

DECISION

Licensing Board of Tasmania
30 November 2005

In the matter of the Liquor Licensing Act 1990 s. 42(1)(f)

In the matter of “Cow” 112 Murray Street Hobart premises with a general licence under s. 7 of the Action

In the matter of freehold owners John Roche and Licensee David Gunton

Mr David Thomas (Manager Operations of the Liquor & Gaming Branch) on behalf of the Commissioner for Licensing applied to the Licensing Board of Tasmania for the cancellation of this licence. At the hearing of the application Mr Thomas was represented by Peter O’Sullivan also of the Liquor & Gaming Branch acting on instructions from Mr Thomas.

The matter was heard at Hobart on the 26 October 2005.

The Commissioner advised in his application to the Board dated 21 October 2005 that the application was made under s. 42(1)(f) of the Act to cancel the licence as the premises had been closed for at least six months and no formal advice had been received from the licence holder in relation to his intentions with respect to the sale of liquor under the licence. The Commissioner also stated that he understood from informal advice passed to officers of the Liquor & Gaming Branch that the premises had been earmarked for redevelopment for residential purposes.

The Board was advised that letters of advice that the application to cancel had been made were sent to the premises, to the licensee’s postal address known to the Commissioner, and to the licensee’s residential address known to the Commissioner.

On the basis that the premises were vacant and unused and the Board was unaware of any intention on the part of the licensee to use the premises for all or any of the purposes permitted by the licence, and as reasonable attempts to alert the licensee to the hearing appeared to have been made, the Board directed the Commissioner to cancel the licence, on the 26 October 2005.

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Subsequent to that decision the Commissioner advised the Board that Mr Roche had contacted him and indicated that he was the freehold owner and had reasons why he wished the licence to continue and requested the Board reconsider the direction.

On the authority of *the Minister for Immigration & Multicultural Affairs v Bhardwaj High Court of Australia [2002] HCA11* the Board determined to reconvene to hear Mr Roche and did so at Hobart on 30 November 2005.

Mr Roche gave evidence that he had had discussions with the Commissioner's representatives earlier in calendar year 2005 regarding ownership and development of the premises but had had no contact more recently and had not had any notice that the cancellation application had been made.

The Commissioner's representative Mr P O'Sullivan, at that subsequent hearing, confirmed that another officer of the Commissioner's office Mr Gilbert Leitch had been in a series of discussions with Mr Roche in the early part of calendar 2005 regarding the premises not continuing to operate and of his intention to reopen or sell the premises to someone who would reopen. Mr O'Sullivan confirmed that notwithstanding that notices had only gone to the licensee as abovementioned that all notices had been returned apparently unopened.

Mr Roche gave evidence that he was able to obtain a transfer of the licence and had authority from the licensee to seek to preserve the licence and if he was successful in avoiding the cancellation he would lodge a transfer of the licence shortly.

Mr Roche also gave evidence with Scott McMurray (also interested in the premises), that they have an uncompleted contract for sale of the freehold which is currently in dispute and which they anticipate will be settled (by completion of the sale) by the 19 December 2005 and that the purchasers will reopen the premises shortly after that. Alternatively, if the contract is not settled then they (Roche & McMurray) intend to reopen in January/February 2006 with a view to having an operating enterprise so that they can more readily market the freehold and business for sale. Their third alternative is that if they do not determine upon a sale within approximately 6 months, they would intend to continue to run the business.

Taking that evidence into account we have decided that with the express knowledge the Commissioner's office had through Mr Leitch that Mr Roche had an interest in the property, and on the basis that notices went out and were returned unopened to addresses, that there was an absence of procedural fairness to the licensee and Mr Roche (with his expressed interest) in that notice could quite readily have gone to Mr Roche at addresses known to the Commissioner.

S. 213 of the Act requires the Board to observe the rules of natural justice in so far as they are applicable.

In the context we think the rules of natural justice (more relevantly termed procedural fairness) have not, with certainty, been obeyed to the extent that they apply in this instance, and we hereby vacate the direction to cancel the licence.

We then heard Mr Roche further on his intentions and the Commissioner requested that the matter be adjourned until February 2006 sittings of the Board.

The Board adjourned the matter accordingly.

Dated 5th day of December 2005

P Kimber
Chairman

L Finney
Member

K Sarten
Member