

Northern Territory Licensing Commission

Decision

Premises:	Madison on Mitchell
Licensee:	Spartacus Pty Ltd
Nominee:	Mr Michael Coleman
Proceeding:	Sec 48 Complaint
By:	Mr M McNamee
Heard Before:	Mrs Mary Ridsdale (Presiding Member)
Dates of Hearing:	21-22 August 2002
Date of Decision:	20 September 2002
Appearances:	Mr John Reeves QC, for the Licensee Mr Lex Silvester, for the Complainant Mr Tom Anderson, Counsel assisting the Commission

1. Before coming to this decision the Commission has to consider the submission by Mr Reeves QC, for the Licensee, that the variation pursuant to section 33(1) of the Liquor Act, to the licence was invalid. His submission was that a notice in writing was not given to the Licensee and no advice regarding section 33(2) was given to the Licensee by the Chairman of the Licensing Commission.
2. The Commission decision on this is as follows. The "notice in writing" was given by way of a new licence dated the 23rd May 2002, sent to the Licensee spelling out the variations in the special conditions "Patrons to be seated" replacing the special condition under that heading in licence granted to "Blush" dated the 8th March 2002.
3. Section 33(2) is a direction to the Licensee, of the rights he may exercise upon receipt of the notice in writing regarding the variation and the time constraint for the exercise of his rights to request a hearing.
4. Section 33(3) "The Commission shall conduct a hearing"
5. Section 33(5)(a)(i) relates to the date that effect of the variation takes place.
6. No request for a hearing was made to the Commission even though the Licensees had solicitors acting for them and their evidence in their formal statement advises they did not seek such advice. They did however acknowledge receipt of the "varied licence" on the 23rd May 2002 at 3pm. Further letters were sent to the Chairman protesting at the variation, but without a request for a hearing,.
7. Mr Reeves QC submits these letters (about 5 in all) could be regarded as a request for a hearing. The Commission does not accept this submission. Section 33(2) is quite clear and unambiguous. The date of the variation is therefore June 20, 2002. The Commission decision is that the variation is valid.
8. We now refer to the resolution and agreement made between the Director of Licensing, the appointed Inspectors who made the complaints and the Licensee on the 30 July 2002. The Director advised that the complaint had not yet been activated and if undertakings were given by the Directors of the Licensee company he would withdraw the complaint provided

that they would comply with the varied conditions. In view of the admissions made by the Licensee, the Commission would consider the matter further.

9. On the admitted facts and on the evidence put before us, in the statements put before the Commission, we find that Licence No. 80316631 bearing date 23 May 2002 had come into effect at the time of the complaints, and that the Licensee at that time was operating in breach of the conditions in that licence forbidding patrons to be permitted to stand and consume liquor.
10. The Commission has been provided with statements of the two directors of the Licensee company and a statement of Susan Jane Porter dated the 20 August 2002, setting out details of the resolution of the complaints and the subsequent withdrawal of same with written undertakings. However the Commission has decided to impose a penalty for the breaches in view of the serial and continuing nature of the breaches prior to 30 July 2002.
11. The Licence pertaining to the premises known as "Madison on Mitchell" will be suspended for a period of 2 days, being the trading period for two consecutive Saturdays but notification and designation of the date of such suspension will be deferred for a period of six (6) months from the date of the handing down of this decision. The Commission has taken into consideration that the Licensee company has not been in breach of its licence conditions prior to these breaches.
12. If a breach of the Act or of any of the conditions of any liquor licence held by the Licensee in respect of the premises at 85 Mitchell Street should be found to have occurred during this six month period, then in addition to whatever further penalty may be imposed in relation to such further breach, the Licensee may also be notified under Section 66(1) of the Act as to the 2 day suspension to be served for the breaches found in these proceedings.
13. If no further breach of the Act or of the licence conditions by the present Licensee has been proven to have occurred at these premises during that six month period, and if no such matter is outstanding, the suspension hereby imposed shall lapse.
14. In relation to the complaints by Mr McNamee, the evidence of investigation by the Inspectors and the submissions of Mr Silvester, we have found the breaches proven. We impose the same penalties to be served concurrently with the penalties set out in paragraphs 11 and 12.
15. What this means is that the Licensee will now carry the burden of what could be described as a "good behaviour bond". If any further transgression by this Licensee on these premises during the next six months are proven to have occurred, the Licensee will suffer the penalty of the suspension of trading for two consecutive Saturdays as well as this present breach being taken into account when deciding the penalty for the further transgression.
16. Full written reason for this decision will be handed down as soon as possible.

Mary Ridsdale
Chairman