

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Ms Marcia Chantal Day

Respondent: Commissioner of Police
(represented by Mr David Leigh of State Solicitor's Office)

Commission: Mr Eddie Watling (Member)
Mr Evan Shackleton (Member)
Ms Belinda Lonsdale (Member)

Matter: Application pursuant to section 152G of the
Liquor Control Act 1988 for variation or
revocation of a prohibition order.

Date of Determination: 11 June 2014
(on papers)

Determination: The application for variation of the prohibition
orders is refused.

Background

1. On 24 January 2013, the Commissioner of Police filed an application under section 152B of the *Liquor Control Act 1988* (“the Act”) for a prohibition order against Marcia Chantal Day.
2. The order was sought on the grounds that Ms Day has demonstrated a course of conduct during March 2011 and May 2012, classified as confidential police information pursuant to section 30 of the Act, that rendered her unsuitable to be employed or to participate in the management of licensed premises. The relevant features of the incidents being:
 - a. The conduct occurred whilst Ms Day was employed and in a position of responsibility on the licensed premises;
 - b. The conduct occurred on multiple occasions.
3. On 25 January 2013, the Director of Liquor Licensing (“the Director”) referred the matter to the Liquor Commission (“the Commission”) for determination.
4. A hearing of the Commission was held on 22 May 2013 and on 4 June 2013 the following determination was published:
 1. The application pursuant to section 152B(a) of the *Liquor Control Act 1988* is hereby granted for a period of 3 years from the date of this determination and Ms Marcia Chantal Day is prohibited from being employed by a licensee at any licensed premises.
 2. The application pursuant to section 152G(b) of the *Liquor Control Act 1988* is varied and Ms Marcia Chantal Day is hereby prohibited from entering the following licensed premises of the class specified in the *Liquor Control Act 1988* for a period of 3 years from the date of this determination:
 - a. All nightclub licences, however described, issued under section 42 of the *Liquor Control Act 1988*.
 - b. All Hotel licences, however described, issued under section 41 of the *Liquor Control Act 1988* which hold an extended hours extended trading permit.
 - c. Casino liquor licence issued under section 44 of the *Liquor Control Act 1988*.
5. On 19 December 2013, Ms Marcia Chantal Day (“the applicant”) wrote to the Director and applied for a variation or revocation of the prohibition order

issued against her.

6. The applicant expressed bewilderment as to the issuing of the order as there was no indication of criminal charges pending against her concerning the allegations. Two character references were lodged with the correspondence.
7. On 5 February 2014, the Police lodged a responsive submission which reached the conclusion that, given that there has been no relevant change of circumstances since the Commission first imposed the Order, to now revoke the Order would be unjustified.
8. On 12 February 2014, the Director determined that as there has been no material change in circumstances to justify the variation or revocation of the prohibition Order dated 4 June, 2013, and therefore dismissed the application.
9. On 24 February 2014, the applicant wrote to the Director providing payroll information to support the claim that she had not been rostered on to work on the days of the alleged offences, therefore there had been a case of mistaken identity by the Police. Ms Day gave notice of intention to lodge an application for a review of the decision.
10. On 18 March 2014, the applicant lodged an application under section 152G of the Act 1988 with the Director to vary or revoke the prohibition order (LC 21/2013) on the grounds of a denial of procedural fairness and that a case of mistaken identity had occurred.
11. On 19 March 2014, the Director referred the application to the Commission for hearing and determination.

Submissions by the applicant

12. The applicant submitted that:
 - a. Whilst it has been stated that the prohibition order was served on 25 November 2013, it was in fact never served on the applicant or her employer. It was necessary for the applicant to contact the Police to obtain a copy on that date, despite the order being issued on 4 June, 2013;
 - b. The applicant was not aware that there was a requirement to submit evidence at the time of the initial application for a variation or revocation of the prohibition order;
 - c. The dates on which the offences are alleged to have occurred were dates that the applicant was not rostered to work;

- d. The statement by the Police that the applicant at no point denied the allegations did not take into consideration that she was quite shocked at the time and assumed that she did not have to enter a plea as she was never charged for the alleged crime.
13. Payroll advice data was submitted to cover the period of the alleged offences – 17 and 18 March, 2011 and 10 and 18 May, 2012 together with a timesheet covering the May period to substantiate the claim that the applicant did not work on those dates and therefore was the subject of a case of mistaken identity.
14. Two character references and a letter from a friend advising that she and the applicant had shared a birthday celebration dinner together on 10 May 2012, were also submitted.

