

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES: THE DUSTBOWL

LICENSEE: Cheap Charlie1 Pty Ltd

LICENCE NUMBER: 80806440

NOMINEE: Greg Boaz

PROCEEDING: Complaint pursuant to s.48(2) of the *Liquor Act*

COMPLAINANT: Licensing Inspector Leanne Daniels

HEARD BEFORE: Mr John Flynn (Presiding)
Ms Brenda Monaghan
Ms Annette Smith

DATE OF HEARING: 28 April 2005

DATE OF DECISION: 28 April 2005

APPEARANCES: Mr Chris McIntyre, for the Complainant
Mr Murray Preston, for the Licensee

1. This complaint arises from an alleged breach of s110 of the *Liquor Act* following the service of liquor to two licensing inspectors on 22 December 2004. The inspectors were not at the time ten pin bowling players nor were they bona fide spectators and therefore were not eligible to be served liquor under the terms of the licence.
2. The Licensee, Cheap Charlie 1 Pty Ltd, through its solicitor Mr Preston has admitted the complaint and has accepted the tender of "agreed facts" which in essence contain the contents of the statutory declaration of Licensing Inspector Terrence James Newcombe appearing in the Brief at pages 3 and 4.
3. At the request of the Licensee, we attended the licensed premises before hearing oral submissions. That viewing made it clear that the licensed premises are in essence two distinct areas quite separate from each other. One area is the bowling alley itself with tables and chairs for players and

- spectators to sit and to drink alcoholic beverages purchased from the bar which is situated within this area. The other area (the dining area) contains the restaurant known as *Rudi's Trattoria and Pizzeria* where bona fide spectators and players can currently under the terms of the licence be served with liquor so long as a meal is also purchased.
4. Mr McIntyre on behalf of the Director of Licensing made submissions relating to penalty. He submitted that this is the 4th proven breach of licence conditions against a licensee where Mr Greg Boaz was a nominee. The previous three breaches in February 2003, July 2003 and August 2004 related to a different venue namely the Gap View Hotel. Those breaches all related to serving liquor to an intoxicated person and all resulted in a brief suspension of the liquor licence as the penalty.
 5. Mr Preston emphasised to the Commission that the licensee in those three previous cases was a completely separate company called CC1 Pty Ltd and this fact is noted by the Commission. Of more importance to the Commission however is the fact that Mr Greg Boaz is a nominee in this current complaint and in the three previous complaints. We are not dealing here with a licence where those in charge do not understand the licence conditions or the ramifications of breaching that licence.
 6. Mr Preston in his submissions gave us a brief rundown of the history of the licenced premises in question and Mr Boaz's involvement in these premises. He submitted that under the current licence, it was difficult for the staff to properly "police" the validity of patrons of the restaurant area to ensure that they were in fact bona fide spectators or players. The restaurant maintained a book for such persons to sign-but he admitted that this system was less than successful on its own to ensure that the licence terms were not breached. He submitted that at present , the only way to attempt to ensure that liquor was not sold in breach of the licence was to rely upon the vigilance of the staff.
 7. Mr Preston submitted that this present breach was a less significant breach than breaches such as serving intoxicated persons or serving minors - and we accept this submission. He also submitted that it was not a deliberate breach and was more a case of a staff member making a mistake on a busy night.
 8. As regards the question of penalty, Mr McIntyre referred the Commission to the two day suspension handed down against Melanka Lodge in April 2004 when they breached their licence by selling takeaway liquor. He submitted however that short suspensions do not appear to have worked in the past when imposed on premises in which Mr Boaz was the nominee and therefore a lengthy suspension was appropriate.
 9. In reaching a decision in this matter, we have taken into account all submissions made to us including the following matters:
 - that this is the first complaint against this Licensee but that the Nominee Mr Boaz is an experienced nominee whose previous history with complaints procedure means that he should know full well the importance of ensuring that the licence conditions are not breached;

- the acceptance by the Commission of the submission by Mr Preston that it is difficult under the present licence conditions to effectively “police” the question as regards who may or may not be bonafide spectators.
10. We consider that an appropriate penalty is one that attempts to assist in preventing further breaches of this specific licence provision. We considered varying the licence to allow only bowlers to be sold liquor to alleviate the problem of ascertaining who were bona fide spectators. This variation appeared too harsh however.
 11. A more appropriate variation is for the licence conditions to be temporarily varied so as to remove the liquor licence from the dining area. This still allows bona fide spectators and bowlers to have a drink in the bowling alley but they must finish those drinks before moving into the dining area.
 12. The temporary variation shall take effect from 6pm on 29 April 2005 and continue until a decision is made on the variation application which is to be heard on 17 May 2005.
 13. The practical consequences of this decision are that all liquor must be removed from the dining area and a sign must be placed in a visible area advising patrons of the variation. The Commission at its meeting of 1 September 2004 granted approval for alterations subject to the strict condition that the dining area may not operate as a public restaurant. The further consequence of this decision is that the dining area is no longer licensed and can operate as a public restaurant. However, liquor may not be taken from the bowling area to the restaurant as this would constitute a take-away sale and a breach. There is no reason why the public cannot bring liquor into the restaurant on a BYO basis for consumption with a meal.
 14. This decision of the Commission in no way anticipates or otherwise fetters the hearing into the variation of licence conditions.

John Flynn
(Presiding Member)
Delivered 28 April 2005

