

Holdfast Bay Charters [2011] SALC 65

LICENSING COURT OF SOUTH AUSTRALIA

HOLDFAST BAY CHARTERS

JURISDICTION: Application to review a Commissioner's decision

FILE NO: 1280 of 2011

HEARING DATES: 31 May 2011

JUDGMENT OF: His Honour Judge B Gilchrist

DELIVERED ON: 10 June 2011

Application for review of the Commissioner's decision - Principles guiding such applications discussed - Applicants sought a special circumstances licence – One of the applicants has an extensive criminal history but was found to have turned his life around and to have acted responsibly for many years – The Commissioner granted an interim licence on strict terms - Held: that there was no detectable error in the Commissioner's approach and his decision is confirmed - S 22 Liquor Licensing Act 1997

Sobey v Commercial and Private Agents Board (1979) 22 SASR 70

Glenelg Jetty Hotel [2011] SALC 59

Gold Class Cinemas [2011] SALC 60

REPRESENTATION:

Counsel:

Applicant: Brevet Sergeant C Brannan

Respondent: Mr P Hoban

Solicitors:

Applicant: Commissioner of Police

Respondent: Wallmans

- 1 This is an application for a review of the Commissioner's decision pursuant to s 22 of the *Liquor Licensing Act 1997*.
- 2 The Commissioner had before him an application for a special circumstances licence by Mr Peter Hancock and his sister, Dr Kerry Hancock, to enable them to sell and supply liquor to bona fide passengers on a cruise or function conducted by them in connection with their business "Holdfast Bay Charters".
- 3 What complicated the application was the fact of Mr Hancock's extensive criminal history, which in turn raised the issue as to whether he is a fit a proper person to hold a liquor licence.
- 4 The material placed before the Commissioner disclosed the following offences:
 - 1978 destroying and damaging property and common assault
 - 1979 hinder or resisting police
 - 1981 common assault
 - 1982 urinating or defecating in a public place, offensive language, driving recklessly or in a dangerous manner and hindering or resisting police
 - 1984 in Victoria, driving whilst in excess of the alcohol limit and careless driving
 - 1987 speeding, resisting police, and failing to exhale into a breath analysis machine
 - 1990 unlawfully on premises, resisting police and refusing to provide his name and address
 - 1990 driving without due care, failing to exhale into a breath analysis apparatus, and resisting and assaulting police
 - 1991 driving under the influence on two occasions
 - 1992 urinating in a public place
 - 1993 driving under the influence
 - 1994 driving whilst disqualified
 - 1995 driving under the influence
 - 1997 failing to wear a bicycle helmet
 - 1998 failing to answer authorised questions
 - 1999 failing to comply with a direction in relation to an alcohol test
 - 2003 driving under the influence
 - 2006 driving whilst disqualified.
- 5 In 2009 he received an expiation notice in relation to a pipe and cannabis. In that same year he was also observed by police to be in the company of a person who has an extensive criminal history.
- 6 Mr Hancock gave evidence before the Commissioner that he accepted the expiation notice in relation to the pipe and the cannabis

notwithstanding that they were not his. Mr Hancock also gave evidence to the effect that he did not have a close relationship with the person of concern to the police and that he did not engage in any criminal conduct with him.

- 7 Mr Hancock frankly acknowledged to the Commissioner that this behaviour between 1978 and 2003 was poor. His case was that in around 2003, after his father died, he turned his life around and resolved to significantly reduce his drinking and to become a responsible citizen. He has obtained a maritime accreditation that allows him to skipper a vessel up to 23.8 metres. He has become an accredited commercial diver. He currently operates a very successful charter business with takings of the order of \$7-800,000 a year.
- 8 He adduced character from witnesses who corroborated his assertion that he had significantly changed his lifestyle. The Commissioner heard from Dr Hancock and she said that her brother was intolerant of intoxicated behaviour and was respectful in his responsibilities as a qualified boat operator. This and other evidence from character witnesses led the Commissioner to conclude that Mr Hancock had turned his life around. Notwithstanding his serious antecedent criminal history he was prepared to find that Mr Hancock was a fit and proper person to be licensed under the Act. He granted the application on an interim basis subject to an 18-month period of review. He issued a condition that Mr Hancock has to submit to any drug or alcohol test as required from time to time by the Liquor and Gambling Commissioner or the Commissioner of Police. He granted both Commissioners liberty to apply.
- 9 In seeking a review of this decision the police contend that the Commissioner erred in finding Mr Hancock to be a fit and proper person.
- 10 The police contend that the issues to be taken into account as determining fitness and propriety are:
 - The reputation honesty and integrity (including creditworthiness of the applicant),
 - The reputation honesty and integrity of people with whom the applicant is associates,
 - Whether the person has appropriate knowledge, experience and skills for the purpose,
 - Whether the person has knowledge, experience and skills in encouraging the responsible supply and consumption of liquor.

