

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: CD

Respondent: Commissioner of Police
(represented by Ms Ellen Tapsell of the State Solicitor's Office)

Commission: Sandra Di Bartolomeo
(Presiding Member)

Matter: Application seeking review of a barring notice pursuant to section 115AD of the *Liquor Control Act 1988*.

Date of lodgement of Application: 28 October 2021

Date of Determination: 6 January 2022

Determination: The Application for review is dismissed and the barring notice is affirmed in accordance with section 115AD(7) of the *Liquor Control Act 1988*.

Authorities considered in the determination:

- *Liquor Control Act 1988* (WA) Sections 5, 115AA(2), 115AB, 115AD(3), 115AD(7), 115AD(7)(a) and (7)(b)
- *SVS v Commissioner of Police* (LC19/2011)
- *KRB v Commissioner of Police* (LC33/2011)

Background

- 1 This is an application for the review of a Barring Notice pursuant to section 115AD(3) of the *Liquor Control Act 1988* (WA) ("Act") made by [REDACTED] ("Applicant").
- 2 On 8 August 2021 at and in the vicinity of licensed premises, namely [REDACTED] ("Premises"), it is alleged that [REDACTED] was disorderly and remained in the vicinity of licensed premises ("Incident").
- 3 As a result of the Incident, a delegate officer for the Commissioner of Police issued a Barring Notice on 30 September 2021 ("Barring Notice") under section 115AA(2) of the of the *Liquor Control Act 1988* ("Act") prohibiting the Applicant from entering licensed premises within Western Australia of the following licence classes:
 - 3.1. All hotel licences issued under section 41 (includes hotel, hotel restricted, tavern and tavern restrict licences);
 - 3.2. All small bar licences issued under section 41A;
 - 3.3. All nightclub licences issued under section 42;
 - 3.4. Casino licence issued under section 44;
 - 3.5. All liquor store licences issued under section 47;
 - 3.6. All club licences issued under section 48;
 - 3.7. All restaurant licences issued under section 50;
 - 3.8. All producer's licences issued under section 55;
 - 3.9. All wholesaler's licences issued under section 58;
 - 3.10. All occasional licences issued under section 59; and
 - 3.11. All special facility licences issued under section 46 and regulation 9A of the *Liquor Control Regulations 1989*.
- 4 The Barring Notice was served on the Applicant on 12 October 2021 and is for a period of approximately 10 months expiring on 8 August 2022.

Incident

- 5 The following allegations regarding the Incident were considered by the Respondent, as set out in Detected Incidents Report incident no. [REDACTED]:
 - 5.1. Police on night-safe uniformed foot patrol duties were sighted and waved down by crowd controllers at the entry to the Premises.
 - 5.2. Two patrons, who had been removed from the Premises due to being intoxicated, had been physically aggressive to security in an attempt to re-enter the Premises.

- 5.3. During this event, the Applicant struck a female bar staff member ("Victim") to the face.
 - 5.4. Both the Applicant and another patron were issued with a Move on Order.
 - 5.5. Further enquiries on 12 August 2021 included police reviewing CCTV footage which the police allege is clear and establishes the offences.
 - 5.6. Inquiries with the Victim identified that she does not wish to continue with an assault complaint.
- 6 The Incident giving rise to the Barring Notice is referred to in the following documents:
- 6.1. Section 115AD Application for review of Barring Notice dated 28 October 2021.
 - 6.2. The evidential material relied upon by the Commissioner of Police being:
 - 6.2.1. Police Detected Incidents Report incident no. [REDACTED];
 - 6.2.2. Western Australia Police Criminal Code Infringement Notice [REDACTED], dated 12 August 2021;
 - 6.2.3. Western Australia Police Liquor Infringement Notice [REDACTED] dated 12 August 2021;
 - 6.2.4. Copy of Criminal Investigation Act 2006 Move on Order [REDACTED], dated 8 August 2021;
 - 6.2.5. Western Australia Police Move on Notice Details Report [REDACTED], dated 8 August 2021;
 - 6.2.6. photographs of the injuries of the Victim;
 - 6.2.7. CCTV video filmed in the vicinity of the Premises ("CCTV Footage");
 - 6.2.8. eight still images of the CCTV Footage; and
 - 6.2.9. the Criminal and Traffic History of the Applicant.
 - 6.3. The Respondent's Primary Outline of Submissions dated 26 November 2021.

