

**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 June 12, 2013  
and the Regulation**

**and**

**IN THE MATTER OF Co Co Di Restaurant Ltd.  
o/a Co Co Di Restaurant  
11454 Jasper Avenue  
Edmonton, Alberta  
T5K 0M1**

**concerning alleged contraventions**

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<b>DATE OF HEARING:</b>	June 9, 2014
<b>HEARING PANEL:</b>	Mr. W. A. Clark, Panel Chair Ms. S. L. Green, Panel Member Mr. J. Hansen, Panel Member
<b>LICENSEE REPRESENTATIVES:</b>	Mr. G., Director/Shareholder
<b>COMPLIANCE AND SOCIAL RESPONSIBILITY (CSR):</b>	Mr. B. 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 April 15, 2014, the Compliance and Social Responsibility (CSR) Division of the Alberta Gaming and Liquor Commission (AGLC) imposed an administrative sanction under Section 50, *Gaming and Liquor Act* (GLA), and Section 1.6 Liquor Licensee Handbook without a hearing, on Co Co Di Restaurant Ltd. o/a Co Co Di Restaurant, Edmonton.

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. **Section 50 GLA: Purchasing or possessing liquor other than in accordance with the Act or with a liquor licence.**
2. **Section 1.6 Liquor Licensee Handbook, Contravention of the ProServe Liquor Staff Training policy.**

The Licensee and the Hearing Panel were provided with a hearing file containing the Incident Report dated April 15, 2014 and various documents pertaining to alleged incidents occurring on the premises of Co Co Di Restaurant, Edmonton, on February 20, 2014. Mr. H. presented the case on behalf of the CSR Division. Mr. G. represented Co Co Di Restaurant.

Mr. G. confirmed that he admitted the facts in the Incident Report but wished to raise a due diligence defence. The Incident Report was entered into evidence as Exhibit #1. Mr. H. stated that he had spoken to Mr. G. prior to the start of the hearing, and Mr. G. actually wished to speak to penalty rather than provide a due diligence argument. Mr. G. confirmed that this was in fact the case.

## II. The Issue

Did the Licensee:

- Purchase or possess liquor other than in accordance with the Act or a liquor licence; and
- Contravene the ProServe Liquor Staff Training policy.

## III. Evidence - excerpted from the Incident Report, dated April 15, 2014

### 1. GLA Section 50 – Sell, give, possess, store, use or consume liquor not in accordance with the GLA or a liquor licence.

- *On February 20, 2014 at 14:51 hours, Inspector B. attended the premises to perform a routine maintenance inspection. B. indentified himself to Ms. G., the only employee working in the service area. Ms. G. indicated that she was part owner of the premises with her husband, R. G., who was overseas at the time of the inspection. While inspecting the service bar B. noted three bottles of liquor which seemed unusual. All three were situated in line with the other liquor products on display behind the service bar. The bottles of liquor in question were labeled as:*
  - *250 ml bottle of MEZCAL ORO DE OAXACA, 38% Alc. Vol. (3/4 full)*
  - *700 ml bottle of ARACK AS-SAMIR, 53% Alc. Vol. (1/5 full)*
  - *700 ml bottle of ARAK FAKRA, 55% Alc. Vol. (1/3 full)*
- *When B. asked Ms. G. about the Mezcal, she stated that the bottle was a gift and was mistakenly at the premises. She and her husband had tried the liquor but had not sold any. When asked about the other two unusual bottles, Ms. G. stated that both were a type of Lebanese liquor but said she did not know where the bottles were purchased. B. instructed Ms. G. to contact her husband and accountant to obtain the receipts for the two bottles of Lebanese liquor.*
- *B. photographed the labeling on the Lebanese liquor bottles in question, and applied a seizure label to the bottle of Mezcal liquor and completed a seizure receipt for the item. Ms. G. dictated (and signed and dated) a statement regarding the Mezcal and stated the following:*
  - *She felt the AGLC was “picking on” small businesses;*
  - *AGLC should be paying more attention to the “big bars” in the area; and*
  - *Ms. G. repeatedly asked B. to ignore the unauthorized liquor and asked hypothetical questions regarding what would happen if B. were to “pretend you saw nothing”.*
- *On February 21, 2014 a Quality Control Clerk at the AGLC indicated that, based on the information available in the photographs of the two Lebanese liquor products, neither product was approved for sale in Alberta. On February 21, 2014 at 13:15 hours, B. attended the premises with Inspector M. W. to seize the two Lebanese liquor products. At that time, Ms. G. stated the following:*
  - *She stated that both bottles were removed from the service bar because the liquor had been sold out.*
  - *She retrieved the empty Arack As-Samir bottle from the premises’ recycling receptacle.*
  - *She claimed to be unable to locate the Arak Fakra bottle after checking the cabinet behind the service bar and in the recycling receptacle.*

