



Our ref: 1-1475132474

Your ref:

Mr Michael Lee
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28 September 2012

Dear Sir

Decision under section 45 of the *Liquor Act 2007* to refuse an Application for an on-premises licence.

I refer to your client's application for an on-premises liquor licence that was received by the Authority on 26 April 2012 ("**Application**"). The Application concerns a karaoke business located in suburban Sydney ("the **Premises**").

The Authority has considered the Application and all submissions provided in relation to it, including your written submission dated 20 September 2012.

The Authority has also considered the oral submissions that the Applicant made during his attendance at the Authority meeting of 27 September 2012, when he was accompanied by you. I note that you have provided a third character reference for the Applicant sent by a facsimile on today's date. However, this matter was determined by the Authority during its meeting convened yesterday, after hearing from your client.

Legislation

Under section 45(3)(a) of the *Liquor Act 2007* ("**Act**"), the Authority must not grant a licence unless the Authority is satisfied that the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates.

Under section 45(3)(b) of the Act, the Authority must not grant a licence unless the Authority is satisfied that practices will be in place at the licensed premises as soon as the licence is granted that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place.

When making licensing decisions under the Act, the Authority must also have regard to the statutory objects and considerations prescribed by section 3, which states:

3 Objects of Act

- (1) The objects of this Act are as follows:
 - (a) to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,

- (b) to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,
- (c) to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.
- (2) In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:
 - (a) the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),
 - (b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,
 - (c) the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

Decision

Detailed Police Submissions dated 28 May 2012 and 11 April 2011 satisfy the Authority that:

- On 18 December 2010 Police from the Eastwood Local Area Command attended the Premises and observed that the Premises was operating as a Karaoke business.
- The Applicant was the owner of that business and in attendance at the time of the inspection.
- Police received information from patrons that the business was selling beer to patrons at five dollars per can and the Applicant admitted this to Police, after initially claiming to Police that the business was not selling alcohol to its patrons.
- During this inspection Police observed a number of people with high levels of intoxication on the Premises.
- Upon inspection of the Applicant's nearby vehicle, Police found a significant volume of beer and also rice wine. The Applicant admitted supplying alcohol to patrons of the business for approximately three to four months without a licence for the Premises.
- The Applicant advised Police that he did not apply for a licence for the Premises by reason that he was advised by a previous solicitor that it would cost over two thousand dollars and this was too expensive.
- Police have issued to the Applicant Infringement Notice number 4024682705 in the amount of \$1100 for an offence against section 7(1) of the Act – selling liquor without a licence, and Infringement Notice number 402682714 in the amount of \$1100 for an offence against section 8(1)(c) of the Act – having the care or management of premises that are used to sell liquor without a licence.

The Authority notes that in the Applicant's letter to the Authority dated 20 September 2012 the Applicant admitted supplying liquor without a licence on the Premises on 18 December 2010, as alleged by Police, and that the Applicant had done so on "three or four occasions" over the three months prior to that occasion. This letter contradicts the information that the Applicant had instructed Panacea Lawyers to communicate at paragraph 15 of a letter from Panacea Lawyers to the Office of Liquor Gaming and Racing ("OLGR") dated 8 June 2012 when the Applicant admitted that he had sold liquor without a licence to customers "once at the subject premises".

The Authority further notes the submission contained in the Applicant's letter dated 20 September 2012 that the Applicant possesses a "good knowledge" of his responsibilities under liquor laws having previously held a wholesale liquor licence while working for a Queensland wine exporter and having completed a New South Wales Responsible Service of Alcohol course in 2004.

At its meeting of 27 September 2012 the Authority decided that in the current circumstances, and having taken into account the Applicant's expressions of regret, his acknowledgement of wrongdoing, the two character references, the Plan of Management for the Premises and the adverse impact that refusal of a licence will have upon the Applicant's business, the Authority is nevertheless not satisfied that the Applicant is not a fit and proper person to hold a licence to carry on the business to which the proposed licence relates.

Additionally, the Authority is not satisfied that practices will be in place at the licensed Premises as soon as the licence is granted that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the Premises and that all reasonable steps are taken to prevent intoxication on the Premises, and that those practices will remain in place.

Accordingly, the Authority has decided to refuse the Application.

A version of this decision letter (without identifying the Applicant's name or the address of the Premises) will be published on the "Decisions of Interest" section of the Authority website www.ilga.nsw.gov.au.

If you have any enquires about this letter please contact the Authority's General Counsel, Mr Bryce Wilson via wilson@ilga.nsw.gov.au

Yours faithfully



David Greenhouse
Chief Executive
Independent Liquor and Gaming Authority