



Civil and Administrative Tribunal
New South Wales

Case Name: Flevotomos v Independent Liquor and Gaming Authority

Medium Neutral Citation: [2019] NSWCATAD 95

Hearing Date(s): 14 May 2019

Date of Orders: 17 May 2019

Decision Date: 27 May 2019

Jurisdiction: Administrative and Equal Opportunity Division

Before: L Pearson, Principal Member

Decision:
1.The decision of the First Respondent made on 20 March 2019 to impose a condition on liquor licence LIQ0624006713 (being Order 2 in the decision of the First Respondent made on 20 March 2019) is stayed until further order of the Tribunal.
2.Without limiting the rights of the parties under s 60(4) of the Administrative Decisions Review Act 1997, the Respondents have liberty to apply on 3 days' notice to seek to vary or revoke order 1 above on the grounds that Mr Ulysses Flevotomos was present at the Dollhouse Nightspot (located at 13-15 Kellett Street, Potts Point) at the time that the licensee or either Applicant committed any breach of the Liquor Act 2007 or any breach of licence conditions.

Catchwords: INTERLOCUTORY ORDER – condition imposed on liquor licence - application for stay

Legislation Cited: Administrative Decisions Review Act 1997
Civil and Administrative Tribunal Act 2013
Gaming and Liquor Administration Act 2007
Liquor Act 2007

Cases Cited: AVS Group of Companies Pty Ltd v Commissioner of Police [2010] NSWCA 81
Bentran Pty Ltd v Sabbarton [2014] NSWCATAP 37
Loveday v Commissioner for Fair Trading [2018] NSWCATAD 80
QLD Protection Security Pty Ltd v Commissioner of Police, NSW Police Force [2018] NSWCATAP 113

Category: Procedural and other rulings

Parties: Ulysses Flevotomos and Iguana Bar & Restaurant Pty Ltd (Applicants)
Independent Liquor and Gaming Authority (First Respondent)
Commissioner of Police, NSW Police Force (Second Respondent)

Representation: Counsel:
M Ashhurst SC with G Gee (Applicants)

Solicitors:
Kardos Scanlan Lawyers (Applicants)
Crown Solicitors Office (Respondents)

File Number(s): 2019/118874

Publication Restriction: No

REASONS FOR DECISION

- 1 On 20 March 2019 the Independent Liquor and Gaming Authority (ILGA) determined to take disciplinary action pursuant to s 141 of the *Liquor Act 2007* (the Act) in response to a disciplinary complaint in relation to Mr Ulysses Flevotomos, the former licensee of the licensed premises known as Dollhouse Nightspot (LIQO624006713) in Potts Point NSW.
- 2 The disciplinary action taken by ILGA was as follows:
 - (1) Mr Flevotomos is ordered to pay a monetary penalty in the amount of \$10,000 by 17 April 2019;
 - (2) The following condition on the licence of Dollhouse Nightspot is imposed:

With effect from 20 May 2019, Mr Ulysses Flevotomos and any other person who has held an interest in Iguana Bar & Restaurant Pty Ltd ABN 41 129 898

942 between 29 October 2014 and 20 March 2019 will not be permitted to enter the Premises nor have any involvement whatsoever with the business conducted on the Premises. For the avoidance of doubt, this does not include the licensee Mr Timothy Williams.

- (3) Mr Flevotomos is disqualified from holding a liquor licence and from being the approved manager in respect of any licensed premises in New South Wales for life from 21 March 2019;
 - (4) Mr Flevotomos is disqualified from being a close associate of a licence for a period of 10 years commencing on 20 May 2019 in respect of licence number LIQO624006713 and commencing on 21 March 2019 in respect of any other licence in New South Wales.
- 3 On 16 April 2019 Ulysses Flevotomos and Iguana Bar & Restaurant Pty Ltd applied for administrative review of the determination of ILGA. The applicants accept that orders (1), (3) and (4) are appropriate in the circumstances. They contend that the imposition of a condition as set out in order (2) is not warranted in the circumstances, and that the correct and preferable decision is not to impose a condition in those terms. On the same date the applicants applied for an order under s 60 of the *Administrative Decisions Review Act 1997* (the ADR Act) to stay the effect of order (2) imposing the condition.
- 4 The Commissioner of Police NSW Police Force was joined as a party to the proceedings, by consent, on 23 April 2019.
- 5 The application for a stay was heard on 15 May 2019. The following are the reasons for the orders made on 17 May 2019 granting the stay.

