

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Complainant: Director of Liquor Licensing
(represented by Mr Leigh Radis of Department of Racing,
Gaming and Liquor)

Respondent: Mr Saran Singh Bajaj
(represented by Mr Dan Mossenson of Lavan Legal)

Commission: Mr Jim Freemantle (Chairperson)
Ms Helen Cogan
Mr Greg Joyce

Matter: Complaint under Section 95 of the *Liquor Control Act 1988*

Date of Hearing: 27 January 2011

Date of Determination: 27 January 2011

Date of Reasons Published: 9 March 2011

Determination: The complaint is dismissed.

Introduction

1. On 21 July 2010 the Director of Liquor Licensing lodged a complaint pursuant to section 95 of the *Liquor Control Act 1988* ("Act") against Saran Singh Bajaj sole director and 100% shareholder of Wavemark Enterprises Pty Ltd being the licensee for nightclub licence 607007542 issued in respect of the premises known as The Shape Bar situated at 237 Hay Street, East Perth.
2. The grounds of the complaint were that Mr Singh was on the 2 May 2010, convicted of "Possess (sic) a Prohibited Drug (Cannabis); Misuse of Drugs Act (WA) 1981; 6(2)B" in the Fremantle Magistrates Court and that this together with the fact that Mr Singh had previously been convicted of a number of drug related offences, made him no longer a fit and proper person to hold a position of authority in a body corporate that holds a licence under the Act.
3. On 27 January 2011 a hearing into the matter was conducted by the Commission.

Submissions by the Director of Liquor Licensing

4. On 7 December 2007 Wavemark Enterprises Pty Ltd (ACN 127 368 408) became the licensee of the licensed premises. Mr Bajaj owns 100% of the shares that comprise the share structure of the licensee. He is also the sole director of the licensee. As the only shareholder in the licensee he is a person who is "in a position to exercise or exert control or substantial influence over the licensee." He therefore occupies a position of authority in the licensee pursuant to section 3(4)(b) of the Act.

On 21 May 2010 Mr Bajaj was convicted in the Fremantle Magistrates Court of "Possess (sic) a Prohibited Drug (Cannabis); Misuse of Drugs Act (WA) 1981; 6(2)B".

Mr Bajaj has a number of similar convictions which occurred at times prior to when Wavemark Enterprises Pty Ltd became the licensee of the licensed premises, namely:

- (i) 16 February 2007 Perth Magistrates Court "Cultivate a Prohibited Plant".
- (ii) 16 February 2007 Perth Magistrates court "Possess a Prohibited Drug (Cannabis)".
- (iii) 16 February 2007 Perth Magistrates court "Possess a Smoking utensil".
- (iv) 6 April 2005 Perth Court of Petty Sessions "Possess a Prohibited Drug".

5. On 6 December 2007 (at or around the time that Mr Singh's application for a transfer of the licence of the Bullion Bar subsequently renamed Shape Bar was being considered) Mr Singh attended an interview conducted by a delegate of the Director of Liquor Licensing. Mr Singh was advised of the consequences of further convictions. The delegate concluded that there was not sufficient evidence before him to determine that Mr Singh was not a fit and proper person within the meaning of the Act and the application was subsequently approved.
6. On the 21 May 2010 Mr Singh was convicted in the Fremantle Magistrates Court of possessing the prohibited drug Cannabis.

Submissions on behalf of Mr Singh

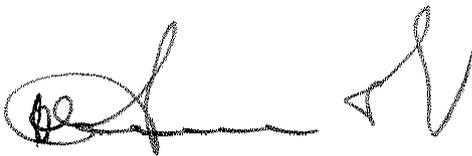
7. The 21 May 2010 conviction is the only relevant offence. This was private and personal in nature and relatively minor on the scale of criminal offences.
8. Since this offence Mr Singh has not used Cannabis.
9. Mr Singh is undergoing therapy from a qualified psychologist in respect of his Cannabis use and enjoys strong family support. Mr Singh shows remorse for his history of Cannabis use.
10. The licensed premises are operated well and the complaint is unrelated to the management of these premises nor is the offence to which the 21 May 2010 conviction relates and any past offences related to such management.
- 11.. The impact of an adverse finding would be severe and the consequences go beyond hardship for Mr Singh as it would impact on the music industry, the public and employees.

Determination

12. Mr Singh had four offences relating to Cannabis use prior to the transfer of the licence. These offences were known to the Director of Liquor Licensing when the transfer application was approved. The Commission notes that Mr Singh was warned of possible consequences of further drug offences.
13. Section 96 of the Act provides that the Commission shall hear and determine the matter to which the complaint, or complaints, relate and if it is satisfied on the balance of probabilities, that the ground upon which the complaint was, or complaints, were

made has been made out so that a proper cause for disciplinary action exists, the Commission may then exercise its discretion as set out in section 96 (1)(a)-(n).

14. The basis of this complaint is that Mr Singh is no longer a fit and proper person as a consequence of his 2010 conviction. However, the complaint is predicated only on the single ground under section 95(4)(f)(ii) of the Act and accordingly the complaint is to be determined only on this single issue after consideration of all of the facts and circumstances.
15. Although section 33(6) of the Act sets out the matters for consideration when determining whether an applicant is a fit and proper person to hold a licence, it can provide some guidance to the determination of a complaint under section 95. Also, there are many authorities concerning the meaning of 'fit and proper' which need not be discussed in detail here. Suffice to say that when deciding whether a person is 'fit and proper' to hold a licence, many factors may be considered including character and reputation (*Australian Broadcasting Tribunal v Bond [1990] HCA 33*), honesty (*Simonsen v Rossi, the Registrar, Real Estate and Business Agents Supervisory Board [2005] WADC 76*) and previous convictions (*Tavelli v Johnson, Unreported, WADC Library No 960693, 25 November 1996*). The purpose of the words 'fit and proper' is to give the decision maker the widest possible scope for judgement (*Hughes and Vale Pty Ltd v New South Wales [No 2] [1955] HCA 28*).
16. In respect of the circumstances of this case, and after consideration of the submissions made by both parties, the Commission is of the view that the 2010 conviction in itself or taken collectively with Mr Singh's prior convictions, is not sufficient to arrive at the conclusion that he is not a fit and proper person to be the holder of a licence under the Act. The Commission is nonetheless concerned that Mr Singh has exercised extremely poor judgement for a person entrusted with the privilege of being able to sell and supply liquor.
17. In arriving at this conclusion, the Commission has given weight to the type and nature of the convictions involved; to the fact that Mr Singh has shown remorse for his actions and taken steps to address this issue, particularly by undergoing counselling; has to date managed and operated his licensed premises in accordance with the Act; and is well respected in the community.
18. The Commission therefore finds that the complaint has not been made out to a satisfactory standard such that proper cause for disciplinary action exists.



JIM FREEMANTLE
CHAIRPERSON