Applicant's Submissions

- 7 On 28 October 2021, the Applicant applied to the Liquor Commission for a review of the Barring Notice.
- 8 The Applicant has elected to have the review determined on the papers pursuant to section 115AD of the Act.
- 9 Primary Submissions of the Applicant are contained within the application made by the Applicant on 28 October 2021.

- 10 The Applicant also submitted a response to the Respondent's Primary Submissions on 8 December 2021.
- 11 The submissions of the Applicant are summarised as follows:
 - 11.1. The Applicant was assaulted by a security guard at the Premises and was removed from the Premises by use of excessive force by pub security.
 - 11.2. In her Secondary Submissions, the Applicant states that she was once again thrown to the ground with excessive force by the same security guard outside of the Premises.
 - 11.3. The security manager accepted liability for the original incident and apologised for the actions of the security guard.
 - 11.4. The Applicant contacted and waited for the police to arrive in relation to the physical assault inflicted on the Applicant.
 - 11.5. The Applicant engaged in an altercation with the bar manager for which she is extremely remorseful and which is highly out of character. The Applicant does not deny that this occurred and is extremely apologetic.
 - 11.6. In her Secondary Submissions, the Applicant:
 - 11.6.1. admits that she was trying to re-enter the Premises, and acknowledges that [pub security used] appropriate force to prevent her from re-entering the [Premises];
 - 11.6.2. acknowledges that her behaviour is unacceptable, states that she was in a heightened and dazed state, and states that she was acting this way in retaliation to being attacked "by unknown men by all different angles";
 - 11.6.3. admits that she accidentally made contact with the Victim's face;
 - 11.6.4. states that the incident has been portrayed by the Respondents in a context other than that which occurred, and they have not acknowledged anyone's disorderly actions towards the Applicant; and
 - 11.6.5. acknowledges that her behaviour was inappropriate and completely out of character, states that she is remorseful and recognises the seriousness of her behaviour and the impact it may have had on others involved in the incident, particularly the [Victim] which the Applicant is very remorseful for.
 - 11.7. The Applicant assumed that the police were there to assist her in relation to the physical assault inflicted upon her, however the Applicant and her friend were issued with a move on notice.
 - 11.8. The Applicant did not leave the immediate vicinity as requested, as she was hopeful that the incident would be classified as an assault on her.
 - 11.9. Following the Incident, the Applicant was issued with two infringement notices in relation to behaving in a disorderly manner in a public place or in sight or hearing of any person in a public place and a person who under section 115, has been refused

entry to, or has been required to leave and has left, or been removed from, licensed premises; and remains on any footpath that is adjacent to the licensed premises.

11.10. On 12 October 2021, the Applicant was issued with the Barring Notice.

11.11. The Applicant requests that the Barring Notice be reviewed on the basis of three grounds:

11.11.1. in the context of the evidence presented, the Barring Notice is manifestly excessive and disproportionate to the offence;

11.11.2. the evidence presented is in disputable context, the Applicant could be seen to be acting in self-defence and there would have been sufficient evidence to suggest that the Applicant was not a risk to which the public needed general protection; and

11.11.3. the object of the Act is for protection rather than to be punitive and there is no justifiable reason why the Applicant should [have been issued] with a [12] month barring notice as punishment for simply not moving on. The Applicant states that she was not disorderly in the context and genuinely believes she was a victim of a physical assault.

Respondent's Submissions

12 The Respondent provided Primary Outline of Submissions dated 26 November 2021.

13 The Respondent's submissions are summarised as follows:

Reasonable grounds for believing the Applicant has been violent or disorderly or contravened a provision of any written law on licensed premises

13.1. On the evidence before the Respondent, especially Detected Incidents Report and the CCTV Footage, a reasonable person would have been inclined to assent to, and not to reject, the proposition that the Applicant engaged in violent or disorderly conduct on or in the vicinity of the Premises, or contravened a provision of any written law, being the offences of common assault under section 313 of the *Criminal Code* (Criminal Code), refusing to leave a Premises when directed under section 115(4B) of the *Liquor Control Act 1988* (Liquor Control Act); and attempting to re-enter a venue under section 115(7) of the Liquor Control Act.

13.2. The Applicant's conduct constitutes:

13.2.1. Engaging in violent conduct on licensed premises and/or in the vicinity of a licensed premises, namely;

(a) Swinging her elbow backwards in the direction of the head of a security guard;

(b) Striking a security officer at head height with her fist while moving quickly towards the Premises entry;