

**Liquor Commission of Western Australia
(Liquor Control Act 1988)**

Complainant: Commissioner of Police
(represented by Mr Luke Villiers and
Ms Rachel Paljetak of State Solicitor's
Office)

Respondent: Mr Guiseppe Anastasio

Commission: Mr Seamus Rafferty (Deputy Chairperson)
Dr Eric Isaachsen (Member)
Mr Alex Zilkens (Member)

Matter: Complaint for disciplinary action pursuant to
section 95 of the *Liquor Control Act 1988*

Premises: Ristorante Paradiso
24 Hislop Road, Attadale

Date of hearing: 16 June 2015

Date of Determination: 16 June 2015

Reasons for determination: 30 June 2015

Determination:

The orders of the Commission are as follows:

- a) there is proper cause for disciplinary action as the respondent, he being a person holding a position of authority in a body corporate that holds the licence, or who is interested in the business or the profits or proceeds of the business is not a fit and proper person to hold that position or be so interested;

- b) pursuant to the power conferred on the Commission by section 96(1)(g) of the Act, the respondent is disqualified from being the holder of a position of authority in a body corporate that holds a licence or being interested in, or in the profits or proceeds of, a business carried on under a licence for a period of ten years;
- c) the disqualification period is to commence from Tuesday, 16 June 2015.

Authorities referred to in the determination

- *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321

- 1 Mr Guiseppe Anastasio (“The respondent”) is the sole Director of Allsound Investments Pty Ltd (“The licensee”) At all material times, the licensee company operated Ristorante Paradiso, an Italian restaurant located at 24 Hislop Road, Attadale. The company had been granted a Restaurant Licence by the Director of Liquor Licensing, which took effect from 2 March 2011 (Licence No. 6060096289).
- 2 The respondent has been convicted of 17 counts of fraud contrary to section 409(1) of the *Criminal Code*. He was sentenced to an overall term of 8 months imprisonment suspended for 18 months in the Perth Magistrates Court on 9 February 2015. He pleaded guilty to each charge two days prior to the commencement of his trial, having negotiated with Police Prosecutions that a further nine counts of fraud would be discontinued in the event that he pleaded guilty to the remaining 17 counts.
- 3 For the purposes of these reasons, it is unnecessary to outline the precise detail of each fraudulent transaction. A Statement of Material Facts for each charge was tendered as evidence of the facts giving rise to each charge. In essence, the respondent processed credit card transactions for customers paying their bill over a period of approximately eight months. He would add on significant amounts as tips during the course of processing the credit card transactions without the knowledge or consent of the holder of the credit card. The total amount that the respondent obtained by virtue of his deceitful conduct was \$19,188.99.
- 4 By way of complaint dated 8 April 2015, the Commissioner of Police (“the complainant”) alleged that there was cause for disciplinary action against the respondent pursuant to section 95(4)(h) of the *Liquor Control Act 1988* (“the Act”). That section states that there shall be proper cause for disciplinary action if ‘a person holding a position of authority in a body corporate that holds the licence, or who is interested in the business or the profits or proceeds of the business, is or becomes not a fit and proper person to hold that position or to be so interested.’
- 5 There is no dispute that the respondent was a person in a position of authority in a body corporate that holds the licence, as he was the sole Director of the

licensee company. He was also a person who was interested in the business as he worked within the business and derived income from it.

- 6 During the course of the hearing, the respondent advised that he had surrendered the liquor licence and that the restaurant was no longer operating. He was now working as a chef in other Italian restaurants as a paid employee.
- 7 The issue for the Liquor Commission (“the Commission”) to resolve is whether the complainant has established that the respondent is not a fit and proper person to be involved in any business that holds a liquor licence. The Act does not define the concept of a “fit and proper person”, however the definition of that term has been considered by the High Court in *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321. The court stated at 380 that:

The concept of ‘fit and proper’ cannot be entirely divorced from the conduct of the person who is ... engaging in those activities. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.’

- 8 Based on the evidence before the Commission, we are of the opinion that:
 - a) the respondent engaged in grossly improper conduct;
 - b) despite the assurances of the respondent, it cannot be concluded that such conduct is unlikely to occur again, particularly given that the offences related to dishonest conduct only concluded once police became involved;

- c) based on the nature of the improper conduct committed by the respondent, the general community could not have confidence that such conduct may not occur again in the future.
- 9 The Commission has no hesitation in finding that the respondent is a person of poor character as evidenced by the fact that he defrauded his own customers of significant amounts of money on multiple occasions. Further, there is no suggestion that the conduct would have ceased had the police not become involved. Whilst the conduct was unsophisticated and always likely to be detected at some point in time, it involved deception and a high level of dishonesty on the part of the respondent.
- 10 Having regard to all relevant matters, the Commission has determined that the respondent is not a fit and proper person to hold a position of authority in a body corporate that holds a licence, or be interested in a business or the profits or proceeds of a business that holds a liquor licence.
- 11 The public must have an expectation that in dealing with licensees of premises or those with an interest in licensed premises, that such persons will act honestly and truthfully in all dealings. By defrauding customers of large sums of money during the course of operating the licensed premises, the respondent has acted contrary to such expectations and is wholly unfit to be involved in the operation of such premises.
- 12 Accordingly, the Commission considers that the complaint has been made out on the balance of probabilities and that there is proper cause for disciplinary action. Having regard to the fact that a criminal court has already punished the respondent for his conduct, the only appropriate action that the Commission can take is to disqualify the respondent from being the holder of a position of authority in a body corporate that holds a licence or from being interested in the profits or proceeds of a business carried on under a licence pursuant to section 96(1)(g) of the Act.
- 13 The issue is then to determine how long the respondent should be disqualified for. The Commission is of the opinion that the conduct of the respondent was so egregious, that it is appropriate that a disqualification of ten (10) years be

imposed. In determining the length of disqualification, the Commission has had regard to the following factors, namely:

- a) the need for general deterrence, that is to deter all other persons involved in the operation of licensed premises from engaging in dishonest conduct;
- b) the need for specific deterrence, that is to deter the respondent from ever again engaging in dishonest conduct associated with the operation of licensed premises;
- c) the seriousness of the dishonest behaviour committed by the respondent;
- d) the prospects of the respondent's rehabilitation. It was evident from the material before the Commission that he operated a successful and well regarded business over a lengthy period of time prior to engaging in the conduct of which he was convicted and the subject of this complaint.

14 The imposition of a ten year disqualification balances the need to protect the community, reflect denunciation of the respondent's conduct and provide the respondent with the ability to operate or be interested in the operation of licensed premises at the conclusion of the disqualification period, if the Director of Liquor Licensing is satisfied that there has been sufficient rehabilitation on the part of the respondent.

15 The orders of the Commission are as follows:

- a) there is proper cause for disciplinary action as the respondent, he being a person holding a position of authority in a body corporate that holds the licence, or who is interested in the business or the profits or proceeds of the business is not a fit and proper person to hold that position or be so interested;
- b) pursuant to the power conferred on the Commission by section 96(1)(g) of the Act, the respondent is disqualified from being the holder of a position of authority in a body corporate that holds a licence or being interested in, or in the profits or proceeds of, a business carried on under a licence for a period of ten years;

c) the disqualification period is to commence from Tuesday, 16 June 2015.



SEAMUS RAFFERTY
DEPUTY CHAIRPERSON