

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Katherine 5 Star Supermarket
Licensee:	Cesdilla Pty Ltd
Licence Number:	80900703
Nominee:	Mr Trevor Wayne Ford
Proceeding:	Pursuant to Section 124AAAS of the <i>Liquor Act</i> Further Penalty Subsequent to Finding of Guilt
Heard Before:	Mr Richard O'Sullivan (Chairman) Mr Philip Timney Mr Walter Grimshaw
Date of Hearing:	23 September 2008
Date of Decision:	28 October 2008
Appearances:	Mr Trevor Ford, Nominee Inspector Mark Wood for the Director of Licensing Inspector Marc MacKenzie

Background

1. On 28 May 2008 the Licensee of the Katherine 5 Star Supermarket was convicted of a breach of Section 102 of the *Liquor Act* ("the Act") for the sale of liquor to a person who was intoxicated at the time of the sale. The Court imposed a fine of \$500 plus \$40 victim's levy.
2. The complaint was brought before the Court by Police. On 12 March 2008 Police observed two (2) intoxicated males enter the premises and purchase a 640 ml bottle of bourbon and cola using an EFTPOS card. The males were identified as Raymond Dodd and Steven Redford. Police spoke with the males as they exited the premises and noted their level of intoxication. The males were placed in protective custody and conveyed to the Katherine Watch House where they agreed to submit to breath tests. The blood alcohol readings were 0.301 for Mr Redford and 0.219 for Mr Dodd. Mr Dodd was the person who purchased the bourbon and cola.
3. The Commission determined to conduct a hearing pursuant to Section 124AAA of the Act to decide whether an additional penalty should be applied to the Licensee.

Hearing

4. The hearing was convened in the Katherine Court House on 23 September 2008. The Director of Licensing was represented by Licensing Inspectors Mark Wood and Marc McKenzie.
5. Mr Trevor Ford, a Director of the Licensee, Cesdilla Pty Ltd, appeared at the hearing as representative of the Licensee.
6. The Hearing Brief included, at folio 3, a certificate of proceedings against Cesdilla Pty Ltd dated 4 June 2008 confirming the conviction and the penalty imposed by the Court.

7. Inspector Wood read a précis of facts leading to the offence following which Mr Ford confirmed that the Licensee had pleaded guilty to the offence before the Court at the first opportunity.

Submissions of Mr Ford

8. By way of mitigation, Mr Ford submitted that whilst it was conceded that the two males were present in the Supermarket at the time of the incident the sale involved only one of the males and he appeared at the time to be not intoxicated and was steady on his feet. To support his view Mr Ford referred to CCTV footage that indicated that the purchaser, Mr Dodd, was not showing overt signs of intoxication at the time of the sale.
9. Mr Ford conceded in evidence that his staff had made a bad judgement call on the day and whilst one of the males may have been swaying, the purchaser (described by Mr Ford as the male with the white hat) did not appear to the staff member who made the sale to be intoxicated. Mr Ford submitted that both males were functioning alcoholics and well versed in masking the indicators of intoxication for the purpose of obtaining more alcohol.
10. Mr Ford submitted that he been involved with the Supermarket for fifteen (15) years and that Cesdilla Pty Ltd had held the licence for eighteen (18) years. During that period the Licensee had not previously been charged or convicted of any offences under the Act. Mr Ford also advised the Commission that the sale of alcohol was not the main focus of the business but rather was ancillary to the sale of groceries and other supermarket items. Mr Ford also advised that whilst the liquor licence allowed for additional hours of sales the total opening hours for the sale of alcohol was limited to 31 hours at the volition of the Licensee.
11. Mr Ford reiterated that the sale of alcohol to Mr Dodd on the day in question was an error of judgement on the part of his staff member and one he did not expect to be repeated. Staff have subsequently been reminded of their responsibilities in ensuring that intoxicated persons are not served. The price of alcohol at the 5 Star Supermarket was more expensive than other licensed premises in Katherine which, in Mr Ford's submission, presented a further disincentive for problem drinkers to frequent the premises.
12. Mr Ford also referred the Commission to an article published in the Katherine Times on 4 June 2008 in respect of the police prosecution. He advised the Commission that the article had caused him personal grief and humiliation and significant public embarrassment in the community, more so as the article referred to Mr Ford's position as a Katherine Town Council Alderman.

