

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES:	THE VICTORIA HOTEL Smith Street Mall Darwin NT 0800
LICENSEE:	REVICTION PTY LTD
LICENCE NUMBER:	80300989
NOMINEE:	Stephen Taylor
PROCEEDINGS:	Hearing into a Complaint Pursuant to Section 48(2) of the <i>Liquor Act</i> – Breaches of Section 110
HEARD BEFORE:	Mr Richard O’Sullivan (Chairman) Ms Brenda Monaghan (Legal Member) Ms Kerri Williams
DATE OF HEARING:	28 September 2009
APPEARANCES:	Mr Martin Bottonfsen for the Licensee Mr Allan Borg for the Director of Licensing

BACKGROUND

- 1) A complaint against the Licensee was lodged by Inspector McCorkell with the Director of Licensing in May 2009. The complaint alleges that the Licensee breached licence conditions in its manner of trade in the Courtyard area on Saturday 2 May 2009 (the evening of its publicised Wet Dream Ball) when the Courtyard did not have the appearance of being used as an Alfresco Dining Area.
- 2) The matter proceeded to a hearing before the Commission on 28 September 2009 where the breach was admitted by Mr Bottonfsen, the General Manager of the Hotel and submissions were made on penalty.

HEARING

History of Complaint

- 1) The Commission is advised that the Director first heard about the Wet Dream Ball when on 23 April 2009 he received an application for a temporary variation to allow the use of the Courtyard for the event. He also became aware of the contents of a poster advertising the event around town. The contents of the poster including 'Best Blow Job Competition' and 'Amateur Strip Show' were clearly in breach of the published Adult Entertainment Guidelines and licence conditions of The Victoria Hotel (the Hotel). After discussions and correspondence between Licensing Inspectors and the Nominee of the Hotel, Mr Taylor, the publicity posters were removed from public display.
- 2) On 27 April 2009, a report was prepared for the Licensing Commission by the Director of Licensing regarding the Hotel's application for a temporary Variation to enable them to use the Courtyard for the Wet Dream Ball and to allow patrons to stand in that area.
- 3) The Director's report noted that:

- (a) the licence conditions for the Courtyard state:

"The Courtyard Alfresco Dining Area shall always have the appearance of a restaurant. Patrons are permitted to stand on the proviso that table seating for at least 80% of the permitted patron capacity for the area must be available at all times."

And the licence further states:

"The Licensee shall not permit or suffer the emanation of noise from the Licensed Premises including the Courtyard of such nature or at such levels as to cause unreasonable disturbance to the ordinary comfort of lawful occupiers of any residential premises."

- (b) The Courtyard area is designed for alfresco dining and it has no special design measure to facilitate noise abatement;
- (c) The roller door which had previously sealed the Courtyard enclosure at night is no longer in existence;
- (d) The roof of the Courtyard is open to the air thus allowing the escape of noise.; and
- (e) In light of the above noise abatement concerns, the Director recommended that the application for temporary variation to the Courtyard

conditions for the Wet Dream Ball be refused by the Licensing Commission.

- 4) On 27 April 2009, the Licensing Commission considered the relevant material and refused the licence variation to allow the Courtyard to be used for purposes other than as an Alfresco Dining Area. The Nominee was advised of this refusal and the reasons for it by letter of 27 April 2009.
- 5) On 2 May 2009, the Licensee held the Wet Dream Ball at the Hotel. Inspectors attended at the Hotel at 11.30pm and noted loud music emanating from the premises into the Mall. They recorded a 90 decibel reading. Whilst the Ball patrons were principally being catered for inside the Hotel itself, Inspectors observed that the Licensee was using the Courtyard as part of its licensed area and was allowing patrons to remain in this area and consume alcohol as if the area was an extension of the Ground Floor bar. The large glass sliding doors between the Bar and the Courtyard were open allowing free movement of patrons between the two spaces. Plastic tables and chairs were arranged in the Courtyard but the area did not have the appearance of a restaurant and no dining or consumption of food was taking place. Inspectors spoke to the Nominee who then closed the Courtyard area to patrons and closed the glass doors to contain the noise.
- 6) Following this event, a complaint was lodged by Licensing Inspectors with the Director of Licensing. By letter dated 7 May 2009, the Licensee was advised of the complaint and provided with the opportunity to respond. No response was received and the Commission ultimately elected to conduct a hearing into the matter.

Submissions of Director

- 7) At the Hearing, Mr Borg emphasised the fact that despite a refusal by the Licensing Commission to allow a temporary variation to licence conditions, the Hotel proceeded to use the Courtyard as if a variation had been granted.
- 8) Mr Borg submitted that the Nominee Mr Taylor displayed an attitude of disrespect towards the Commission including the following:

When the Nominee was advised that the Wet Dream Ball poster advertising a "Best Blow Job" competition and "Amateur Strip Show" etc was in breach of the Commission's Adult Entertainment Guidelines, he sent an email to Inspector McCorkell which advised that the Nominee didn't want *"to be prosecuted for prostitution or upset the nuns at the foot of the Himalayas"* and that *"Basically we will have a pub full of naked, disappointed drinkers."*

Mr Taylor knew full well that the Commission had refused the application for use of the Courtyard for the Wet Dream Ball and he blatantly flouted the ruling; and

When the Director served a complaint against the Licensee following the Wet Dream Ball, the Licensee's failure to provide any written response was symptomatic of the Hotel management's general attitude towards the Commission ruling.

