

BUSINESS LICENCE HEARING MINUTES



APRIL 4, 2012

A Business Licence Hearing of the Council of the City of Vancouver was held on Wednesday, April 4, 2012, at 9:33 am, in the Council Chamber, Third Floor, City Hall, to determine whether or not the suspension by the Chief Licence Inspector of the 2012 business licence issued to Champion Pizza Inc., doing business as Yadi's Eatery, located at 1181 Granville Street, Vancouver, British Columbia, should be upheld or overturned.

PRESENT: Councillor Geoff Meggs, Chair
Councillor George Affleck
Councillor Adriane Carr

CITY CLERK'S OFFICE: Nicole Ludwig, Meeting Coordinator

1. **Champion Pizza Inc. dba Yadi's Eatery**

The Business License Hearing Panel had before it for consideration an Evidence Brief, prepared by the City of Vancouver's Legal Department, which contained the following material (*on file in the City Clerk's Office*) and the evidence of witnesses:

Notice of Hearing

Tab

1 Correspondence

- Letter to Hama Kha Lamea from Tom Hammel dated January 6, 2012
- E-mail between Yadigar Akram Muhammad and Tom Hammel dated January 3 & 4, 2012
- Letter to Hama Kha Lamea from Tom Hammel dated December 15, 2011
- E-mail between Yadigar Akram Muhammad and Susan Smith dated November 24, 28, & 29, 2011
- E-mail between Yadigar Akram Muhammad and Tom Hammel dated October 5, 6, 11, 12, & 24, 2011
- Letter to Yadigar Akram Muhammad from Tom Hammel dated September 14, 2011
- E-mail between Yadigar Akram Muhammad and Tom Hammel dated September 11 & 12, 2011
- Letter to Yadigar Akram Muhammad from Tom Hammel dated August 18, 2011

2 Meeting Notes:

- Handwritten notes from Tom Hammel dated November 30, 2011
- Handwritten notes from Tom Hammel dated August 16, 2011
- Handwritten notes from Lucia Cumerlato dated August 16, 2011

3 Other documents from Licence & Inspections Department:

- Business licence 2012
- Business licence 2011
- BC Company Summary Search dated August 17, 2011
- Printscreen of AMANDA

4 LCLB

- Food Primary Licence #303772 for 2012
- Food Primary Licence #303772 for 2011
- Handwritten meeting notes from Lucia Cumerlato dated May 3, 2011
- LCLB Compliance Meeting dated May 3, 2011
- Letter to Lamea Abduraham from LCLB dated April 5, 2011
- E-mail from LCLB, Melanie Mahon to Lucia Cumerlato dated April 5, 2011
- Letter to Champion Pizza from LCLB dated May 31, 2010
- Application package for Permanent Amendment to Hours of Liquor Service for Food Primary Liquor Establishments dated April 12, 2010
- Floor plan stamp dated December 22, 2009

5 Police Department

- Police Report #2011-179486 dated November 3, 2011
- Police Report #2011-114840 dated July 21, 2011

The Panel also had before it a supplemental evidence package containing the following documents:

- Police Report #2012-20790 dated February 9, 2012;
- Police Report #2012-22016 dated February 11, 2012.

Robert Penkala, Solicitor, Law Department, represented the City of Vancouver. Mr. Penkala noted neither the Licensee or her agent were present and suggested a short recess to allow them to arrive. The Panel agreed to recess for 15 minutes.

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The Panel recessed at 9:34 am and reconvened at 9:47 am with the same members present.

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Following the recess, Mr. Penkala introduced Yadigar Akram Muhammad as the authorized agent for the Licensee.

Mr. Muhammad explained he has been unable to retain a lawyer due to financial hardship and requested the hearing be postponed until next month to allow him to retain legal representation.