Background

- 6 The following facts are not in dispute. Mr Flevotomos has been associated with the premises since 1982. He was licensee of the premises from 1 November 2006 to 1 December 2017, and Mr Timothy Williams commenced the role of licensee on 1 December 2017. The Business Owner is Iguana Bar & Restaurant Pty Ltd (Iguana). Mr Flevotomos was until 9 May 2019 the sole Director and Secretary of Iguana; Mr Nick Katsaras is from that date Director and Secretary. The sole shareholder of Iguana is Mrs Helen Flevotomos, the mother of Mr Flevotomos.
- 7 The background to the complaint and disciplinary action, as recorded in the decision of 20 March 2019, is as follows. The premises were previously known as Iguana Bar. In August 2014 the business model changed, from a

restaurant/nightclub to an adult entertainment venue providing female strippers performing striptease and podium dancing on a stage and in private rooms. New conditions were imposed on the licence from 30 October 2014, including conditions that prohibit physical contact between performers and patrons (Contact Condition), performances being limited to a stage area (Stage Condition), minimum attire of performers when not on stage (G String Condition), and prohibiting any place within the premises being partitioned to prevent observation of activity (Visibility Condition).

- 8 The disciplinary complaint was made on 10 December 2017 by Acting Superintendent Allison of the Kings Cross Local Area Command as delegate of the Commissioner of Police.
- 9 After receiving submissions, including submissions in reply by the complainant and further material from the complainant, ILGA found that the four grounds of the complaint were established, being that:
 - (1) Ground (1) (s 139(3)(a) of the Act): Mr Flevotomos had, while holding a licence, been convicted of an offence under the Act or regulations, being 11 separate convictions for liquor legislation offences arising from breaches of conditions of the licence;
 - (2) Ground (2) (s 139(3)(b) of the Act): as former licensee Mr Flevotomos had failed to comply with conditions to which the licence was subject, specifying approximately 13 incidents involving the contravention of licence conditions;
 - (3) Ground (3) (ss 139(3)(i), (m), (j) of the Act): Mr Flevotomos was not a fit and proper person to be the holder of a licence, and as a person interested in the business and as a close associate was not a fit and proper person to be so interested or a close associate of a licensee; and
 - (4) Ground (4) (ss 139(3)(s), (t) of the Act): the licence had not been exercised in the public interest, on the basis that Mr Flevotomos as former licensee had permitted the premises to be used for indecent conduct and drug use, and the continuation of the licence was not in the public interest.

Legal principles

- 10 The general rule is that an application for administrative review of a decision does not prevent the decision from taking effect. The Tribunal may make an order “staying or otherwise affecting the operation of the decision under review”.

11 The power is set out in s 60 of the ADR Act:

60 Operation and implementation of decisions pending applications for administrative review

(1) Subject to this section, an application to the Tribunal for an administrative review under this Act of an administratively reviewable decision does not affect the operation of the decision under review or prevent the taking of action to implement that decision.

(2) On the application of any party to proceedings for an application for an administrative review under this Act of an administratively reviewable decision, the Tribunal may make such orders staying or otherwise affecting the operation of the decision under review as it considers appropriate to secure the effectiveness of the determination of the application.

(3) The Tribunal may make an order under this section only if it considers that it is desirable to do so after taking into account:

(a) the interests of any persons who may be affected by the determination of the application, and

(b) any submission made by or on behalf of the administrator who made the decision to which the application relates, and

(c) the public interest.

(4) While an order is in force under this section (including an order that has previously been varied on one or more occasions under this subsection), the Tribunal may, on application by a party to the proceedings, vary or revoke the order by another order.