- 9) Mr Borg submitted that the Commission had shown some leniency towards the Hotel in its previous decisions. In relation to penalty in this instance, he suggested that the original Commission decision allowing the Courtyard to be used for alfresco dining and some special events should be reviewed by the Commission of its own motion. Alternatively, consideration should be given as to whether the Commission should prohibit the use of the Courtyard by the Hotel in future or at least prohibit it being used for future events.

Submissions of the Licensee

- 10) At the hearing, Mr Bottonfsen appeared on behalf of the Licensee and made the following submissions:
- (a) Mr Bottonfsen was appointed General Manager of a group of licensed premises including the Hotel a week or two before the Wet Dream Ball so his knowledge of the planning for the event and the correspondence between the Nominee and the Director was limited;
 - (b) On the night in question, the Courtyard was only intended to be used for backpacker's meals and this had occurred earlier in the evening. The main Ball took place upstairs within the Hotel and whilst conceding that the Courtyard remained open after food service had ended, there were few patrons who elected to remain down there;
 - (c) Whilst it may look like the Hotel management were trying to 'pull the wool over their eyes' and continue to use the Courtyard despite the Commission's ruling, this was never their intention. In fact, as soon as inspectors visited on the evening in question and expressed concerns, Hotel management and security immediately responded and cleared the Courtyard;
 - (d) Changes in Hotel management have occurred since Mr Bottonfsen's appointment. Both the Nominee and Duty Manager who were involved in this incident are no longer employed at the Hotel. Mr Bottonfsen emphasised that he takes this matter very seriously and that his vision for the Hotel in the future will be based on a business model of sociable, relaxed trade. To this end, there are plans to refurbish the Courtyard area

with an emphasis on dining and an application for approval is currently lodged with the Director.

CONSIDERATION OF THE ISSUES

11) The Commission has taken into account all of the submissions made by the parties at hearing and the documents contained in the hearing brief. In particular, it notes the following:

(a) In 2005, the applicant sought to extend the licensed area to encompass the newly renovated court yard area (the Courtyard) located between the Smith Street Mall and the internal access route to West Lane. The written application stated: *'the licensing of this area will primarily be for the purpose of alfresco dining, with an emphasis on lunchtime catering and early evening. To facilitate the objectives of the Liquor Act (S3) the area has been renovated with a clear focus on emphasising and presenting the history of the Victoria Hotel (Vic. Hotel) as an icon of Darwin. The alfresco dining in this area is to appeal to a specific market, which is a mature demographic, including tourists and locals wishing to have a quiet alcoholic beverage with their meal.'*

(b) The application was advertised for alfresco dining with no mention of the use of the Courtyard for special events. It attracted no objectors. During a viewing of the premises, the Commission was asked to allow the Licensee to use the Courtyard from time to time for special functions in the evening when use by the public of the access way through the Vic Arcade had ceased.

(c) In its decision, the Commission approved the use of the Courtyard as requested and envisaged by the Licensee. The 2005 decision clearly states the manner in which the Courtyard is to be used and the circumstances when approval is required before such use. It states:

"that it is part of the concept of this licence that:

i) the Courtyard shall be used principally and primarily for alfresco dining and shall not be operated as if it were a beer garden or as an extension of the ground floor bar;

ii) The area may be used from time to time for special events such as the Hooker's Ball, Halloween and a New Years Eve party provided that the Licensee applies within the specified time to the Director of Licensing for a Temporary Variation of the Liquor Licence.

iii) Should the usage of the Courtyard area be considered by the Commission, a Licensing Inspector or Police Officers to be inconsistent with such concept, the Commission may of its own motion convene a

hearing into the operation of the premises and, at the conclusion of the Hearing, may suspend, cancel or vary the licence if the Licensee in the opinion of the Commission shall have failed to show sufficient cause to the contrary.

iv) The Licensee shall not permit or suffer the emanation of noise from the Licensed Premises including the Courtyard of such nature or at such levels as to cause unreasonable disturbance to the ordinary comfort of lawful occupiers of any residential premises.

- 12) One of the main frustrations for the Commission is caused when licensed premises ignore their licence conditions and trade in a manner that is inconsistent with those conditions. This is not a matter that the Commission can take lightly. In the case in question, whilst the breach was not significant in nature in that it did not involve antisocial behaviour or harm, the Nominee clearly traded outside the licence conditions. The email exchange that preceded this event supports a view that the breach was intentional.
- 13) The Commission takes account of the fact that the General Manager Mr Bottonfsen had only recently taken up the position and was not fully aware of what was happening. It also notes Mr Bottonfsen's submission that changes are afoot which will impact in a positive way on the image of the Hotel. The Commission cannot ignore however that clear licence conditions were intentionally breached. This breach will remain on the Hotel's record. If the Commission had the power to impose a financial penalty, which it does not, it would do so in a matter such as this.

DECISION ON PENALTY

No application for variation of licence conditions to allow the Licensee to use the Courtyard for functions will be considered by the Commission for the rest of 2009.

Richard O'Sullivan
CHAIRMAN

29 October 2009