board met to hear the following alleged violation:

**Liquor licensee or employee or agent of the licensee directly or indirectly borrowing or receiving as a gift from any liquor supplier or liquor agency money, an advance of money, or anything of value, Section 82(2)(a)
Gaming and Liquor Regulation**

The Licensee and the Hearing Panel were provided with a hearing file containing the incident report dated January 14, 2014 and various documents pertaining to an alleged incident occurring in October 2012. Mr. H. presented the case on behalf of the CSR Division. Mr. W. H. represented 50 Cent Capital Investments Ltd.

Mr. W. H. confirmed he received the Notice of Hearing and admitted the facts set out in the incident report, but wished to speak to penalty. The incident report was entered into evidence as Exhibit #1. Copies of invoices from Diageo Canada Inc. (Diageo) for menus provided to the Licensee were entered into evidence as Exhibit #2.

II. The Issue

Did the licensee or employee or agent of the licensee directly or indirectly borrow or receive as a gift from any liquor supplier or liquor agency money, an advance of money, or anything of value?

III. Evidence - excerpted from the incident report dated January 14, 2014

On January 9, 2012, the AGLC sent a reminder to all Liquor Agents, Liquor Suppliers and Liquor Licensees to be aware of relevant legislation and Board policies pertaining to the provision and acceptance of inducements. This letter indicated that the AGLC would be increasing enforcement to ensure compliance.

As a result of interviews with the Calgary area representatives of Diageo, a registered liquor agency, it was determined that 50 Cent Capital Investments Ltd., a Licensee in the Province of Alberta, received menu contents from Diageo in October 2012. Invoices provided by Diageo indicated that \$392.65 worth of items of value was provided to Houston's Public House.

W. H., the Board Approved Manager for Houston's Public House, advised AGLC Inspectors that Diageo had provided him with a wine insert for his menu and that was the only business he did with Diageo.

Evidence of Mr. W. H.

Mr. W. H. provided the Panel with a copy of an invoice from All Rush Copies & Print setting out the cost Mr. W. H. generally pays for the printing of his regular menu, together with a copy of the regular menu. The invoice was entered into evidence as Exhibit #3 and the menu as Exhibit #4. Mr. W. H. then provided the Panel with a copy of the menu paid for by Diageo, which was entered into evidence as Exhibit #5. The Licensee provided the documentation to show he is unable to justify the invoice from Diageo in the amount of \$392.65 for the menu he received.

Mr. W. H. has been in compliance for eleven years and has never had an issue with the AGLC during those eleven years. His reputation is of primary importance to him. At no time was any cash exchanged between Houston's Public House and Diageo. Mr. W. H. would like to be treated fairly by the Panel. Diageo was found guilty of \$327,494.20 in wrongdoings and their fine amount was \$150,000.00. Mr. W. H. respectfully recommended the panel set a penalty of \$200, if he is found to be in violation of Section 82(2)(a) of the Gaming and Liquor Regulation. Mr. W. H. felt it was fair to ask for a reduction in penalty, in light of the fact the penalty for Diageo was reduced by more than half.

As an owner/operator, Mr. W. H. finds it difficult to operate his business, particularly in light of the .05 liquor laws that were introduced. The cost of doing business has increased and minimum wage has gone up over the past few years. All the changes have cut in to his bottom line.

Mr. W. H. – cross-examined by the Panel

Mr. W. H. prints his own menus through All Rush Copies & Print and prints fifty menus at a time. Mr. W. H. is charged \$78.00 for menu design but he did not provide the Panel with documentation in support of the menu design costs. The total cost to produce his regular menu is under \$200.00. Mr. W. H. changes his regular menu approximately every quarter, depending on usage.

Mr. W. H. simply wished to introduce some new wines to his regular menu and that's how the process began with Diageo. The intention was to run the new menu from Diageo for a few months. Mr. W. H. received fifty new menus from Diageo and does not dispute he accepted the new menus.

Houston's Public House is a restaurant that primarily sells pizza. They are not a pub and it is not their intention to primarily draw off liquor sales. Diageo was helping introduce a new wine list to the menu that accompanied the food they serve. Houston's Public House is located in an area of Calgary with a lot of wine connoisseurs so they wanted to bring in some new, fresh wines.

