

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

Premises:	Cazalys Palmerston Club
Licensee:	Cazalys Palmerston Club Inc
Licence Number:	81416400
Proceeding:	Complaint pursuant to Section 48(2) of the <i>Liquor Act</i> – Breach of Licence conditions – sell liquor to non-members
Decision By:	Mr Craig Spencer
Date of Hearing:	11 August 2005
Date of Decision:	29 August 2005
Appearances:	Graham Buckley – Licensee Solicitor Greg Frewen-Lord – Nominee Greg Lye – Director of Licensing

Background

1. This matter was a complaint lodged by the Director of Licensing alleging the sale of liquor to a non-financial member of Cazalys Palmerston Club.
2. The sale of liquor, namely a bottle of wine valued at \$13.00 occurred about 11.20 am Thursday 26 May 2005. The sale was to a member of the staff of Racing, Gaming and Licensing who was not a member of Cazalys Palmerston Club.
3. The allegation by the Director of Licensing was that Cazalys Palmerston Club breached one of its core licence conditions that states in part:

Liquor shall be sold only for consumption away from the licensed premises to financial members only during the following hours:

- (i) *Sunday to Friday inclusive between the hours 10:00 and 22:00.*

4. At the Commission July 2005 Monthly meeting, a number of similar complaints were referred to it by the Director of Licensing. The Commission determined that this matter would be referred to hearing which was one of the recommendations.

5. The Director of Licensing and the Licensee agreed on the facts of this matter. Being satisfied a breach had been proven, submissions were made as to penalty.
6. There was argument presented by the Director of Licensing and the Licensee's counsel with regard to information contained within the brief relating to an incident that occurred at the premises on Thursday 1 June 2000. The substance of that incident was a carton of beer was sold for consumption away from the premises to a non financial member of the club. The complaint was withdrawn.
7. A ruling was made that the information would be admitted as it was relevant to this matter, from the perspective that it was an acknowledgment by the Club that it does take this type of breach seriously and that it did undertake certain actions to the satisfaction of the Director of Licensing in 2000. It was also further taken that this incident did occur 5years ago and in the correspondence, there was no indication by the Director of Licensing that there would be any carry over effect associated with it.
8. Counsel for the Licensee made submissions that this is the first offence of its type since it commenced six (6) years ago, entered an early guilty plea, do take this matter seriously and have been cooperative. The staff member concerned inadvertently breached the condition.
9. Evidence was given by various witnesses for Cazalys Palmerston Club with regard to active measures it has taken, with most in place since 2000, to prevent a breach such as this one from occurring, namely:
 - Induction Manual
 - Induction Training sessions
 - Signs throughout the premises
 - Constant reminders from management to staff
10. There was further evidence given of a number of new measures being considered or proposed to be taken or that have only been taken in the last week even though the incident occurred over two months ago. It should be stated that the Commission does have some concerns that these measures were not taken sooner. The measures are:
 - Internal audits
 - Timesheets having a paragraph inserted to remind staff
 - Pay advises having a paragraph inserted to remind staff
 - Inquiries with the computer software company to ascertain if it is possible to only operate the cash register by the swiping of a valid membership card

11. The Licensee's counsel did submit there were a range of options available to the Commission on how to deal with this matter. However, he submitted that any penalty should be at the lower end of intervention such as deferring any further consideration of the complaint based on their understanding of the seriousness of the matter and the measures referred to above.
12. On the other hand, the Director of Licensing clearly indicated that this breach was of a core licence condition. Further, he submitted that if a period of suspension was to be considered, suspending it would be appropriate.
13. In determining this matter and the associated penalty, the Commission seriously took into account the submissions of the Licensee while balancing them against a breach of a core licence condition. The various options available have been considered in determining the penalty.
14. It is important for those operating Clubs to understand the condition is central to its existence and is intentionally and deliberately designed to distinguish clubs from other licensed premises such as hotels and taverns. Ignoring the membership limitations, blurs the distinction between these types of licensed premises and others.
15. The Commission is very mindful that the Licensee has clearly indicated that it takes this matter seriously and that there would be not further instances of non financial members being served due to the measures they have taken or intend to take. As such, the Commission accepts these submissions on face and has taken them into consideration in determining penalty.

DECISION

16. That the breach of its licence, namely selling liquor to a non-member, is proved and is to be recorded.
17. That the breach is of sufficient gravity the penalty for the breach is to be the suspension of all sales of liquor for consumption of liquor away from the premises (take away sales) for the period of one (1) day, a Thursday.
18. That the penalty imposed be suspended for a period of twelve (12) months as of the date of this decision on the basis that during that twelve month period, no further breach of this particular licence condition occurs. This is intended to enable the Licensee to provide tangible evidence of a commitment to their submissions.

19. In the event of a further breach occurring during the twelve month period, on the breach being found proved or accepted by the Licensee, the suspension will apply to a Thursday as nominated by the Director of Licensing within a reasonable period of time after the breach being found proven or accepted by the Licensee. The suspension will be in addition to any other penalty that may be imposed by the Commission with regard to the subsequent breach.

Craig Spencer
Member