

The Monkey Bar Port Noarlunga [2022] SALC 45

LICENSING COURT OF SOUTH AUSTRALIA

THE MONKEY BAR PORT NOARLUNGA

JURISDICTION: Application for review of or an appeal from the Commissioner's Decision

FILE NO: 36 of 2022

HEARING DATE: 15 June 2022

JUDGMENT OF: His Honour Judge BP Gilchrist

DELIVERED ON: 15 June 2022

REPRESENTATION:

Counsel:

Applicant: Mr G Coppola

Respondent: No appearance

Solicitors:

Applicant: Australian Hotels Association (SA)

Respondent:

- 1 This is an application for review sought by the Australian Hotels Association (AHA) in connection with the grant of an on-premises licence by the Commissioner for Liquor and Gambling.
- 2 Jack Gibson sought the licence in respect of a business known as ‘The Monkey Bar Port Noarlunga’. Its proposed business model contemplated it operating as an art studio/gallery offering art classes combined with showcasing locally produced alcohol products and light food.
- 3 AHA filed submissions to the Commissioner opposing the grant of the licence on various grounds, none of which were accepted.
- 4 The Commissioner, through a delegate, granted the licence on 10 February 2022. The only conditions imposed upon the licence were in respect of trading hours, only permitting trade on Thursday to Sunday, commencing at 5.00 pm on Thursday and Friday, midday on Saturday and Sunday on each day of trading ceasing at 1.00 am the following day.
- 5 The Commissioner did not forward a copy of the decision and it was not published on the Commissioner’s website until several weeks later. AHA did not become aware of the decision until 3 May 2022.
- 6 Section 22(6) of the Liquor Licensing Act 1997 provides that ‘An application for review of a decision of the Commissioner must be made within one month after the applicant for the review receives notice of the decision or a longer period allowed by the Court’.
- 7 The application for review was lodged in this Court on 4 May 2022. Because AHA did not receive notice of the delegate’s decision until 3 May 2022, it would seem that the application for review was filed within time. For avoidance of any doubt, I made an order that, to the extent that it is necessary, AHA was granted an extension of time within which to file the application.
- 8 AHA contends that the delegate made several errors in arriving at the decision.
- 9 First, that she made a procedural irregularity in that she invited Mr Gibson to make further submissions that addressed issues that AHA had raised and she failed to inform AHA of the fact of the invitation or the response to the invitation.
- 10 Second, Mr Gibson’s response to the invitation amounted to a significant variation to his initial proposal. As such it should have been afforded the opportunity to make further submissions.
- 11 Third, the delegate impermissibly reasoned that because the premises had previously traded under a Liquor and Production Sales licence, the

proposed business ‘was not an additional outlet’ in the locality. AHA submitted that this was not to the point as the sole issues were whether the proposed business was in the community interest and the public interest.

12 Fourth, that the delegate impermissibly placed weight on the apparent lack of complaints when the premises had previously traded under a Liquor and Production Sales licence. It submitted that because the proposed business was based on a different business model the prior lack of complaints was of no probative value.

13 On review, AHA no longer opposed the grant of the licence. It merely sought the imposition of a condition upon the licence that:

Liquor shall only be sold or supplied to person attending a ticketed art course event for the duration of, and up to, 30 minutes after the scheduled event.

14 In light of this, it is not necessary for me to deal with the complaints made by AHA. It is sufficient for me to reiterate what was said by this Court in *Cellarbrations Mannum*¹ about the importance for a delegate, when acting as an adjudicator on a contested application, affording procedural fairness.

15 An application for an on-premises licence is a designated application for the purposes of the Act. As such, an applicant for such a licence must complete a ‘Community Impact Assessment Form’. Within that form Mr Gibson outlined his proposed business model in the following terms:

‘The Monkey Bar Port Noarlunga will provide an art studio space and structured art classes, together with ‘paint and sip’ Art class sessions, where, alcohol, paint, canvass and brushes will be provided, guided by an experienced instructor who will lead the group step by step through the process. Sessions will be booked online only and run for a specified duration (approx. 2 hours)’.

16 The proposed condition sought by AHA is consistent with this model.

17 In *Rhino Room Pty Ltd trading as The Howling Owl*² this Court made the point that a licensing authority needs to be aware that licences can change hands. New owners can have different ideas as to how a business should be run and may develop business models that are vastly different to those that underpinned the initial grant of the licence.

18 In this case, it is one thing to conduct a business model based on the notion of ‘paint and sip’. It is another thing altogether to conduct a bar trading to 1.00 am from Thursday to Monday morning under an on-premises licence

¹ [2021] SALC 42.

² [2020] SALC 40.

focused on selling the full range of liquor and unconnected to any activity related to art classes.

- 19 It therefore seemed to me that the condition proposed by AHA was sensible and prevented this licence and more particularly, the business model that underpinned it, into morphing into something else.
- 20 This application for review was listed on several dates. On each occasion Mr Gibson was advised and, on each occasion, he failed to attend. When this matter was last before this Court, I resolved to deal with the matter in his absence.
- 21 I allowed the application for review and imposed upon the licence the condition proposed by AHA.