

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: DISCIPLINARY ACTION PURSUANT TO THE LIQUOR ACT

REFERENCE: LC2020/026

LICENCE NUMBER: 81402352

LICENSEE: The Alice Springs Golf Club Incorporated

PREMISES: The Alice Springs Golf Club
50 Cromwell Drive
Alice Springs NT

LEGISLATION: Section 164 of the *Liquor Act 2019*

HEARD BEFORE: Mr Russell Goldflam (Acting Deputy Chairman)
Ms Pauline Reynolds (Health Member)
Mr Blair McFarland (Community Member)

DATE OF HEARING: 17 July 2020

DATE OF DECISION: 18 September 2020

DECISION

1. On 17 July 2020, the Northern Territory Liquor Commission ("the Commission") heard and upheld a complaint against The Alice Springs Golf Club Incorporated ("the licensee"), and decided to take disciplinary action against the licensee.
2. The Commission has determined to take disciplinary action by imposing a monetary penalty of \$400, to be paid within fourteen days of the publication of this Decision Notice.

STATEMENT OF REASONS

BACKGROUND

3. On 2 June 2020 the Director of Liquor Licensing ("the Director") referred a complaint against the licensee to the Commission, alleging a breach of section 285(1) of the *Liquor Act 2019* (NT) ("the Act"), which relevantly provides that it is an offence for a licensee's employee to intentionally sell or otherwise supply liquor on licensed premises to another person who is intoxicated, where the licensee's employee is reckless in relation to whether the other person is intoxicated.

THE HEARING

4. The matter proceeded as a public hearing on 17 July 2020. Mr Wood appeared on behalf of the Director. Three other Licensing NT officers, Mr Wade, Ms Free and Ms Sowerby, were also present. Ms Pearce, a committee member of the licensee, and Mr Penley, the manager of the licensed premises, appeared on behalf of the licensee. The Commission thanks them all for their attendance and assistance. As the licensee was unrepresented, the hearing was conducted with a minimum of formality.

THE FACTS

5. The licensee indicated that it did not intend to contest the complaint. Accordingly, the hearing proceeded by a recital of facts relied on by the Director in support of the complaint. The licensee admitted the truth and accuracy of the recited facts, and the Commission finds the following facts to be proved.
 - a. The Alice Springs Golf Club Incorporated is the licensee of the premises, the Alice Springs Golf Club, 50 Cromwell Drive, Alice Springs to which Liquor Licence 81402352 refers.
 - b. On Saturday 30 November 2019 a member of the public (“the complainant”) attending a wake at the premises observed a young male (“the patron”) being served liquor who was clearly intoxicated and stumbling about.
 - c. Video surveillance footage of the incident shows the patron wearing a black and white hooped t-shirt and shorts in the company of a group of males on the premises between 16:15 hours and his departure at approximately 17:50 hours.
 - d. At 16:17 hours the group was served a round of Corona beers, one of which was handed to the patron. The group was then served another round of beers along with shots of tequila. The male consumed one shot of tequila and was in possession of two of the stubbies of Corona beer. At 16:59 hours the group was served a further round of four Corona stubbies along with four shots of tequila. The patron consumed the tequila and was in possession of two stubbies of Corona beer. At 17:03 hours six further shots of tequila were served to the group with the male consuming one of them. At 17:19 hours the male’s impaired mobility was brought to the attention of a staff member by the complainant.
 - e. On 2 December 2019, the complainant informed Licensing NT of her observations.
 - f. At all material times the nominee of the premises was Mr Nick Prus, who resigned his employment on 7 July 2020.
 - g. On 7 July 2020 Mr Brouwer, the President of the licensee, appointed Mr Colin Penley as the acting licensee of the premises in pursuance of section 76 of the Act. It is intended that Mr Penley will be acting licensee until such time as the licensee formally appoints a nominee under section 53(3) of the Act.

- h. The Commission upholds the complaint referred to it by the Director on the ground specified in the complaint, namely that the licensee or the licensee's employee had contravened section 285 of the Act by supplying liquor to an intoxicated person.
6. The Commission is satisfied that the admitted and proven facts support a finding that there has been a contravention of the Act. The Commission is further satisfied in accordance with section 165(1) of the Act that a ground for the disciplinary action exists, and that the disciplinary action it has determined to impose is appropriate in relation to that ground.

DISCIPLINARY ACTION

7. The Commission accepts the submission of the Director that in imposing disciplinary action, the Commission should apply the principles of proportionality, parity, deterrence, denunciation and community protection.
8. In considering what disciplinary action to impose, the Commission has had regard to the following circumstances that are adverse to the licensee:
 - a. The contravention arose as a result of trading conduct apt to encourage irresponsible consumption of liquor resulting in rapid intoxication. On this occasion, it appears that the patron was supplied with and consumed approximately 6.5 standard drinks in an hour.
 - b. When initially informed of the complaint, the licensee's then nominee did not admit the contravention, requiring Licensing NT officers to prepare the matter for a contested hearing, including the issue of a summons to the complainant.
9. In considering what disciplinary action to impose, the Commission has had regard to the following circumstances that are favourable to the licensee:
 - a. The licensee has acted to engage a new manager and nominee, and taken appropriate steps to ensure that interim arrangements for the responsible management of the premises are put in place.
 - b. The licensee has an unblemished record of compliance with the Act and its liquor licences for a period of at least 28 years.
 - c. Noting a letter of apology to the Commission by the President of the club, as well as oral submissions at the hearing to similar effect by Committee member Ms Pearce, the Commission accepts that the club is genuinely embarrassed and remorseful for the contravention.
 - d. Noting the evidence from the licensee that the recently appointed manager is giving daily reminders to staff of their RSA responsibilities, the Commission accepts that the licensee is committed to effecting a positive change in the manner in which liquor is sold, supplied and consumed on the premises.
 - e. The licensee has admitted the contravention, avoiding the need for witnesses to be called.

- f. The licensee, a non-profit club substantially reliant on members' fees and patronage, is suffering from severe financial hardship due to a number of circumstances including drought conditions (necessitating increased expenditure for irrigation of the course), the COVID-19 pandemic (causing the forced closure of the course from 27 March to 15 May, and restricted operations at the clubhouse thereafter), and a history in recent years of trading at a deficit.
- g. Had the licensee admitted the contravention when first informed of the complaint, the Director would have issued an Infringement Notice in the sum of \$785, and not have referred the complaint to the Commission.

10. Having regard to all the circumstances of the licensee and the contravention, and in particular the financial hardship of the licensee, a not for profit club, the Commission has determined to impose a monetary penalty in the sum of \$400. This is an unusually lenient penalty in the unusually exigent circumstances of the licensee, and should not be considered as a precedent.

11. This contravention would not have come to the attention of the Commission but for the commendable actions of the complainant in bringing it to the attention of the appropriate authorities, and her subsequent willingness to follow this up by giving evidence at the hearing if required. The Commission requests the Director to convey its thanks to the complainant for taking the initiative to report the incident the subject of this complaint.

NOTICE OF RIGHTS

12. Section 31(1) read with section 166(7) of the Act provide that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal (**NTCAT**). Section 94(3) of the *NTCAT Act* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.

13. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Director and the licensee.



RUSSELL GOLDFLAM
ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION

21 September 2020

On behalf of Commissioners Goldflam, Reynolds and McFarland