

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES:	TIWI SUPERMARKET
LICENCE NUMBER:	80903294
COMPLAINANT:	Director of Licensing
HEARING:	Penalty decision regarding Complaints pursuant to Section 48 of the <i>Liquor Act</i> - Breach of Licence conditions (bookup of liquor) contrary to section 110 of the <i>Liquor Act</i> and breach of section 33E(1) of the <i>Liquor Act</i> (retention of a persons debt card as security for payment for liquor)
HEARD BEFORE:	Mr John Flynn Mrs Veronica McClintic Ms Brenda Monaghan
DATE OF HEARING:	11 August 2006
APPEARANCES:	Complainant – Mr Phil Timney Licensee – Self Represented

1. On 17 May 2006, the Commission handed down a decision upholding two complaints against the Licensee of Tiwi Supermarket, Mrs Jannie Mathers. The circumstances were that on 7 December 2005, employees of the Licensee engaged in the bookup of liquor and further that employees of the Licensee retained the debit card of a customer as security for the purchase of liquor.
2. On 11 August 2006, the hearing reconvened to hear submissions on penalty. Mrs Mathers, the Licensee, appeared on her own behalf with Mr Timney appeared as counsel for the Director of Licensing.
3. We have listened to Mrs Mathers and read her personal references. We accept that she is a person of good character but we do not accept that she has properly conducted the business of the licensed premises with regard to the question of book up. We note that Mrs Mathers is not involved full time in the management of the Tiwi Supermarket business and that she herself was not personally involved in

the latest breaches on 7 December or in any of the prior breaches that have been dealt with by the Commission. We are fully aware that she genuinely believes that her husband as manager and her staff would not be knowingly involved in breaching the licence or the Act. As we have preferred the evidence of Mr Pascoe and his cousin to that of Mr Mathers and the other staff member, we can only question Mrs Mathers' blind faith in those she relies on to protect her interests.

4. Since taking over the licence some six (6) years ago, this Licensee has appeared in front of the Commission on three (3) occasions. On the first occasion, the complaint was for selling liquor to an intoxicated person. Whilst there were some mitigating factors in that Mr Mathers tried to "reverse" the sale when he realised that the customer was intoxicated, the complaint was upheld and a one (1) day partial suspension was imposed. The penalty was described by the Presiding Member as "*the very fainted touch of the lash*". He went on to say however, "*We do regard the incident as indicative of a culpable slackness of management at that time...*". The Commission also noted the submissions placed before them that Mrs Mathers would be "*more hands on and be able to be more dedicated to managing the licence*".
5. Despite submissions made about better supervision of her licence, Mrs Mathers appeared before the Commission in 2005 when she admitted to four (4) complaints of bookup. Once again, these incidents were circumstances where she herself was not responsible for the breaches but her employees were. The complaints related to incidents that occurred over an extended period (in May, June, July and October 2004) when liquor was sold on book up to various customers. In considering penalty for those breaches, the Commission gave the Licensee credit for admitting the breaches and noted that had they been upheld after a full hearing, "*a lengthy suspension*" would have been imposed. Once again the Commission commented on the level of supervision of the Licensee as follows: "*At the very least we are of the view that there was a complete lack of supervision or direction given by the Licensee to her employees.*" The Commission then gave what we see as a modest penalty of seven days (7) for these breaches.
6. Mrs Mathers once again finds herself before us – and once again it is not for her own deliberate actions but those of her employees including her husband. This is no excuse however. Mrs Mathers is the Licensee and she must "conduct the business" of the licensed premises. She remains responsible for the actions of her husband and her staff in the course of their duties undertaken on her behalf. It appears to us that Mrs Mathers is either unwilling or unable to control her agents.
7. Mr Timney submitted persuasively that we should cancel the Liquor Licence relating to these premises. He emphasised that these breaches were serious in that the likely results of selling takeaway alcohol by book up include anti social behaviour and public drunkenness. He emphasised the steps taken by parliament to try to prevent these sales.
8. We have seriously considered cancellation of this licence. It seems that two (2) previous appearances before the Commission when a more lenient approach was taken have had no impact on the conduct of the Licensee or her staff. We can see the major failing of this Licensee is the inability to properly supervise and control her staff and this is an ongoing concern for us.

9. Ultimately, however, we have decided not to cancel the licence but to do what we have threatened to do in the past, which is to impose a lengthy suspension. We see the imposition of this suspension as a last chance for Mrs Mathers to ensure she maintains proper control of her licence. Further breaches of a similar nature will undoubtedly lead to a cancellation of this licence. Under these circumstances, we intend to impose a suspension of fifty-six days (8 weeks) commencing fourteen days (14) after the date of this decision.

John Flynn
CHAIRMAN

18 August 2006