12 In *QLD Protection Security Pty Ltd v Commissioner of Police, NSW Police Force* [2018] NSWCATAP 113 the Appeal Panel discussed the principles concerning stays and other orders under s 60 in the following terms:

31. The Tribunal recently considered the power under s 60 of the ADR Act in *Loveday v Commissioner for Fair Trading* [2018] NSWCATAD 80 (*Loveday*). In that decision it was held at [8]:

“... Section 60(2) and (3) give the Tribunal a single discretionary power to make a stay order or to refuse to make such an order taking into account all relevant considerations. Secondly, the words “to secure the effectiveness of the hearing” include a situation where the applicant will suffer irreparable loss in the sense that no recompense for it can be obtained if the application is ultimately successful: *Re Pelling and Secretary, Department of Aviation* [1984] AATA 179; (1984) 5 ALD 638 at 639. It is not confined to the situation where a hearing would be pointless because the applicant will go out of business if a stay is refused. ...”

32. The relevant considerations in deciding whether to make an order under s 60(2) include:

(1) whether the order is appropriate to secure the effectiveness of the determination of the application for review: ADR Act, s 60(2);

(2) whether the order is desirable taking into account:

(a) the interests of any persons who may be affected by the determination of the application for review: ADR Act, s 60(3)(a), *Loveday* at [10], *Re Scott and Australian Securities and Investments Commission* [2009] AATA 798 (*Re Scott*) at [4];

(b) any submission made by or on behalf of the administrator who made the decision to which the application relates: ADR Act, s 60(3)(b), *Loveday* at [10], *Re Scott* at [4];

(c) the public interest: ADR Act, s 60(3)(c), *Loveday* at [10], *Re Scott* at [4];

(3) the applicant's prospects of success on the application for review: *AVS Group of Companies Pty Ltd v Commissioner of Police* [2010] NSWCA 81 (*AVS Group*) at [129], *Loveday* at [10] and [11], *Re Scott* at [4].

33. The circumstances that are relevant in any particular case to the considerations identified above may well overlap or be interrelated.

Submissions on the stay application

Applicants' submissions

13 The applicants submit that an order under s 60 is appropriate to secure the effectiveness of the determination of the review application for the following reasons:

- (1) The condition exposes Iguana to irreparable loss in the form of further regulatory action, which it cannot plan for or avoid. The persons (other than Mr Flevotomos) who the licensee must exclude from the premises have not been identified by name and the term "interest" is not defined, and the evidence is that it will not be possible to implement controls to prevent such unnamed persons attending the premises;
- (2) The condition exposes Iguana to significant loss of revenue for which it will not receive recompense if the application is ultimately successful. Iguana is likely to lose revenue of \$230,000 per annum or \$20,000 per month if Mr Flevotomos is excluded from attending even in a social capacity. He has a long-standing association with the customers of Iguana;
- (3) The condition exposes Mr Flevotomos to damage to his mental and emotional wellbeing as a result of social dislocation and a negative impact on his sense of identity. The majority of his friendships are with longstanding customers of the venue whom he meets at the venue, and his sole remaining family member in Australia is his elderly mother for whom he is the primary carer.

14 The applicants submit that there has been no breach of licence conditions since 1 January 2017. Mr Flevotomos was licensee until 1 December 2017, and has been able to attend the premises since then, and the inference arising from this sustained period of compliance with licence conditions is that there is

no prejudice to the public interest if the stay is granted. Further, the application for review has significant prospects of success, there being no basis for ILGA's conclusion that the condition excluding Mr Flevotomos from the premises is appropriate in circumstances where Mr Flevotomos was directly or personally involved in a small number of adverse events only; he continued as licensee until December 2017; and he has now resigned as director and has no role in respect of the premises or Iguana. There is no basis for the conclusion that there is an unacceptable risk that Mr Flevotomos may seek to become involved with the day to day affairs of business conducted on the premises if he is allowed to attend.