Mr. W. H. did not wish to take away from what the AGLC is doing with respect to inducements but he wanted the Panel to understand he is under financial constraints. It's difficult to survive in the industry as a single operator and that's why he asked for a reduction in the penalty. Mr. W. H. understood he made a mistake but he was looking for some compassion from the Panel. The incident has forced Mr. W. H. to re-evaluate what he does on a day to day basis. He simply wants a competitive market where everyone is treated equally.

V. Finding

The Panel makes a finding of a violation of Section 82(2)(a) of the Gaming and Liquor Regulation: *Liquor licensee or employee or agent of the licensee directly or indirectly borrowing or receiving as a gift from any liquor supplier or liquor agency money, and advance of money, or anything of value*

The *Gaming and Liquor Act* and its Regulations and AGLC Board policy prohibits liquor agents and suppliers from giving or offering to give money, a rebate, a concession or anything of value to a liquor Licensee or to an employee or agent of a Licensee. Licensees, or an employee or agent of a Licensee, are also prohibited from receiving as a gift from any liquor agent or supplier, either directly or indirectly money or an advance of money or anything of value (Section 82 (2)(a) of the Gaming and Liquor Regulation.)

Recent investigations by the CSR Division of the AGLC have revealed that some liquor suppliers are offering incentives to Licensees who purchase their products. In addition, some Licensees are receiving, and in some instances, demanding incentives from agents and/or suppliers in order to sell the suppliers' products. These incentives or "inducements" have taken various forms including payment of money, paying for products and services and installation of equipment. Violations of the Gaming and Liquor Regulations in these circumstances take two forms; those providing the inducement and those receiving the inducement.

The evidence in the present case is that as a result of an investigation, it was determined that Diageo, a registered liquor agency in Alberta, provided to the Licensee, 50 Cent Capital Investments Ltd. operating as Houston's Public House, certain items of value, being the cost of printing wine menus for use in the Licensee's establishment. The wine menu was to ostensibly promote the liquor agency's wine products. The invoice provided by Diageo indicates the cost of providing this service was \$392.65. During the hearing, the Licensee fully admitted complicity in the inducement case and was quite apologetic. The only issue was the matter of the sanction.

VI. Penalty

The administrative sanction offered by the CSR Division was 100% of the value of the incentive, being \$392.65. The Licensee argued the penalty was too harsh. Firstly, he presented evidence to the effect that the "real" cost of printing the wine menu would have been significantly less than the actual amount of the invoice, had the Licensee incurred the expense directly through its own printing supplier. The Panel is not persuaded that this argument has any validity. The best indication of value is the cost to the liquor agency. To do otherwise would result in an unnecessary and needless exercise.

The Licensee further argued the penalty should be reduced to less than the value of the inducement, having regard to the magnitude or scale of the cases involving Diageo, as compared to the monetary penalty it received. This argument is also without merit.

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. There is however a difference between offering an incentive or inducement and receiving an incentive or inducement and nothing would be gained by somehow trying to compare the scale of the two. In each case, deterrence (both specific and general) is the primary consideration in determining the appropriate monetary 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 engaging in this type of improper activity.

The purpose here is to try to educate and to bring home to others within the industry there are serious consequences for violating the Regulations and engaging in this type of activity, whether as a giver or receiver of an incentive. In the case of the liquor agency, the penalty ought to be significant otherwise it may simply be considered a "cost" of doing business.

In the case of the Licensee, the penalty should be generally consistent with other inducement cases, unless there are exceptional or unusual circumstances and should reflect the need to discourage others from engaging in this type of conduct. In other cases involving Licensees, monetary penalties satisfying the need for both specific and general deterrence have been imposed in the range of two to three times the value of the incentive to reflect the Board's denunciation of this type of conduct.

In the present case, taking into account the honest and straightforward approach taken by the Licensee and the apparent genuine remorse, the need for an elevated penalty is not necessary.

Accordingly, in accordance with Section 91(2) GLA, the Hearing Panel imposes the following penalty for a violation of Section 82(2)(a) Gaming and Liquor Regulation:

Penalty: A \$392.65 fine. The fine is to be paid within 6 months of the date of this decision or before Friday, October 10, 2014.

Signed at St. Albert this 10th day of April, 2014.

W.J. Anhorn, QC, Hearing Panel Chair