Submissions of Mr Wood

13. In submissions in respect of penalty, Mr Wood confirmed that the Licensee had operated the premises for approximately eighteen (18) years without significant incident and with no recorded breaches of the Act or licence conditions. He informed the Commission that Mr Ford had contacted Licensing & Regulation and advised them of the charges immediately following the incident.
14. It was also submitted that Mr Ford had been an active contributor to the Katherine Liquor Accord and had previously contributed to and participated in alcohol management forums and harm minimisation initiatives for the township of Katherine.
15. Mr Wood confirmed that the Licensee had implemented revised procedures since the incident and that the requirements for the responsible service of alcohol had been reinforced with the staff of the 5 Star Supermarket. Mr Wood submitted that, in his opinion, the Licensee was unlikely to commit further breaches in the future.
16. Mr Wood confirmed that he was aware of the article published in the Katherine Times and submitted that the manner in which the incident had been reported, including the banner headline "Alderman caught selling alcohol to drunks", had been a major topic of

conversation in Katherine and had caused significant embarrassment to Mr Ford. Mr Wood did however refer the Commission to the comments of the presiding Magistrate, Chief Magistrate Blockland, that whilst it was important to put in place a deterrent to further offences she was satisfied with the steps taken by Mr Ford to not serve drunks. In Her Honours words: "The Licensee has gone to a lot of effort so they don't serve drunks so it's probably disappointing as an organisation that this has occurred".

17. Mr Wood also confirmed that the Licensee had pleaded guilty to the offences at the first available opportunity and that, in his opinion after viewing the CCTV footage, the person who purchased the alcohol at least appeared steady on his feet, as opposed to his companion at the time.
18. Mr Wood submitted that, in all the circumstances, the appropriate penalty in his view would be a formal caution from the Commission to the Licensee.

Considerations of the Commission

19. In reaching its decision on the appropriate penalty in this instance the following matters into account:
 - the unblemished record of the Licensee over a period of eighteen (18) years;
 - the evident contrition of Mr Ford;
 - Mr Ford's standing within the community, including his voluntary and active participation in the development of alcohol harm minimisation strategies within the Katherine region;
 - the steps taken by the Licensee prior to and since the breach in respect of the prevention of the sale of alcohol to intoxicated persons. The Commission also took note of the Comments of the Chief Magistrate, referred to above, in that regard;
 - the impact of the Local Court decision in respect the damage and hurt to Mr Ford's reputation in the local community following the adverse publicity in the local newspaper,
 - the Licensee's admission of the breach at the first opportunity, both before the Court and the Commission;
 - the submission of Mr Wood, on behalf of the Director, that the appropriate penalty would be a letter of reprimand.

Decision

20. The Commission notes that serving alcohol to intoxicated persons is a serious offence under the Act and one that will not be tolerated, particularly in regions, such as the Katherine district, where significant efforts are being made to reduce the harm and anti-social behaviour associated with excessive consumption of alcohol. In the appropriate case Licensees can expect harsh penalties for such offences, particularly in the circumstances of consistent and irresponsible behaviour on the part of the Licensee.
21. The Commission also notes with some concern the number of similar matters that have been referred to the Commission for hearing in recent months.
22. However, taking account of the matters set out in paragraph 19 above, the Commission find that the penalty should be at the lower end of the scale. The Commission determines that the appropriate penalty is a formal letter of reprimand. The Commission directs the Director of Licensing to send a formal letter of reprimand to the Licensee and Nominee. The Commission further directs that the letter be placed on the file of the Licensee to be considered by the Commission if there are any further breaches of the Act by the Licensee.

Richard O'Sullivan
Chairman

28 October 2008