

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

Complainant: Commissioner of Police
(represented by Mr Joshua Berson of the State
Solicitor's Office)

Respondent: Pure Profit Pty Ltd
(represented by Ms Jessica Patterson of Lavan
Lawyers)

Commission: Mr Eddie Watling (Deputy Chairperson)
Ms Sarah Oliver (Member)
Ms Wendy Hughes (Member)

Premises: *Blue to the Bone*, 174 James Street Northbridge

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

Date of Hearing: 15 March 2019

Date of Determination: 29 April 2019

Determination:

The Commission finds the complaint has been made out to a satisfactory standard such that proper cause for disciplinary action exists on the following terms:

1. the respondent is to pay a monetary penalty of \$10,000 pursuant to section 96(1)(m) of the *Liquor Control Act 1988* within 60 days of the date of this determination and lodge with the Commission evidence of payment of the penalty within 28 days of making the payment;
2. no further conditions are to be imposed on the respondent's licence number 6070020131.

Background

1. Pure Profit Pty Ltd is the Licensee of premises called *Blue To The Bone*, which is located at 174 James Street in Northbridge Western Australia ("the premises").
2. Pure Profit holds a nightclub licence issued for the premises on 23 December 2015 (licence number 6070020131).
3. The premises has two areas commonly known as the "Voodoo Lounge" and the "Rocket Room". The Voodoo Lounge is located in the second story of the building and is accessible via a staircase near the front door. The Voodoo Lounge offers provocative adult entertainment.

The Complaint

4. The complainant submits as per the complaint dated 10 October 2018 the following grounds for disciplinary action:

Ground (1) the licensed premise are not properly managed in accordance with this Act (section 95(4)(b));

Ground (2) the safety, health or welfare of persons who resort to the premises is endangered by an act or neglect of the respondent, contrary to section 95(4)(k) of the Act; and

Ground (3) the licensee has contravened a requirement of this Act or a term or condition of the licence, contrary to section 95(4)(e)(i) of the Act.

5. It was submitted at the hearing that the complainant did not seek the Commission to make a finding in relation to Ground (1) of the complaint, that the licensed premise are not properly managed in accordance with this Act, section 95(4)(b) of the Act.
6. Further, at the hearing Mr Berson on behalf of the complainant advised the Commission that the complainant was not relying on the further submissions filed on behalf of the Commissioner of Police dated 8 March 2019 to prove either grounds for the disciplinary proceeding. The Commission clarified with Mr Berson that the complainant was relying on the one incident from 14 July 2018 and that the Commission was to proceed on the basis that it was just one incident relied on to prove the grounds.

Evidence relied on by the complainant

7. Evidence relied upon by the complainant in relation to the incident on 14 July 2018 was:
 - (a) CCTV footage of the incident;
 - (b) the statement of William Clarence Isgar, dated 19 July 2018;

- (c) the statement of Brian Behan, dated 27 July 2018;
 - (d) venue incident report completed by Greg Street, dated 14 July 2018;
 - (e) the statement of Senior Constable Justin Stern, dated 4 August 2018;
 - (f) the statement of Constable Lauren Dixon, dated 9 August 2018; and
 - (g) the redacted medical report for William Isgar dated 25 October 2018.
8. The complainant submits the CCTV footage depicts the following events occurring on 14 July 2018:
- (a) at about 1:00 am on 14 July 2018, Mr William Isgar, a patron and victim in the incident, attended the Voodoo Lounge with two friends;
 - (b) Mr Isgar appears to bump into two male patrons (referred to by the complainant as Patron 1 and Patron 2) and has a brief conversation with them before entering into the toilets;
 - (c) Patron 1 and Patron 2 are seen to talk to Mr Street, the approved manager on the premises that evening and Mr Matt Channon Gill, one of the licensed crowd controllers working at the premises that evening;
 - (d) Mr Isgar exits the toilet and has a conversation with Mr Street before walking back to the bar. Mr Isgar then walks away from the bar in the direction of the exit when Mr Street grabs Mr Isgar;
 - (e) Mr Street then takes Mr Isgar to the ground;
 - (f) Patron 2 approaches Mr Isgar and appears to assault Mr Isgar to the head/neck area;
 - (g) Mr Street lifts Mr Isgar to his feet and Mr Isgar is taken towards the stairwell;
 - (h) Patron 2 follows;
 - (i) Mr Gill is seen to drag Mr Isgar towards the stair landing, with Patron 2 assisting and Mr Street following behind;
 - (j) the audio recording captures comments being made including “oi oi carry him down here, carry him down here”, “close the door” and “get up, get up you fucken dog” (yelling); “let him walk out so it’s on camera”;
 - (k) the crowd controller Mr Mitchell James Fitzgerald closes the front door of the premises;
 - (l) Mr Isgar is then seen to be dragged by Patron 1 and Mr Fitzgerald out of the premises unconscious and bleeding;
 - (m) Mr Street is observed to clean blood off the floor of the entrance;
 - (n) Mr Gill is captured on the audio recording saying “get your story straight”, before he asked Mr Street “what happened? The cops are coming” and a third person says “he fell down the stairs”.

