

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES:	SQUIRES TAVERN / THE TIME NIGHTCLUB
LICENCE NUMBER:	80300317
COMPLAINANT:	Director of Licensing
HEARING:	Complaint Pursuant to Section 48 of the <i>Liquor Act</i> – Underage on Licensed Premises and Breach of Camera Surveillance Requirements
HEARD BEFORE:	Ms Brenda Monaghan (Acting Chairperson) Mrs Veronica McClintic Mrs Jane Large
DATE OF HEARING:	10 October 2006
DATE OF DECISION:	14 November 2006
APPEARANCES:	For Complainant – Mr G Lye on behalf of Northern Territory Police For Licensee – Mr Ian Rowbottam

1. Complaints have been laid by the Northern Territory Police against the Licensee, J&L Investments Pty Ltd of Squires Tavern for the following breaches:
 - a. That on 16 July 2005, the Licensee through its agents allowed a minor to enter and remain on licensed premises at a time when the presence of minors was prohibited under the terms of the licence; and
 - b. That the Licensee breached the terms of both the liquor licence and the Camera Surveillance Guidelines in failing to provide a copy of camera surveillance footage upon request.

At the hearing before the Licensing Commission on 26 October 2006, Mr Rowbottam, Counsel for the Licensee, admitted both breaches.

2. A complaint of allowing a minor to enter and remain on premises was the subject of a prosecution in the Court of Summary Jurisdiction and on 17 August 2006, the Nominee, Mr Grant Cain pleaded guilty to the charge. A conviction was entered and Mr Cain was fined \$300 plus victim levy of \$40 and prosecution costs of \$710.

The guidelines set out in s124AAA (2) of the *Liquor Act* prescribe a schedule of maximum penalties which may be applied by the Commission following a conviction of the Licensee for certain offences including the one in question. The prescribed maximum penalty for a first offence is a 24 hour suspension. Whilst it was the Nominee and not the Licensee (a body corporate) who was convicted in this matter, s25(3) of the *Liquor Act* states:

(3) For the purposes of this Act, the manager of the licensed premises nominated by a body corporate shall be deemed to be the person licensed in respect of the premises and the premises shall be deemed to be his licensed premises or the premises in respect of which he is licensed.

This means that the application of s124AAA is appropriate in this matter with respect to this breach.

First Breach - Minor on Premises

3. With respect to the first breach of allowing a minor to enter and remain on premises, the relevant facts are as follows:
 - a. The minor, Donna Fisher, was aged fifteen (15) on the night in question.
 - b. She entered the premises with another female who was a former employee of the Licensee. There was little or no attempt by security staff at the door to check the minor's age.
 - c. Over a 45 minute interval, the minor admitted to drinking at least three (3) beers purchased for her by others.
 - d. When Police entered the premises, they undertook an inspection and noted her presence and the fact that she appeared to be underage. When questioned by them, she stated her age as 16.

4. In his submissions on behalf of the Licensee, Mr Rowbottam asked us to take into account the following matters:
 - a. That a Licensee must rely on employees and agents to do the right thing. In this case, the security officer at the entrance did not do the right thing and the Licensee must bear the consequences.
 - b. That the security officer may well have been lulled into a false sense of security when the minor arrived with a former employee because he would not have suspected a former employee to behave so irresponsibly.
 - c. That some weight should be placed on the fact that the services of the security officer were terminated as a direct result of this breach.
 - d. That neither the Licensee as a corporate entity nor the directors individually have ever been the subject of a complaint to the Licensing Commission and credit should be given for that.

- e. Mr Lye, for the Complainant, placed fifteen (15) years of age at the time of the breach and that Police had no difficulty in identifying her as a likely underage drinker when they conducted their inspection on the night in question; and
 - f. That historically, the Licensing Commission has considered breaches involving minors to be one of the most serious breaches of the Liquor Licence that a Licensee can commit.
5. Mr Rowbottam submitted that in the circumstances before us, it would be an appropriate case to consider a fully suspended suspension. Mr Lye submitted that a two (2) day suspension (not suspended) was more appropriate. As we have decided to give a combined penalty for both complaints, we will consider the second complaint before imposing penalty.

Second Breach-Camera Surveillance

6. The admitted complaint is that the Licensee breached the terms of both the liquor licence and the Camera Surveillance Guidelines in failing to provide a copy of camera surveillance footage upon request. With regards to this breach we take into account the following matters:
- a. The system in place at the time of breach complied with camera surveillance guidelines. The problem was that when footage was first requested, Mr English was interstate for family reasons and no other responsible person was trained to download the tape requested by Police. Later, when Mr English returned and attempted to download a copy, he realised that the footage was no longer available due to a technical problem (where more footage was erased than expected).
 - b. There is an acceptance in this matter that there was no attempt to hide or destroy evidence on the part of the Licensee or staff. Ms Castela had in fact offered the Police the entire hard drive to take away so as to enable them to download the footage. What she couldn't do was download it herself.
 - c. We note the advice of Mr English that he is in the process of preparing a manual and is training appropriate staff to enable them to download footage if he is unavailable.
7. We see the main issue in this case to be the fact that the Police had to request footage on several occasions. The guidelines require production upon request, not following numerous requests-and even more so when the footage is ultimately unavailable.

Penalty

8. We have taken into account all submissions made to us by Counsel. As regards the breach involving a minor on licensed premises, we must take seriously the presence of a fifteen (15) year old minor on licensed premises. It is simply not acceptable to argue that security on the door may have been misled by the fact that she entered with an older ex-employee. Police seemed to have no difficulty in identifying her as a potential minor so there is no reason for security to allow her to enter unchallenged. It is noted that the minor appeared to sit quietly in the background and that she did not approach the bar. She was drinking however. It is also noted that the Nominee Mr Cain has already pleaded guilty and been convicted of an offence in the Magistrates Court as a direct result of this incident and that must be taken into account. So too must the fact that the Licensee has been proactive in addressing security issues that lead to this unfortunate incident occurring.
9. As regards the second breach of non-compliance with Camera Surveillance Guidelines, we take account of the proactive steps the Licensee has taken to address any security problems since this breach. As the first breach deserves slightly less than the maximum penalty in s124AAA and the second breach warrants some lesser penalty, we intend to impose a combined penalty for both breaches in the form of a suspension of the liquor licence for Squires Tavern for one (1) day on Tuesday 28 November 2006.

Brenda Monaghan
ACTING CHAIRPERSON

14 November 2006