Submissions by the respondent

15. With respect to the applicant's claim of a denial of procedural fairness, it is unclear whether this refers to matters before the Commission at the time of the making of the Order, or before the Director at the time of consideration of the first variance application.
16. It was submitted that the only matter complained of in the applicant's letter of 16 March 2014, which might arguably support an allegation that she was denied procedural fairness is the issue raised in the second bullet point of that letter being: "*I was not aware that I was required to submit any evidence at the time of the initial application*". However, the applicant was repeatedly invited to provide evidence throughout the course of the hearing before the Commission and offered the opportunity of an adjournment to obtain legal advice. Therefor the applicant has not been denied procedural fairness.
17. The new materials provided by the applicant in support of this second variation application, alone or in combination, are not sufficiently probative to cast any doubt on the Commission's decision to make the Order.
18. Whilst both the character references state that the applicant is a valued employee of the premises, neither provides any specific refutation of the allegations against the applicant. Further, neither statement provides any basis to suggest that the respective authors would be able to specifically refute allegations made against the applicant.
19. The payroll slips submitted in support of the applicant's claim that she did not work on Thursdays and Fridays during the relevant periods were not

certified by her employer to confirm the accuracy of the documents and the slips for both periods do not identify the separate daily hours worked on weekdays. Hours works on Saturdays and Sundays are recorded separately.

20. The timesheet submitted for the period 7 May 2012 to 19 May 2012 is also not certified as to accuracy by the applicant's employer. It was submitted that there are also indications on the face of the document that it has been tampered with, in particular the addition of the characters "/12" in each column against the day and the month e.g. /12 has been added to 14/5 to produce 14/5/12.
21. The respondent noted that the times recorded on the timesheet document for the weeks apparently beginning 7 May 2012 and 14 May 2012 are consistent with the total hours recorded in the relevant payroll advice slip.
22. It was submitted that other materials submitted, in the form of a commemorative postcard for the birth of the applicant's grandson and the handwritten letter signed in the name of Tania Chancellor, are inconclusive and have no real probative value for the purposes of these proceedings.
23. Of even more significance is the fact that the claims made by the applicant in this application are wholly inconsistent with the statements made by her at the time of the initial hearing when she indicated that she had examined the dates in relation to the matters that were alleged against her and confirmed she was working on those dates.
24. It was submitted that in view of the dubious, if any, probative value of the materials provided, the inconsistencies in the claims made by the applicant and the compelling evidence against her, the Order should not be disturbed.

Determination

25. By virtue of the provisions under section 30(3)(b) of the Act and in order to preserve the integrity and intention of section 30(2), the Commission is unable to provide detailed reasons in making a decision on confidential police information.
26. However, this application is based on two grounds:
 - i. that there has been a denial of procedural fairness;
 - ii. that on the days of the alleged offences the applicant was not rostered to work therefore this is a case of mistaken identity;

and

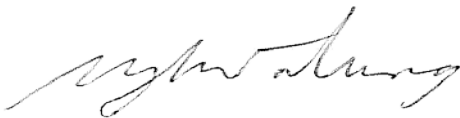
therefore, comments relating to those assertions are provided.

27. From the material before the Commission it is evident that the applicant has been provided with ample opportunity to respond to the allegations both in the form of written submissions and in person at the 22 May 2013 hearing of the Commission.
28. The transcript of the Commission hearing records the applicant stating that she understood the nature of the proceedings and the fact that she was entitled to legal representation. This position was further confirmed later in the proceedings when the applicant declined a further invitation to take legal advice or to adjourn the hearing to further consider her position.
29. The Commission therefore does not accept that there has been a denial of procedural fairness and believes that every opportunity has been extended to the applicant to provide evidence against the allegations.
30. The prime matter to be assessed by the Commission is therefore whether the applicant has been the subject of mistaken identity.
31. A further review of the confidential police information has persuaded the Commission that the likelihood of the offender not being correctly identified by the Police is highly improbable.
32. The similarities of the four offences and the descriptions of the circumstances of each event persuade the Commission that, on the balance of probabilities, there has been no mistaken identity with regard to the applicant.
33. The additional material submitted by the applicant to support the claim of mistaken identity has been closely considered by the Commission. However, it is not sufficiently probative to support any variance to the prohibition order that is in place. The material lacks substance because:
 - i. the payroll advice slips do not detail the particular weekdays worked, nor has their accuracy been confirmed by an appropriate authority;
 - ii. the timesheet submitted for the May, 2012 period, whilst being consistent with the total hours of the payroll advice slips, is not convincing due to the nature of the document which displays some

apparent alterations and has not had its accuracy confirmed by an appropriate authority;

- iii. information concerning the birth of the applicant's grandson on 16 May 2012 and the letter from Tania Chancellor relating to a shared dinner with the applicant on 10 May 2012 is inconclusive in its relevance to the matters the subject of the Prohibition Order;
- iv. the transcript of the Commission hearing of 22 May 2013 records the applicant stating that she was at work on the days in question.

34. Accordingly, the application for variance or revocation of the Prohibition Order issued against Marcia Chantal Day on 4 June, 2013 (LC 21/2013) is refused.



EDDIE WATLING
ACTING CHAIRPERSON