Mr. Penkala noted the original hearing was January 25, 2012, and read from a letter from the City's Legal Department dated January 25, 2012, which discussed the conditions for a postponement. In particular, Mr. Penkala noted the Licensee's legal representative must confirm no later than February 14, 2012, that he will represent the licensee at the hearing which would then be rescheduled for April 4, 2012. If the lawyer was unable to represent Mr. Muhammed, the hearing would be rescheduled for March 7, 2012

Mr. Penkala submitted that he called Larry Smeets, Smeets Law Corporation, on or about February 14, 2012, to confirm that he would represent Mr. Muhammad. At this time, Mr. Smeets indicated he had not been officially retained, but anticipated he would represent Mr. Muhammad at the hearing. The hearing was therefore rescheduled for April 4, 2012.

In response to a question from the Panel, Mr. Penkala noted Mr. Muhammad has had ample opportunity to retain legal counsel, Mr. Smeets indicated he anticipated representing Mr. Muhammad, and that the formal Licensee, Lamea Kha Hama, who is also Mr. Muhammad's mother, has not communicated any concern about legal representation, or lack thereof, at the hearing.

The Panel agreed to proceed with the hearing.

Mr. Penkala advised this appeal of the Chief Licence Inspector's suspension had been brought before Council pursuant to Section 277 of the *Vancouver Charter*, and in accordance with Section 17 of the City of Vancouver *Procedure By-law*. He noted Council's discretion to uphold, reverse, or vary the suspension after considering whether or not the Licensees' operation of the business constituted gross misconduct.

Mr. Penkala referred the Panel to the reasons for the Chief Licence Inspector's suspension of the Business License, as set out in the Notice of Hearing dated January 10, 2012. At issue was the opinion of the Chief Licence Inspector that the Licensee had failed to properly manage the business by:

- (a) violating the terms of the City of Vancouver business licence and of the liquor licence issued by the British Columbia Liquor Control and Licensing Branch, by serving alcohol after service hours and failing to ensure that alcohol is taken from patrons within one-half hour after permitted liquor service hours contrary to municipal and provincial licensing regulations;
- (b) failing to maintain adequate control of the Premises by allowing patrons to consume illicit substances on the Premises;
- (c) failing to demonstrate compliance after previous enforcement actions taken by

the City and by the Liquor Licensing Branch based on similar contraventions;
and

- (d) causing a drain on police and City resources.

Mr. Penkala also discussed the scope of the Panel's discretion and the principles of procedural fairness, in particular the requirements of notice, the opportunity to be heard, impartiality, and reasons for the Panel's decision. Mr. Penkala noted if Council finds there was gross misconduct in operating the business, Council may decide on a suitable penalty that is different from the Chief Licence Inspector's suspension, including revoking the business licence and that Section 275 of the *Vancouver Charter* gives Council the power to revoke a business licence. Finally, Mr. Penkala submitted that while Council must disregard irrelevant issues in its decision, as elected representatives Council's view of the public interest is a valid consideration.

In support of the allegations set out in the above-noted reports and evidence, Mr. Penkala called the following witnesses:

1. Inspector Melanie Chalmers, BC Liquor Control and Licensing Board
2. PC Shaif Manji, Vancouver Police Department
3. PC Cheryl Weeks, Vancouver Police Department
4. PC Jenn Weber, Vancouver Police Department
5. PC Kim Rossiter, Vancouver Police Department
6. PC Alan Bridges, Vancouver Police Department
7. Det/Cst Alex Clarke, Vancouver Police Department
8. Tom Hammel, Deputy Chief Licence Inspector

Mr. Penkala, the Panel and Mr. Muhammad also directed questions to the witnesses.

Upon questioning from the Chair, Mr. Muhammad indicated he had witnesses to call however they were not present today as he had been anticipating a postponement of the hearing.

The Panel agreed to recess for 30 minutes to allow Mr. Muhammad to call his witnesses.

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The Panel recessed at 12:15 pm and reconvened at 12:47 pm with the same members present.

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Following the recess, Mr. Muhammad was provided with the opportunity to make submissions to the panel.

Mr. Muhammed described a number of events involving his interactions with police over the past two years, and submitted the City's witnesses were telling a different story than the actual events that took place. He stated that the first suspension of the business licence in

September 2011, was unfair, because there had been no liquor present and the police report describing the incident was not accurate.