9. Senior Constable Stern and Constable Dixon observe Mr Fitzgerald dragging Mr Isgar whilst unconscious out of the premises to a nearby bench and attempting to sit him up on a bench.
10. Senior Constable Stern says when he was dealing with Mr Street he observed a strong smell of liquor on Mr Street's breath and that his eyes appeared glazed and had enlarged pupils.
11. The Commission has viewed the CCTV footage and read the statements and the evidence has been considered in these reasons for decision.

Evidence relied on by the Respondent

12. Ms Hayley Stewart, Director of Pure Profit Pty Ltd provided a signed statutory declaration dated 8 March 2019.
13. In her statutory declaration Ms Stewart did not dispute what was depicted in the CCTV footage, but rather the inferences that could be drawn from viewing the footage.
14. Ms Stewart submitted the following in regard to the incident on 14 July 2018:
 - (a) It cannot be inferred from the CCTV footage that Mr Isgar was not being aggressive toward Mr Street;
 - (b) Mr Street did not tackle Mr Isgar to the ground, rather both men fell to the ground;
 - (c) The closing of the doors did not prevent the CCTV cameras from capturing the incident as there were no CCTV cameras in the stairwell;
 - (d) Mr Street can be seen on the CCTV footage getting out a first aid kit; and
 - (e) It was another employee, not Mr Street who cleaned up the mess as it was a potential slip hazard.
15. At the hearing, counsel for the respondent did not press the Commission to make the particular findings of fact as outlined by Ms Stewart. Rather counsel for the respondent submitted that the licensee was disturbed by the incident on 14 July 2018 and has taken the matter seriously. It was submitted that since the incident on 14 July 2018 the licensee has taken prompt and decisive action. Mr Street is no longer employed, the licensee is in the process of reviewing the company that provides security staff and security cameras have now been installed in the stairwell.
16. The respondent sought to emphasise the complaint was grounded by only one incident, that there was no evidence of a history or pattern of mismanagement, no history of infringements and also very importantly no further incidents since 14 July 2018.

17. It was submitted to the Commission that one incident may not be sufficient to establish the grounds of the complaint, and if they were, the remedies sought by the complainant were excessive.

Relevant Law

18. In determining whether there is proper cause for disciplinary action, the Commission needs to be satisfied on the balance of probabilities that one of the grounds of complaint alleged pursuant to section 95(4) of the Act has been made out.

19. The standard of proof applicable to section 95 proceedings is proof on the balance of probabilities.

20. Section 95(11) of the Act states, it is not a defence to a complaint lodged pursuant to section 95 of the Act to show that the licensee:

- (a) did not know, or could not reasonably have been aware or have prevented the act or omission which gave rise to the complaint; or
- (b) had taken reasonable steps to prevent the act or omission from taking place.

21. The policy of the Act is that a licensee is to be held personally responsible for acts or omissions on their licenced premises. This is illustrated by the following:

- (a) the conduct of business under a licence is always the responsibility of the licensee and shall be personally supervised and managed by a natural person, section 100(1) of the Act;
- (b) it is a criminal offence for the licensee to fail to ensure that the conduct of the business at the licensed premises is supervised and managed in accordance with section 100 of the Act, section 100(8) of the Act;
- (c) a licensee is liable for offences committed on the licensed premises by an employee or agent of the licensee, or by a person acting, or purporting to act, on behalf of the licensee- even if the licensee did not know of and could not reasonably have been aware of or have prevented, the commission of the offence, section 165 of the Act. (See also sections 95(4)(f) and (k) of the Act).

