

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Commissioner of Police
(represented by Mr Andrew Mason of State Solicitor's Office)

Respondent: Mr Sean Cyril George

Commission: Mr Seamus Rafferty (Chairperson)
Ms Pamela Hass (Member)
Mr Paul Shanahan (Member)

Matter: Application pursuant to section 25 of the *Liquor Control Act 1988* for a review of a decision by the delegate of the Director of Liquor Licensing in declining to take disciplinary action pursuant to section 102F of the Act

Date of Hearing: 5 April 2018

Date of Determination: 5 April 2018

Reasons for Determination: 7 September 2018

Determination: The decision of the delegate of the Director of Liquor Licensing is quashed and disciplinary action imposed

Background

- 1 This is an application by the Commissioner of Police for the review of a decision made by a Delegate of the Director of Liquor Licensing pursuant to section 25 of the *Liquor Control Act 1988* ("the Act"). At first instance the Commissioner had advised that there were grounds to take disciplinary action against Mr Sean Cyril George, who is an approved manager as defined by section 102A of the Act.
- 2 The Commissioner of Police made representations and provided evidence that indicated the existence of grounds pursuant to section 102F(1)(b) of the Act and that disciplinary action should be taken on the basis that Mr George was no longer a fit and proper person to be an approved manager. In his reasons for decision at first instance the Delegate found that it was his view that the facts outlined by the Commissioner warranted a reconsideration of Mr George's fitness and propriety.
- 3 The behaviour of Mr George, the subject of this disciplinary action, relates to an incident at the Bassendean Hotel on 12 July 2017. At the time, Mr George was the approved manager of the premises. It was alleged that in the course of removing a patron from the premises, Mr George struck the patron 18 times with a coffee machine "portafilter".
- 4 Mr George was afforded the opportunity in accordance with section 102F(3) of the Act to make representations as to whether he still was a fit and proper person to hold the relevant licence, and ultimately the Delegate determined that based on the evidence, Mr George's actions had fallen short of the standards expected of a manager of licensed premises and that disciplinary action was appropriate.
- 5 The Commission has been provided with the CCTV footage from the Bassendean Hotel from the relevant evening. It is clear from that footage that Mr George repeatedly struck the patron of the premises with an item on multiple occasions. Mr George properly conceded at the hearing that he effectively lost control on the night of the incident. So in the circumstances, at first instance it was appropriate that the Delegate made the finding that he did.
- 6 In the context of the disciplinary action to then be taken pursuant to the relevant section of the Act, the Delegate went on to find that having regard to the objects of the Act and the public interest, he had determined that a formal warning was appropriate.
- 7 In bringing this review application, it is contended by the Commissioner of Police that the penalty that was imposed on Mr George at first instance was manifestly inadequate, having regard to all of the circumstances that existed at the time.
- 8 Given the fact that this is a section 25 hearing, the application for review is a hearing *de novo*, meaning that the matter is to be considered afresh and that there is no need to demonstrate error at first instance. As I have already noted, the Commission is of the view that the matter as to propriety and fitness was properly raised by the Commissioner. It was proper that the Delegate found that Mr George's actions fell short of the standards expected of the manager of licensed premises and that disciplinary action should be taken.
- 9 Notwithstanding the fact that error does not need to be demonstrated upon an application for review, the Commission has determined that the penalty imposed at first instance was manifestly inadequate in all the circumstances. That finding is primarily based on our viewing

of the CCTV footage and an assessment of the severity and violence inflicted upon the patron by Mr George.

- 10 Mr George properly conceded that he lost control on the relevant evening. The Commission has been provided with materials relevant to his character and we are satisfied that he is otherwise a person of good character and that that has a bearing upon the penalty that should be imposed in all of the circumstances. There is a level of contrition on behalf of Mr George, albeit that contrition does seem to come relatively late in the day, but that is also a matter that can be taken into account in determining the relevant penalty that should be imposed.
- 11 Having determined that there are grounds for disciplinary action, the question of what disciplinary action should be taken becomes a live issue. The primary submission of the Commissioner of Police is that Mr George's approved manager status should be revoked, or that Mr George's approved manager status should be suspended for a period of six months. Given the fact that Mr George is a person who still works in the industry, that he is still an approved manager and that this is his primary source of income, that would be a very significant step to take because it would implicitly involve him losing his job. In all of the circumstances, this would not be an appropriate outcome, notwithstanding the seriousness of Mr George's proven conduct warranting disciplinary action.
- 12 The third submission as to penalty made on behalf of the Commissioner of Police is that the Commission should impose conditions on Mr George's manager approval status. Given the consequences of revocation or suspension, the Commission has determined that this is the appropriate penalty in all of the circumstances and Mr George agreed at the hearing of this matter, that he would abide by such conditions.

Determination

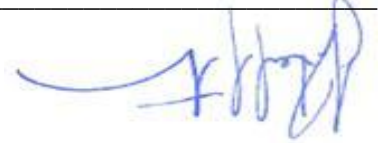
- 13 Having been satisfied that there are grounds for disciplinary action and that there does need to be some form of action taken against Mr George, the Commission quashes the decision made by the delegate of the Director at first instance pursuant to section 25(4)(a) of the Act. The disciplinary actions that are imposed are as follows:
 - a. Sean Cyril George is prohibited from engaging in the removal of persons while working as an approved manager for six months from 5 April 2018.
 - b. Sean Cyril George is prohibited from engaging in the resolution of disputes whilst working as an approved manager for a period of six months from 5 April 2018.
 - c. Within six months from 5 April 2018, Sean Cyril George is to undergo further training by completion of the mandatory training requirements outlined by the Department of Local Government, Sport and Cultural Industry's Approved Managers Lodgement Guide and Information Sheet so as to reinforce the expectation of approved managers when removing patrons from licensed premises and the duties of approved managers generally.
- 14 It was contended by the Commissioner through his counsel that a fourth condition should be imposed, that being another approved manager must be on duty at any times that Mr George is working in the capacity of an approved manager. In all of the circumstances, notwithstanding the validity of that submission, it would be an impractical situation and an

untenable situation for a licensee to effectively have to employ two managers at the same time and that would have a significant impact on Mr George potentially in that he may lose his job.

15 At the conclusion of the hearing in delivering *ex tempore* reasons for the decision, the Chairman made the following observations:

'Mr George, let me make this clear. What we saw on the CCTV footage was nothing short of appalling. And I understand that working in licensed premises is difficult. I understand that people can get to the end of their tether because people in those licensed premises can be very difficult from time to time. But you can never, ever, ever resort to the level of violence, or indeed any form of violence, but the type of violence that you committed on that particular date.'

16 Should there be any further transgressions committed by Mr George in his capacity as an approved manager, the Commission would have no hesitation in adopting the primary submissions that were made on behalf of the Commissioner of Police in this application.



SEAMUS RAFFERTY
CHAIRPERSON