- 11 The police took me to the decision of Walters J in *Sobey v Commercial and Private Agents Board* and in particular the following passage:

“I cannot imagine anything which is more germane to the question whether a person is a fit and proper person than the matter of his record of previous offences. Any previous breaches of the law, and any propensity towards offending against the law must, in my view, be regarded as of crucial importance. I would not go so far as to say that one criminal offence must necessarily deprive a person of that fitness and propriety which is a pre-requisite for a licence under the Act. But, in the present case, I think the appellant’s past conduct exposes an intrinsic defect of character which is incompatible with his being entrusted with a licence, either as a process server or a commercial sub agent.”¹

- 12 The police contended that with these matters in mind the only reasonable conclusion that could have been reached was a rejection of Mr Hancock’s application.

- 13 In *Glenelg Jetty Hotel* I remarked that:

“The purpose of disciplinary action is focussed towards protecting the public.”²

- 14 In the same vein, determining whether or not a person is a fit and proper person contains no element of punishment. The sole focus of the enquiry is directed towards protecting the public. The public is entitled to assume that those who have been provided with approval under the various positions provided for by the Act are responsible and that they are honest and have integrity. Whilst as Walters J noted previous breaches of the law and a propensity towards offending against the law, which in this case clearly existed, are matters of crucial importance, they do not necessarily forever close the door. It is important to note that further in that judgment Walters J said the following:

“The moral that he must learn is that he will have to demonstrate a greater respect for the law, before he can expect to obtain a licence under the Act. When a considerable period of time has elapsed from now, past facts might be viewed in the light of the lapse of time and weight might be then be properly given to his subsequent good behaviour.”³

- 15 The Commissioner clearly formed the view that in recent years Mr Hancock has exhibited attributes compatible with the proper discharge of the duties of a licensee and that the public could have confidence in his capacity to faithfully discharge those duties.

¹ (1979) 22 SASR 70 at 75

² [2011] SALC 59 at para 24

³ *Sobey* at pp 75-6

16 I remind myself, as I did in *Gold Class Cinemas*, that:

“The application for review is in the nature of an appeal by way of a rehearing. Whilst that exercise requires me to conduct a thorough review of material placed before the Commissioner it does not give me a licence to simply revisit the evidence to reach my own conclusion as to what orders should have been made. For me to interfere, I have to identify error.”(Footnote omitted)⁴

17 It is implicit that the Commissioner accepted Mr Hancock’s evidence about the expiation notice and of the nature of his relationship with the person of concern to the police. He also clearly accepted that Mr Hancock is a changed person. Given the constraints that I have, having not seen or heard Mr Hancock give his evidence, I must defer to the Commissioner on these issues. Accordingly, in conducting this review I proceed from the premise is that the fact of the expiation notice and the fact of some recent association with a person who has an extensive criminal history are irrelevant. I also must proceed from the premise that Mr Hancock’s past criminal conduct must be viewed in the light of the lapse of time and his subsequent good behaviour.

18 Whilst I can understand that the police might have some concerns it is notable that an independent licensing authority that could be expected to be particularly concerned about Mr Hancock’s capacity to manage has effectively licensed him to skipper a substantial vessel. In light of that fact, and in light of the additional restrictions to safeguard the public that the Commissioner imposed, leads me to conclude that the decision reached by the Commissioner was within the bounds of his discretion. Whether I would have reached the same conclusion it is not to the point. I cannot detect any error in the Commissioner’s approach, nor can I say that his conclusion must have been reached as result of an error on his part.

19 I note that during the course of submissions Mr Hancock, through his counsel, Mr Hoban, gave an undertaking that he would not personally undertake, or permit others on the vessel he is skippering to undertake any activities that would be contrary to the terms of the liquor licence or in breach of South Australian law. Subject to imposing these additional conditions, which I do so pursuant to s 43(1) of the Act,⁵ I confirm the Commissioner’s decision to allow Mr Hancock to be licensed on an interim basis for 18 months.

⁴ *Gold Class Cinemas* [2011] SALC 60

⁵ Amongst other things this enables me to impose: “Conditions to ensure that the nature of the business to be conducted under the licence conforms with representations made to the licensing authority in proceedings for the grant of the licence or other proceedings under this Act.”