Respondents' submissions

- 15 The respondents consent, for the purposes of the stay, to the stay of the condition insofar as it relates to "any other person who has held an interest in Iguana Bar & Restaurant Pty Ltd ABN 41 129 898 942 between 29 October 2014 and 20 March 2019", and oppose the making of a stay in respect of Mr Flevotomos' ability to enter the premises or be involved in the conduct of the business.
- 16 The respondents refer to the list of non-exhaustive relevant considerations stated by President Downes J in *Re Scott* at [4], which is similar to the principles stated by the Appeal Panel in *Bentran Pty Ltd v Sabbarton* [2014] NSWCATAP 37 at [9] as relevant to the exercise of discretion under s 43(3) of the NCAT Act to grant a stay pending appeal. Those principles are:

(1) Generally a successful party is entitled to the benefit of the decision or orders that the party has obtained at first instance, but a stay may be granted where the appellant has demonstrated an appropriate case to warrant the exercise of discretion in its favour - s 43(2) and (3) of the Act, *Kalafair Pty Limited v Digitec (Australia) Pty Limited* (2002) 55 NSWLR 737 at [28], *Mushroom Composters Pty Ltd v IS & DE Robertson Pty Ltd* [2014] NSWCA 231 at [7].

(2) In practical effect the onus is on an applicant for a stay to make out a case that it is appropriate for the court to make such an order - *Alexander v Cambridge Credit Corporation Ltd* (1985) 2 NSWLR 685 at 694, *Vaughan v Dawson* [2008] NSWCA 169 at 16.

(3) The mere lodgment of the notice of appeal is insufficient, of itself, to demonstrate that it is an appropriate case to warrant the granting of a stay - s 43(2) and (3) of the Act, *Alexander v Cambridge Credit Corporation Ltd* (1985) 2 NSWLR 685 at 694, *Mushroom Composters Pty Ltd v IS & DE Robertson Pty Ltd* [2014] NSWCA 231 at [7].

(4) An order staying the operation of a decision or orders will generally be appropriate where such an order is reasonably necessary to secure the effectiveness of the appeal - s 43(3) of the Act. This is similar to, if not the same as, the considerations applied by the Courts that where there is a risk that an appeal will prove abortive if the appellant succeeds and a stay is not granted or where unless a stay is granted an appeal will be rendered nugatory, the discretion should generally be exercised in favour of granting a stay - *Alexander v Cambridge Credit Corporation Ltd* (1985) 2 NSWLR 685 at 695.

(5) The Tribunal may also take into account the strength or otherwise of the case of the party seeking the stay. This consideration may be particularly relevant when it is plain that an appeal, which does not require leave, has been lodged without any real prospects of success and simply in the hope of gaining a respite against immediate execution of the decision - *Alexander v Cambridge Credit Corporation Ltd* (1985) 2 NSWLR 685 at 695.

(6) The Tribunal's power to grant a stay includes a power to make such an order subject to such conditions as the Tribunal specifies - ss 43(3) and 58 of the Act.

(7) In exercising the discretion the Tribunal will also weigh the balance of convenience and the competing rights of the parties and may impose appropriate conditions so as to achieve a result that is fair to all parties - *Alexander v Cambridge Credit Corporation Ltd* (1985) 2 NSWLR 685 at 694, *Mushroom Composters Pty Ltd v IS & DE Robertson Pty Ltd* [2014] NSWCA 231 at [21] and [22].

(8) Finally, the overriding principle in an application for a stay is to ask what the interests of justice require - *New South Wales Bar Association v Stevens* [2003] NSWCA 95 at [83] and *Penrith Whitewater Stadium Ltd v Lesvos Pty Ltd* [2007] NSWCA 103 at [18].

- 17 The respondents submit that the stay is not necessary to secure the effectiveness of the review application. The condition was imposed for protective purposes and as the only reasonable alternative to cancelling the liquor licence. There is ample support for the condition in the complaint materials and the decision: the conduct underpinning the offences was serious, and ILGA found that Mr Flevotomos exercises a substantial degree of influence over the business despite the change in licensee. Despite the assertions that Mr Flevotomos wishes to attend the premises in a social capacity only and the recent change in directorship, he continues to wield a significant influence over the business. There is evidence of his ongoing involvement in the “Dollhouse Rules and Regulations” annexed to the Statutory Declaration of Mr Williams dated 18 July 2018. He is a regular attendee at the premises. ILGA was not persuaded that he would comply with a condition that he not have any involvement in the business if he were permitted to be on the premises. The applicants have not established that the determination of the review

proceedings will be rendered ineffective, in terms that Mr Flevotomos will personally suffer irreparable loss, if a stay is not granted. A desire to attend the premises to socialise cannot amount to an interest necessary to secure the effectiveness of the determination of the review application, nor should it outweigh the protective objective of the condition or the public interest in an individual who was responsible for repeated and egregious breaches of the Act from having any involvement in the business conducted in the premises.

