

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Complainant: The Commissioner of Police
(represented by Mr S Bagley, Prosecutor, Police Licensing Enforcement Division)

Respondent: Ronimi Engineering Pty Ltd
(represented by Mr J Prior of Counsel, instructed by Mark Andrews Legal)

Premises: "Seoul Karaoke Restaurant"
57 Aberdeen Street, Northbridge

Commission: J.M. Freemantle (Chairperson),
H Cogan and K Lang (Members)

Matter: Complaint under Section 95(5) of the *Liquor Control Act 1988*
("the Act")

Date of Hearing: 16 September 2008
Date of Determination: 19 September 2008

Additional material tendered to the Commission at the Hearing:

1. Perth Magistrates Court statement of convictions recorded against the Respondent on 14 August 2008.
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BACKGROUND

The Complaint made by Superintendent Dale Bell, Police Licensing Division, on behalf of the Commissioner of Police dated 11 July 2008 alleges that proper cause for disciplinary action exists against the Respondent on the following grounds:

Ground 1

On 6 April 2007, Police observed patrons in the restaurant consuming liquor without a meal and there was no evidence of them having consumed a meal. The area was not subject to any permit allowing liquor to be consumed without a meal. The Licensee was issued with an infringement notice for an offence under section 110(1)(aa) of the Act and has subsequently paid that penalty.

By reason of the above, the Complainant alleges that:

- (i) The Respondent has breached section 95(4)(a) of the Act by failing to conduct the business properly in accordance with the licence,

- (ii) The Respondent has breached section 95(4)(e)(ii) by selling or supplying liquor otherwise than in accordance with the authorisation conferred by the licence,
- (iii) The licensee has been issued with an infringement notice under section 167 of the Act and the monetary penalty has been paid, within the terms of section 95(4)(fa) and,
- (iv) The continuation of the licence is not in the public interest and has not been exercised in the public interest under section 95(4)(j).

Ground 2

At 2.05 am on Sunday 19 August 2007, Police attended the restaurant and observed there were no food menus or price lists on display. Police requested a menu which was given to them by an employee taken from under the counter. When questioned regarding the reason for not displaying the menu the employee stated "the customers will want to order food if they see the menu".

Police also spoke to 5 juveniles on the licensed premises who were unaccompanied by a responsible adult. 4 of them were consuming alcohol and not consuming a meal.

The premises were busy and patrons were consuming liquor without having had a meal in areas that permitted liquor to be served, only if ancillary to a meal. There was no evidence of any food being consumed or having been consumed and there was no food available from the kitchen.

There was no approved manager on the premises and no evidence of any person being temporarily appointed. The Licensee was issued with 8 infringement notices and elected to have them dealt with in court.

By reason of the above, the Complainant alleges that:

- (i) The Respondent has breached section 95(4)(a) of the Act by failing to conduct the business properly in accordance with the licence,
- (ii) The Respondent has breached section 95(4)(b) by failing to properly manage the licensed premises in accordance with the Act,
- (iii) The Respondent has breached section 95(4)(e)(ii) by selling or supplying liquor otherwise than in accordance with the authorisation conferred by the licence.
- (iv) The safety, health and welfare of persons who resort to the licensed premises has been endangered by an act or neglect of the licensee in breach of section 95(4)(k) and,
- (v) The continuation of the licence is not in the public interest and has not been exercised in the public interest under section 95(4)(j).

Ground 3

At 12.30 am on Sunday, 30 December 2007, Police attended the restaurant and observed there were no food menus or price lists on display. The premises were busy and patrons were consuming liquor without having had a meal, in areas that permitted liquor to be served only if ancillary to a meal. There was no evidence of any food being consumed or having been consumed and there was no food available from the kitchen.

By reason of the above, the Complainant alleges that:

- (i) The Respondent breached section 95(4)(a) of the Act by failing to conduct the business properly in accordance with the licence,

- (ii) The Respondent breached section 95(4)(e)(ii) of the Act by selling or supplying liquor otherwise than in accordance with the authorisation conferred by the licence,

Ground 4

At 1.50 am on Sunday, 13 January 2008, Police attended the restaurant and observed there were no food menus or price lists on display. The premises were busy and patrons were consuming liquor without having had a meal in areas that permitted liquor to be served only if ancillary to a meal. There was no evidence of any food being consumed or having been consumed and there was no food available from the kitchen.

Police also had cause to speak to a juvenile on the licensed premises who was there without being accompanied by a responsible adult.

By reason of the above, the Complainant alleges that:

- (i) The Respondent breached section 95(4)(a) of the Act by failing to conduct the business properly in accordance with the licence,
- (ii) The Respondent breached section 95(4)(e)(ii) of the Act by selling or supplying liquor otherwise than in accordance with the authorisation conferred by the licence,
- (iii) The safety, health and welfare of persons who resort to the licensed premises has been endangered by an act or neglect of the licensee pursuant to section 95(4)(k) of the Act and,
- (iv) The continuation of the licence is not in the public interest and has not been exercised in the public interest under section 95(4)(j) of the Act.

Ground 5

At 1.20 am on Saturday, 23 February 2008, Police attended the restaurant and observed there were no food menus or price lists on display. The premises were busy and patrons were consuming liquor without having had a meal, in areas that permitted liquor to be served only if ancillary to a meal. There was evidence of two baskets of chicken and chips on a table within the premises.

Police also had cause to speak to 2 female juveniles who were on the premises consuming food without being accompanied by a responsible adult.

