

**Liquor Commission of Western Australia
(Liquor Control Act 1988)**

Applicant: Mr M E N
(represented by Mr Terry Dobson of Terry Dobson
Legal)

Respondent: Commissioner of Police
(represented by Ms Hayley Richardson of State
Solicitor's Office)

Commission: Mr Evan Shackleton (Presiding Member)

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

Date of Determination: 19 March 2013

Determination: The barring notice is varied as follows:

- The applicant must not enter or remain on licensed nightclub premises;
- The applicant must not enter or remain on licensed premises unless for the purposes of attending *redacted* events as and when requested by the *redacted* , during which time he will at all times remain in the company of a designated *redacted* representative and he will be required to exit such premises by 11:30 pm.

Background

- 1 It is alleged that Mr M E N (“the applicant”) assaulted Mr B D M at the Library Nightclub, 69 Lake Street, Northbridge, at about 1:30 am on 10 November 2012.
- 2 According to the Statement of Material Facts, the applicant and Mr M became involved in a verbal altercation and then the applicant punched Mr M to the left side of his face, whereupon a fight started between the two, where several punches were thrown. It is alleged that Mr M suffered a fractured jaw as a result of the incident.
- 3 On or around 15 November 2012, the applicant was charged with grievous bodily harm. He was released on bail with conditions (amongst others) that he not consume alcohol and that he not enter any licensed premises.
- 4 On 23 November 2012, the applicant was served with a barring notice under the hand of Superintendent Migro, dated 19 November 2012 pursuant to section 115AA(2) of the *Liquor Control Act 1988* (“the Act”) prohibiting him from entering any licensed premises in Western Australia, except those premises licensed under a liquor store licence, for a period of 12 months, expiring 18 November 2013 (“the barring notice”).
- 5 On 30 November 2012, the applicant appeared in the Perth Magistrates Court for his first appearance, and his counsel successfully applied for the bail conditions to be varied, so that the applicant could not enter nightclub premises, but could enter and remain in licensed premises other than nightclub premises while on official *redacted* business but not to remain on those licensed premises after 11:30 pm.
- 6 One of the further conditions is that the applicant not consume alcohol.

Request for Variation

- 7 The same day, the applicant’s counsel wrote to Superintendent Migro, asking that the barring notice be varied, effectively to reflect the variation to bail made by the Court.
- 8 On 3 December 2012, Superintendent Migro declined to vary the barring notice as requested.

Application for Review

- 9 On 22 December 2012, the applicant applied to the Commission for a review of the barring notice pursuant to section 115 AD of the Act.
- 10 Section 115AD(7) of the Act provides that the Commission may affirm, vary or quash the decision subject of the review.
- 11 In this case, the applicant applies for a variation only, in the terms previously put forward to Superintendent Migro.

Submissions on behalf of the applicant

- 12 The applicant is a listed player at the *redacted*.
- 13 The applicant has provided a letter from Mr Trevor Nisbett, Chief Executive Officer of the *redacted*, who says that the applicant is required to attend restaurants, hotels and cafés as part of his employment with the *redacted*, and that it is crucial to the business that all players be available for such events. Further, Mr N says that it is important that the applicant attends club events as part of his all-round development.
- 14 Mr N suggests that the barring notice be varied to prohibit him from entering or remaining upon licensed nightclubs, but allow him to enter and remain upon other licensed premises strictly for the purpose of attending Club events as and when requested by the Club, during which time he will at all times remain in the company of a designated Club representative and he will be required to exit such premises by 11:30 pm.
- 15 The applicant submits that his bail requires him not to consume alcohol and in any event, he would not do that because he is in training.

Submissions on behalf of the Commissioner of Police

- 16 The Commissioner of Police (“the Police”) correctly submits that the purpose of a barring notice is very different to the purpose of criminal proceedings and that the notice is not a penalty but a protective mechanism (*V S v Commissioner of Police* (L19/2011) at [12]).
- 17 The Police further point to the primary and secondary objects of the Act provided in section 5 of the Act and in particular subsections (1)(b) and (2)(d).
- 18 The Police submit that the alleged conduct of the applicant was violent and on licensed premises, that it involved considerable force, was out of proportion to any provocation offered, and points to aspects of the case that suggest that this was not a spontaneous incident.

Determination

- 19 The applicant does not apply to quash the barring notice but to vary it.
- 20 I have had some regard to the purpose and intent of section 115AA(7A) in coming to my decision, but I have placed considerable weight on the letter from Mr N and what I regard as undertakings by the club to monitor the applicant under the variation.
- 21 It is my view that it is more likely than not that in all the circumstances, the terms of the variation are unlikely to result in any danger to the public, a licensee or the applicant himself.
- 22 The barring notice is therefore varied as follows:

- The applicant must not enter or remain on licensed nightclub premises;
- The applicant must not enter or remain on licensed premises unless for the purposes of attending *redacted* events as and when requested by the *redacted*, during which time he will at all times remain in the company of a designated *redacted* representative and he will be required to exit such premises by 11:30 pm.



**MR EVAN SHACKLETON
PRESIDING MEMBER**