Evidence on the stay application

- 18 The applicants rely on affidavit evidence from Timothy Williams, George Koutalas, Jason Gantry and Ulysses Flevotomos. Mr Gantry gave oral evidence by telephone, and was cross examined. Mr Flevotomos' affidavit had been served in accordance with the directions made on 7 May 2019, on Friday 10 May 2019, and the request that he be available for cross examination was made on the afternoon before the hearing. On the day of the hearing Mr Flevotomos was at hospital assisting his elderly mother. Attempts to have him available by telephone were unsuccessful. The affidavit was admitted, the parties making submissions as to the weight to be given to that evidence. Mr Williams and Mr Koutalas were not required for cross examination.
- 19 The evidence of Mr Williams, the current licensee, is that he would be unable to enforce and thereby comply with the condition that all persons who have had an interest in Iguana between 29 October 2014 and 20 March 2019 not be permitted to enter the premises. That would have consequences for him as licensee, and for the licence, the Premises Owner, the company and its employees. Mr Williams states that the average revenue per week of the venue is approximately \$25,000, two major sources of which are bucks parties organised by Mr Gantry, and regular longstanding clients such as Mr Koutalas. The bucks parties generate \$200,000 per annum in revenue, which is a reliable source of income in contrast to having to rely on walk up customers which fluctuate, plus additional money spent by clients after their package has completed. Mr Koutalas is the biggest and most regular spender of the individual clients who attend the venue. Those two sources of revenue account for 17.7% of the venue's weekly revenue. He is concerned that exclusion of Mr Flevotomos from the premises would cause the loss of business of Mr Gantry

and Mr Koutalas which would not be compensated for if the review application is successful. Mr Williams states that despite Mr Flevotomos' management of the premises up to 1 December 2017 and his social attendance since then, no adverse event has occurred since January 2017, and there have been no regulatory issues or licence breaches since that time. In his opinion the personal presence of Mr Flevotomos at the venue has no effect on his ability to manage the licence or ensure that the venue is compliant with licence conditions.

- 20 Mr Koutalas is the director of a medium size retail mattress and bedding business. His evidence was that as part of the business he entertains international and interstate suppliers when they come to Sydney. He entertains clients 3-4 times a month. He generally takes clients visiting Sydney to a restaurant and then to the Dollhouse for drinks and entertainment. His business would spend in excess of \$30,000 per annum at the Dollhouse entertaining clients. He met Mr Flevotomos when he was operating the Iguana Bar approximately 10 years ago, and he has always made him feel welcome. He has helped him build his relationship with a number of significant clients. If Mr Flevotomos is unable to attend the venue he would no longer take his clients there.
- 21 Mr Gantry is the director of a company which operates a party planning business. Since early 2014 the business has held bucks parties at Dollhouse. From the first event in mid April 2014 he has agreed on a long term business plan with Mr Flevotomos. He currently holds 2-6 events at Dollhouse per week, and the revenue generated to the Dollhouse (excluding deposits paid by clients to him) is approximately \$200,000 per annum pre-paid. He has had offers from rival venues to take his business elsewhere but has refused as without the input and support of Mr Flevotomos his business would not be where it is. If Mr Flevotomos was no longer able to attend the venue he would move his business elsewhere.
- 22 In oral evidence Mr Gantry stated that he has events booked at the Dollhouse from one week to six months in advance. He feels more comfortable with

someone he trusts and would not feel comfortable if Mr Flevotomos was not there.