With regard to the incident of late liquor service in February, 2011, observed by PC Bridges, Mr. Muhammad told the panel that he had advised the employee involved to observe proper hours of service, further explaining that the employee who had served liquor after hours had been terminated.

With regard to the undercover operation undertaken by the Vancouver Police Department on November 4 and 5, 2011, Mr. Muhammad noted he was not on the premises on those evenings and when he reviewed the security footage two weeks later, he did not see any evidence of after-hours service. Subsequently, when he tried to transfer the video data to a DVD disc, the file had already been deleted even though the system was originally supposed to save it for 30 days.

In support of his testimony, Mr. Muhammad called Esmail Satamdibeh, one of his employees, as witness. With Mr. Muhammad providing interpretation, Mr. Satamdibeh reported that on the nights of November 4 and 5, 2011, liquor was only served within the hours noted on the liquor licence and was cleared off the tables in the required timeframes of the licence.

The Panel and Mr. Penkala also asked questions of Mr. Muhammed and his witness, with Mr. Muhammed again acting as interpreter for his witness. Under examination by Counsel, Mr. Muhammad and Mr. Satamdibeh stated that Mr. Satamdibeh's role as an employee did not include service of liquor at the restaurant.

In closing, Mr. Penkala, noted the evidence points to repeated violations of the licensee's obligations relating to liquor service, and a series of steps in progressive enforcement were taken by the Chief Licence Inspector, resulting in the suspension disputed in this appeal. He submitted that the Panel's task is to assess and weigh the evidence, specifically given that the evidence provided by the undercover police operation is at odds with Mr. Muhammad's testimony. Mr. Penkala further submitted that in weighing the evidence and assessing its credibility, the very clear evidence provided by the undercover operation should be preferred to the evidence supplied by Mr. Muhammad and his witness. Mr. Penkala also noted that there is some question as to whether the premises was acting as a food primary operation as there was scant evidence of food service. Mr. Penkala finished his closing comments by noting that in a regulated field the regulated person has chosen to enter that field and can be expected to know and to have accepted the regulatory requirements. The Panel should determine whether a reasonable standard of care was taken to perform this regulated activity, and in the absence of evidence that persuades the Panel that Mr. Muhammad has taken reasonable steps to mitigate the contraventions, and in light of evidence of a very marked departure from the standard expected of a competent licensee, the suspension should be upheld.

In closing, Mr. Muhammad submitted that he is working hard to train his employees to the standard required and that because business is slow, he is undergoing some financial difficulty. He noted problems in the immediate neighbourhood affect the perception of his business though this is not in his control, and that due to these challenges, he may in future have to leave the business.

PANEL MEMBERS DISCUSSION

The Panel noted evidence brought forward by the Vancouver Police Department and the Deputy Chief License inspector is more credible than Mr. Muhammad's evidence, they have concerns about recurring issues that do not respect the license holder's duty to the community which constitutes gross misconduct and therefore warrants an increase in the penalty.

MOVED by Councillor Carr

THAT the suspension by the Chief Licence Inspector of the 2012 Business Licence issued to Champion Pizza Inc. doing business as Yadi's Eatery, located at 1181 Granville Street, Vancouver, British Columbia, be increased to 20 days because the Licensee has:

- (a) violated the terms of the City of Vancouver business licence and of the liquor licence issued by the British Columbia Liquor Control and Licensing Branch, by serving alcohol after service hours and failing to ensure that alcohol is taken from patrons within one-half hour after permitted liquor service hours contrary to municipal and provincial licensing regulations;
- (b) failed to maintain adequate control of the Premises by allowing patrons to consume illicit substances on the Premises;
- (c) failed to demonstrate compliance after previous enforcement actions taken by the City and by the Liquor Licensing Branch based on similar contraventions;
and
- (d) caused a drain on police and City resources.

CARRIED UNANIMOUSLY

The Business License Hearing Panel adjourned at 2:10 pm.

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