By reason of the above, the Complainant alleges that:

- (i) The Respondent breached section 95(4)(a) of the Act by failing to conduct the business properly in accordance with the licence,
- (ii) The Respondent breached section 95(4)(e)(ii) of the Act by selling or supplying liquor otherwise than in accordance with the authorisation conferred by the licence,
- (iii) The continuation of the licence is not in the public interest and has not been exercised in the public interest under section 95(4)(j) of the Act.

Ground 6

At 12.40 am on Sunday, 23 March 2008, Police attended the restaurant and observed that food menus or price lists were not on display. The premises were busy and patrons were consuming liquor without having had a meal in areas that permitted liquor to be served only if ancillary to a meal. There was evidence of 1 basket of chicken and chips on a table within the premises. There was a sign displayed at the bar stating "Seoul Karaoke

Restaurant your first drink with incur a \$2 charge. This will entitle you to chicken wings and chips ALL NIGHT. Thank you”.

By reason of the above, the Complainant alleges that:

- (i) The Respondent breached section 95(4)(a) of the Act by failing to conduct the business properly in accordance with the licence,
- (ii) The Respondent breached section 95(4)(e)(ii) of the Act by selling or supplying liquor otherwise than in accordance with the authorisation conferred by the licence,
- (iii) The continuation of the licence is not in the public interest and has not been exercised in the public interest under section 95(4)(j) of the Act.

Ground 7

On 30 December 2007, 13 January 2008, 23 February 2008 and 23 March 2008, Police observed Rodney CALKIN positioned at the front door of the premises carrying out the duties of a crowd controller. Police were shown a notice of authorisation issued by the licensee under section 126C(2) of the Act to Rodney CALKIN. Rodney CALKIN is not the holder of a Crowd Controller licence and due to his extensive criminal record for violence, drug and stealing offences would not be considered a fit and proper person and of good character to be issued with a licence.

By reason of the above, the Complainant alleges that the Respondent has breached section 95(4)(e)(i) by contravening a requirement of the Act.

SUSPENSION OF LICENCE

On 11 June 2008, the Director of Liquor Licensing, having considered all relevant information, and being satisfied on the balance of probabilities that it was in the public interest, exercised his powers under section 91(1) of the Act to suspend the Respondent's licence forthwith until the hearing of this Complaint.

The Complaint was listed for hearing by the Liquor Commission, constituted by three members, on 16 September 2008.

THE HEARING

A bundle of all relevant documents and exhibits was prepared for the hearing and made available to members of the Liquor Commission and the parties.

Mr Prior on behalf of the Respondent tendered a statement of the Respondent's convictions recorded in the Perth Magistrates Court on 14 August 2008 following its pleas of guilty to the 8 infringement notices outlined in Ground 2. The presiding magistrate had imposed fines of \$5000 on the Respondent.

Mr Prior submitted that the Respondent admits grounds 1, 2 and 7 above and concedes the existence of proper cause for disciplinary action by the Liquor Commission under section 95 of the Act.

The Complainant requested cancellation of the Respondent's licence. Section 96 of the Act sets out the range of penalties available to the Liquor Commission of which cancellation is the most serious.

Mr Prior conceded on behalf of the Respondent that cancellation of its licence was appropriate in the circumstances. Mr Prior submitted by way of mitigation that no other penalty should be imposed by the Liquor Commission, having regard to the financial detriment suffered by the Respondent by way of lost income since the suspension of its licence by the Director. The Respondent has ongoing expenses such as rent on the premises and has already incurred infringement notice penalties of \$2000 and Magistrate Court fines of \$5000 for conduct which is the subject of this Complaint.

Mr Prior also submitted that a costs order to the Liquor Commission in the lower range would be appropriate, given the above.

FINDINGS

Having heard the parties and considered all the evidence before us at the hearing, we are satisfied that proper cause for disciplinary action exists within the terms of section 95.

The Liquor Commission's disciplinary powers are set out at section 96 of the Act. Cancellation of a liquor licence under section 96(1)(e) is the most onerous of those sanctions. We accept the Complainants submission that the Respondent's conduct is sufficiently serious to require cancellation of its licence. The Respondent does not oppose such an order.

We accept the Respondent's submissions as to the financial fines and penalties it has already incurred as a result of its conduct in breach of the Act. The authorities demonstrate that penalties already incurred in other jurisdictions have relevance to the appropriate level of penalty to be imposed under section 96: see for example, *Re Club Red Sea; Director of Liquor Licensing v Red Cee Pty Ltd and White Dee Pty Ltd* LC1/2007 and *Re Paramount Nightclub; Director of Liquor Licensing v Explorer Cruise Lines Pty Ltd* [2006] WALLC3 and *Re The Clink; Director of Liquor Licensing v Dorigo Pty Ltd* [2003] WALLC 6

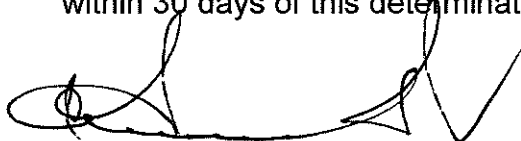
We do not consider that a monetary penalty is appropriate in the circumstances of this matter.

In relation to costs, we have regard to the severity of the penalty imposed and the financial circumstances of the Respondent in exercising our discretion under section 21 of the Act to order costs against the Respondent in the lower range.

ORDERS

The Liquor Commission orders as follows:

1. The Respondent's licence is cancelled with immediate effect pursuant to section 96(1)(e) of the Act.
2. The Respondent to pay costs of \$1000 to the Liquor Commission of Western Australia within 30 days of this determination.



Mr J Freemantle, Chairperson