- 23 Mr Flevotomos' affidavit evidence was that he was personally involved in only the following adverse events:
- (1) Two occasions of permitting patrons to enter the premises during the lock-out period on 24 September 2016 and 22 January 2017;
 - (2) One breach of the Incident Register condition on 14 February 2013; and
 - (3) Two occasions of breach of the Contact condition on 9 June 2016 (when he was present when a patron kissed a dancer) and 30 October 2016 (when he was on the premises when a patron slapped a female dancer).
- 24 Mr Flevotomos states that the majority of the adverse events occurred as a result of his failure of management of the venue including not having appropriate policies or controls in place to prevent the adverse events from occurring. He has resigned as licensee, hired a new licensee, and hired a consultant to create a new set of management policies for the venue. While he has resigned any involvement in a professional capacity with Dollhouse, the venue remains intrinsically linked to his personal and social identity. He has been involved in the operation of the venue since 1982, first when it was a restaurant and bar, then a nightclub and then when it became a gentleman's club. He has cultivated close relationships with regular customers. He has no children or spouse and the bulk of his social interactions involve meeting and catching up for drinks with friends. Under the condition he will be unable to participate in social interactions, which will have a significant and negative effect on his mental and emotional well-being and his social standing in the local Kings Cross community.

Discussion and findings

- 25 Orders 1, 3 and 4 of the disciplinary action taken on 20 March 2019 are disciplinary action taken under s 141(2) of the Act against Mr Flevotomos directly, as former licensee. The respondents accept that the interests of Iguana are affected by the condition imposed on the licence under order 2 insofar as it relates to "other person(s)" with an interest in the business, and that accordingly Iguana is a proper and necessary party to the proceedings: s 44(1) ADR Act. The Tribunal has considered the relevant matters as specified

in s 60(2) of the ADR Act and as discussed in *QLD Protection Security Pty Ltd v Commissioner of Police, NSW Police Force* [2018] NSWCATAP 113 by reference to both applicants in the proceedings.

- 26 In considering those factors, the Tribunal notes that as discussed by Deputy President Hennessy in *Loveday* at [11], applying *AVS Group of Companies Pty Ltd v Commissioner of Police* [2010] NSWCA 81, it is relevant to take into account not only whether there is any practical point in reviewing the decision if a stay is not granted, but also the likelihood that the decision will be affirmed and the correct decision will not have been implemented for some time. The hearing of the administrative review application is listed for 1 August 2019, which is not a significant lapse of time.

Effect on Mr Flevotomos and Iguana if the stay is not granted

- 27 The Tribunal accepts the evidence of Mr Flevotomos that if the stay is refused and he cannot enter the premises he would be unable to participate in social interactions associated with the Dollhouse. In the absence of any evidence as to the significance of any negative effect on his mental and emotional well-being as a consequence, the Tribunal does not consider that this factor establishes that the stay is necessary to secure the effectiveness of the determination of the review application, on the basis that Mr Flevotomos is likely to suffer irreparable harm in the sense that no recompense can be obtained if the application is successful. Any disruption to his social interactions would be, if the application for review is successful, of a finite duration for a relatively limited period until the review is finalised.
- 28 The position of Iguana is different. The Tribunal accepts the evidence of Mr Williams that the bucks parties organised by Mr Gantry are a reliable source of revenue for the premises, and that his business, together with the clients of Mr Koutalas, constitutes approximately 17.7% of the weekly revenue of the Dollhouse. The Tribunal accepts the evidence of Mr Gantry and Mr Koutalas that Mr Flevotomos' presence at the Dollhouse is a significant factor in retaining their business. While Mr Gantry states that if Mr Flevotomos was no longer able to attend he would take his business elsewhere, it is not clear how long the process he envisages of either acquiring his own venue or taking his

business to another venue would take. The evidence does not establish that it would be immediate. Acknowledging that, the Tribunal accepts that if a stay is not granted and if either Mr Koutalas or Mr Gantry acted on their expressed intention, there is at least the likelihood that there would be a loss of a significant part of the business' income, which loss could not be recompensed if the application for review is successful.