*B. checked the same cabinet behind the service bar and located the Arack Fakra bottle in amongst the other liquor products. It was still approximately 1/3 full.*

- *B. applied seizure labels to the two bottles and a seizure receipt was completed and provided to Ms. G.. Ms. G. was once again instructed to contact R. G. to determine where he had purchased the bottles and provide the receipts or invoices to prove where they were purchased.*
- *On February 24, 2014, at 11:20, AGLC Liquor Supply and Distribution confirmed that neither Lebanese product is an approved product for sale in the Province of Alberta. They also confirmed that while the Mezcal is an approved product, the 250 ml size that was seized had not been approved for sale in Alberta. At 14:07 hours, Ms. G. confirmed with B. via telephone that her husband, R. G., had advised both bottles had been purchased during two separate trips to Lebanon and he felt they would be okay to sell in the premises because he had declared them with Canada Customs. Ms. G. indicated that she had researched the issue after B.s' seizure of the liquor and understood that the liquor was not legal to sell. B. explained that it was not legal to even possess the foreign-purchased, unapproved products within the licensed premises.*
- *A review of the AGLC Liquor Licence file for the premises by Inspector B. noted that on June 9, 2010 R. G. signed an Acknowledgement and Understanding document which specifically outlined the violation and potential repercussions for possession of liquor not authorized by the AGLC. As well, on June 11, 2010 the topic of illegal liquor was discussed with R. G. as part of the standard Class A Liquor Licence Operating Procedures discussion. R. G. signed the standard Operating Procedures checklist confirming that various topics had been discussed, including the fact that illegal liquor sales are not permitted.*

## **2. Liquor Licensee Handbook Section 1.6 – Contravention of the ProServe policy requirements.**

- *During the routine maintenance inspection, when asked for the premises' ProServe records or certification logbook, Ms. G. pointed to an expired ASIP certificate displayed on the wall and stated "that is me". B. informed Ms. G. that the certificate had expired on April 4, 2012 and explained how to obtain current certification.*

### **Evidence of Mr. G.**

Mr. G. advised that he has been in business since 1990. He has never had any problems, but rather has always had compliments from the liquor board because at his restaurant they always ID customers and never do anything wrong. The two bottles were brought from Lebanon for himself. He knows that it is wrong to offer that liquor to customers, but \$2,000.00 is too much for him to pay. A \$1,000.00 fine could be paid in four installments; otherwise he needs to take the 8 day suspension.

### **Mr. G. – cross-examined by Mr. H.**

The Lebanese liquor was being sold to patrons in the premises. The bottle of liquor from Mexico was a gift from the mother of a cook, given to Mr. G. four years ago. Mr. G. was not sure how it ended up being stored in the liquor service area, but it was a gift and not for sale.

### **Mr. G. – questioned by Ms. Greene**

\$2,000.00 penalty or 8 days suspension is too much of a penalty. A \$1,000.00 penalty could be paid in four months.

### **Mr. G. – questioned by Mr. Clarke**

There was no intent to sell anything from the small bottle from Mexico. The larger bottles from Lebanon were put out for sale while Mr. G. was away with the intention to sell to customers. It was a mistake that will never happen again.

## **IV. Summation**

### **Mr. H.**

The matters before the Panel are contraventions of Section 50 of the GLA and Section 1.6 of the Liquor Licensee Handbook. The evidence outlined in the Incident Report is detailed quite clearly. With respect to Section 50 of the GLA, a routine maintenance inspection of the premises was conducted by Inspector B.. He located three bottles of liquor that seemed to be out of place amongst other liquor bottles in the actual liquor service area. The three bottles of liquor were described in the Incident Report.