Determination of Grounds (2) and (3)

22. In relation to Ground (2), the safety, health or welfare of persons is endangered the Commission is satisfied this ground is made out. The Commission finds the patron, Mr Isgar's safety, health and welfare was endangered on 14 July 2018 as depicted in the CCTV footage, namely:

- (a) the approved manager Mr Street, used unreasonable force to remove Mr Isgar in circumstances where no force was necessary;

- (b) Mr Isgar was assaulted in the stairwell by either Mr Street, Mr Gill or one of two patrons;
 - (c) Mr Isgar was rendered unconscious and was observed to be bleeding;
 - (d) the manner in which Mr Isgar was carried outside whilst injured and apparently unconscious was clearly dangerous; and
 - (e) despite being obviously injured, Mr Isgar was not provided with any first aid.
23. The Commission finds this incident, whilst isolated, to be serious in its nature and contrary to the primary objectives of the Act, specifically safety. The Commission finds this single incident to be significant enough in nature to justify the complaint.
24. In relation to Ground 3, the requirements of the Act have been contravened, the Commission makes the following observations.
25. Firstly, the Act creates an offence where a licensee, personally or by an employee or agent, permits violent, quarrelsome or disorderly behaviour to take place on the licensed premises, section 115(1)(a)(ii) of the Act.
26. The Commission finds Mr Street and Mr Gill contravened the Act by either assaulting Mr Isgar themselves or by permitting Patron 1 and/or Patron 2 to be involved, potentially violently, in removing Mr Isgar from the premises. In either two versions, Mr Street has either participated in or permitted violent, quarrelsome or disorderly behaviour to take place in the premises.
27. Secondly, it's an offence to make a statement that is false or misleading in relation to any record that is required to be kept, provided or produced under or for the purposes of the Act, section 159(1)(b) of the Act. The Licensee is liable for that contravention, section 165(1) of the Act.
28. The Commission finds Mr Street has contravened the Act by providing a misleading incident report dated 14 July 2018. The contents of the report are contrary to what is depicted in the CCTV footage.
29. Hence the Commission is satisfied that Ground 3 is also made out.

Remedies sought

30. If the complaint was made out, the complainant sought in addition to the imposition of a monetary penalty, the following conditions be imposed on the respondent's licence:
- an identification scanning system such as ID scanning or Scanteck be installed and operated during all hours of trade, with such system to record details of persons entering and re-entering the premises;

- a CCTV video system be installed and operated in the premises. The CCTV system must comply with the relevant policies of the Director of Liquor Licensing.
- the licensee is to engage four crowd controllers (licensed under the *Securities and Related Activities (Control) Act 1996*) from the commencement of trade until the close of business Monday through to Sunday inclusive; and
- approved managers and crowd controllers are not permitted to consume liquor at the premises whilst on duty and are to submit to a preliminary breath test immediately upon request from an authorised officer.

31. The Respondent opposes the imposition of conditions that would require additional crowd controllers and an identification scanning system.
32. The Commission has considered the submission by the complainant and declines to impose any further conditions on the licensee. The Commission has had regard to the privacy concerns raised by the respondent given the nature of their business and the type of clients the business attracts. The Commission has also had regard to the fact the contravention is based on a single event and there is no evidence before the Commission of a continuing pattern of mismanagement. Further the Commission finds, even if there had been an identification scanning system in place and more crowd controllers, it would not have prevented what occurred on 14 July 2018, which the Commission accepts may not be of comfort to Mr Isgar.

Orders

33. On the basis that the complaint in respect of grounds (2) and (3) is made out, the Commission makes the following orders;
 - a. the respondent is to pay a monetary penalty of \$10,000 pursuant to section 96(1)(m) of the Act within 60 days of the date of this determination and lodge with the Commission evidence of payment of the penalty within 28 days of making the payment;
 - b. no further conditions are to be imposed on the respondent's licence number 6070020131.



EDDIE WATLING
DEPUTY CHAIRPERSON