Mr Flevotomos' involvement in the business

- 29 Mr Flevotomos ceased as licensee in December 2017, and as at 9 May 2019 is no longer a director or secretary of Iguana. The current shareholder is Mr Flevotomos' mother, and it was not in dispute that she is elderly, and unwell. The Tribunal finds that, despite his assertions that he wishes to attend the premises in a social capacity and despite the recent change in directorship, Mr Flevotomos continues to have an influence in the business, by bringing custom to the business. That much is clear from the evidence of Mr Gantry and Mr Koutalas. The issue is, however, whether his presence is likely to influence whether the business can operate lawfully, including in compliance with the relevant conditions.
- 30 Each of the four grounds established in the decision of 20 March 2019 is particularised. It is not necessary for the purposes of the stay application to analyse each particular, and it will be a matter for the substantive review for the evidence going to each matter found to be considered, and in particular for the contention of the applicants that Mr Flevotomos was directly involved in only a few of the recorded breaches to be addressed. For the purposes of the stay application, the material referred to in the decision supports the applicants' submission that no relevant offences or breaches have been recorded since January 2017.
- 31 Based on the findings in the decision of 20 March 2019, the breaches of conditions leading to convictions of Mr Flevotomos as particularised in ground 1 occurred between 9 February 2013 and 29 November 2015; and the failure of Mr Flevotomos to comply with conditions as particularised in ground 2 relates to events occurring between 12 October 2014 and 22 January 2017. The findings on ground 3 rely on the issue of 7 penalty infringement notices to

Mr Flevotomos between 25 October 2015 to 29 November 2015 for breaches of s 11 of the Act; 13 compliance notices issued by NSW Police between 29 June 2013 to 9 November 2014 for contravention of conditions; the issue of 5 penalty notices by NSW Police between 9 February 2013 to 12 October 2014 for contravention of conditions. Those findings were also based on 15 matters current before the Local Court at the time of the complaint and finalised on 21 February 2018, relating to breaches of conditions between 9 June 2016 to 30 October 2016, in respect of which fines were imposed. ILGA accepts that the fines have been paid. The findings on ground 4 relating to the public interest relate to incidents of drug use by patrons and staff on the premises between 6 November 2015 to 30 October 2016, findings that Mr Flevotomos was aware that patrons were using or possessing prohibited drugs and that there was a culture of prohibited drug use by patrons underscoring the high-risk nature of the late-night trading venue.

32 The respondents submit that there are further unresolved criminal charges against Mr Flevotomos in the Local Court for failure to comply with licence conditions. In support, the respondents rely on a printout from JusticeLink at 23 April 2019, which shows five matters “Licensee fail to comply with conditions of licence” lodged 11 September 2018. The respondents’ representative was unable at the hearing to confirm what those matters relate to. In the absence of any clarification, and given the recording that the charges relate to “Licensee failing to comply...”, the Tribunal does not find that these matters relate to offences or breaches since Mr Flevotomos ceased to be licensee on 1 December 2017.

33 By order (4) made on 20 March 2019 Mr Flevotomos is disqualified from being a close associate of a licence for a period of 10 years commencing on 20 May 2019 in respect of licence number LIQO624006713. A “close associate” of the holder of a gaming or liquor licence is defined in s 5(1) of the *Gaming and Liquor Administration Act 2007* as a person who:

(a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the applicant or licensee that is or will be carried on under the authority of the licence, and by virtue of that interest or power is or will be able (in the opinion of the Authority) to exercise a significant

influence over or with respect to the management or operation of that business, or

(b) holds or will hold any relevant position, whether in his or her own right or on behalf of any other person, in the business of the applicant or licensee that is or will be carried on under the authority of the licence.