The inspector was advised by the Director/Shareholder, Ms. G., that the first bottle of liquor was a gift from Mexico that a staff member purchased and provided to the Licensee. Ms. G. contended that this product was not being sold in the licensed premises; however, was it was only three-quarters full and it was found directly in the liquor service area where other liquor products were being sold. Ms. G. later identified the two remaining bottles as liquor product that came from Lebanon, and she advised Inspector B. that Mr. G. felt the bottles of liquor were okay to sell in the licensed premises, as they were declared with Canada Customs. These two bottles were apparently being sold on the licensed premises to patrons as Mr. G. has indicated before the Panel. AGLC Liquor Supply and Distribution confirmed that neither of the two 700 ml bottles of Lebanese liquor were approved product to be sold in Alberta, and also confirmed that the 250 ml bottle of liquor from Mexico had also not been approved for sale in the Province of Alberta.

With respect to Section 1.6 of the Liquor Licensee Handbook, Inspector B. determined while dealing with Ms. G. during the course of this investigation that she did not have the required ProServe certification as it expired on April 4, 2012. Ms. G. is required to have ProServe certification as stipulated under policy.

These sections of the legislation and commission policy are of the utmost importance in having liquor activities conducted with integrity in the Province of Alberta. A patron should be able to have the confidence when they are in a licensed premises that the liquor ordered is an approved product that has been properly scrutinized and legal for sale in Alberta. The Licensee was made fully aware that only liquor authorized by the Licensee may be sold or stored in the licensed premises. This information was reviewed at the time of licensing with Mr. G. with the acknowledgement and undertaking form, as well an AGLC inspector discussing operating procedures with him in respect to illegal liquor. That information is contained in the Incident Report as well. Mr. G. signed off on both of these documents, indicating that he understood those policies.

The Licensee has taken a position before the Panel that the penalty is too high and, as such, should be reduced. I suggest to the Panel that the Licensee has already received a reduced penalty as offered by the CSR Division, as a first occurrence. As listed under the Administrative Sanction Guidelines, a violation of Section 50 lists a \$4,000.00 penalty or a 16-day suspension. As such, Mr. G. has already received a reduced penalty as offered by the CSR Division. The CSR Division respectfully disagrees with the Licensee's position, wherein the evidence contained in the Incident Report suggests that Ms. G. asserted to the inspector that the AGLC is picking on small business and asked the inspector to ignore the illegal liquor and even go so far as to state, "pretend you saw nothing". There certainly seems to be some evidence here that the Licensee was not being very forthcoming with the inspector in the performance of his duties. The CSR Division respectfully submits that breaches of the legislation and policy did in fact occur and recommends the original administrative sanction of \$2,000.00 or 8 days suspended under Section 50 of the GLA, plus a warning for Section 1.6 of the Liquor Licensee Handbook, offer be upheld.

#### **Mr. G.**

The liquor should not have been offered for sale, and this was done while he was away. His restaurant business is not that good because there are many big restaurants that are now open beside them. Mr. G. asked that the penalty be reduced or he will take the 8 day suspension. It was a mistake and will never happen again.

#### **V. Finding**

**The Panel makes a finding of a violation of Section 50, GLA: Purchasing or possessing liquor other than in accordance with the Act or with a liquor licence; and Section 1.6 Liquor Licensee Handbook: Contravention of the ProServe Liquor Staff Training policy.**

The Licensee did not dispute the fact that a violation occurred and admitted the facts as set out in the Incident Report.

#### **VI. Penalty**

The Panel found Mr. G. to be very forthcoming, taking full responsibility for his actions. The Panel understands that the Licensee has been in business for a long time and would have difficulty paying the proposed penalty. However, the Panel was concerned

that the ProServe of Ms. G. was not current, and was very concerned that Ms. G. attempted to divert the decision in the discussion with the inspector by suggesting, "pretend you saw nothing." The Panel wishes to convey that the penalty may have been further reduced had Ms. G. not suggested that the inspector ignore the evidence.

Given the above, in accordance with Section 91(2) GLA, the Panel imposes a reduced penalty for a violation of Section 50, GLA:

**Penalty:** \$1500 fine – **OR** – a 6-day suspension of Class A Liquor Licence 770201-1. The fine is to be paid within 4 months of the date of this decision or on or before Saturday, April 11, 2015 or the suspension served commencing Sunday, April 12, 2015 and continuing until the close of business on Friday, April 17, 2015.

With respect to contravention of the ProServe Liquor Staff Training policy, Section 1.6 Liquor Licensee Handbook, it is further suggested that the Licensee ensure that all of his employees' ProServe statuses are up to date.

Signed at St. Albert this 11<sup>th</sup> day of December, 2014.

A handwritten signature in black ink, appearing to read 'W. A. Clark', written in a cursive style.

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W. A. Clark, Hearing Panel Chair