- 34 The respondents submit that the reason for the imposition of the condition in order (2) was ILGA's concern that Mr Flevotomos would not comply with a condition that he not have any involvement in the business if he was permitted to be on the premises. Given the evidence that Mr Flevotomos' mother, who is the sole shareholder of Iguana, is elderly and unwell, and that he is her carer, the Tribunal has some concern that he may maintain influence and involvement in the business through that shareholding. However, that could still continue even if he were not permitted to be on the premises.
- 35 The respondents rely on the involvement of Mr Flevotomos as recorded in the "Dollhouse Rules and Regulations", as stated in an email of 4 September 2015, to which Mr Williams refers in his statutory declaration of 18 July 2018 as the new house policy implemented in late 2015. That document records a management role for Mr Flevotomos, which would be consistent with his position at that time as licensee. In the statutory declaration of 18 July 2018 Mr Williams records that Mr Flevotomos provides support and advice. The issue of whether Mr Flevotomos continues, or is likely to continue, to play a role in managerial decision making after the change in formal management of Iguana and the making of order (4) on 20 March 2019, such that the imposition of the condition on the licence is the correct and preferable decision, will be a matter for determination in the substantive proceedings. For the purposes of the stay, the Tribunal accepts the evidence of Mr Williams in his affidavit of 9 May 2019, which was not challenged, that Mr Flevotomos' personal presence at the premises does not affect his ability to manage the licence or ensure the venue is compliant with conditions.
- 36 The Tribunal accepts that the number, and range, of offences and breaches recorded in the decision as the basis on which the disciplinary action was taken are serious. On the evidence before the Tribunal, there is no indication of any further breaches since January 2017, a period which includes the 10 months before and 18 months since Mr Flevotomos ceased to be licensee. In that

period Mr Flevotomos has, on his evidence and on the evidence of Mr Gantry and Mr Koutalas, been attending the venue, and has been director and secretary of Iguana, the Business Owner.

Prospects of success

- 37 The applicants submit, based on the evidence of Mr Williams, that that part of the condition requiring exclusion of any person with an “interest” in Iguana between 29 October 2014 and 20 March 2019 will be impractical to implement. That aspect of the substantive review was not argued on the hearing of the stay, the respondents having consented to the stay insofar as it relates to that part of the condition. The issues relating to the requirement to exclude Mr Flevotomos which will require determination in the substantive hearing appear to relate to the evaluative task of determining whether, in light of the history, the condition is appropriate. The applicants challenge a number of factual findings going to Mr Flevotomos’ knowledge of breaches and his motives for permitting contravention of conditions, and submit that Mr Flevotomos was only directly or personally involved in a small number of adverse events. The respondents point to the protective purpose served by Part 9 of the Act, and the risk that Mr Flevotomos would not comply with a condition that he not have any involvement in the business if he is permitted to remain on the premises. On neither basis can it be said, based on the evidence before the Tribunal at this stage, that there is either a likelihood that the decision will be affirmed, or that there are no prospects of success.

Conclusion

- 38 The number, nature and seriousness of the offences and the allegations, in the context of the protective purpose served by the disciplinary provisions in Part 9 of the Act, is relevant to the consideration of the public interest required by s 60(3)(c). The convictions and contraventions recorded in the decision between February 2013 to January 2016 reflect an extremely poor approach to compliance with the regulatory requirements for the proper conduct of the nightclub business. The regulator, ILGA, opposes the stay, pointing to what it contends is a risk that Mr Flevotomos will continue to exercise a significant influence over the business. The Tribunal has found that not to grant a stay is likely to have a significant impact on the revenue generated by Iguana. On

balance, given that impact, and given the absence of any record of continued non-compliance since Mr Flevotomos ceased to be licensee, the Tribunal is satisfied that it is appropriate to grant the stay to secure the effectiveness of the determination of the application.

Orders

39 The Tribunal orders:

1. The decision of the First Respondent made on 20 March 2019 to impose a condition on liquor licence LIQ0624006713 (being Order 2 in the decision of the First Respondent made on 20 March 2019) is stayed until further order of the Tribunal.
2. Without limiting the rights of the parties under s 60(4) of the *Administrative Decisions Review Act 1997*, the Respondents have liberty to apply on 3 days' notice to seek to vary or revoke order 1 above on the grounds that Mr Ulysses Flevotomos was present at the Dollhouse Nightspot (located at 13-15 Kellett Street, Potts Point) at the time that the licensee or either Applicant committed any breach of the *Liquor Act 2007* or any breach of licence conditions.

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.
Registrar

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.