

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Ms Svetlana Sergeevna Martin
(assisted by Mr Gerald Martin)

Interveners: Commissioner of Police
(represented by Ms Hannah Stapp of State
Solicitor's Office)

Executive Director of Public Health

Objector: Ms M A Rogers

Observers: Sargeant Trevor Atkins

Mr Brian Childs
(Small Business Development Corporation)

Commission: Mr Eddie Watling (Presiding Member)
Mr Greg Joyce (Member)
Mr Evan Shackleton (Member)

Matter: Application for a review of a decision by the
Director of Liquor Licensing pursuant to section 25
of the *Liquor Control Act 1988*

Premises: Euro Deli'sh,
Units 8 & 9, 1 Dundee Street, Leeming Park

Date of Hearing: 13 June 2012

Date of Determination: 15 August 2012

Determination: The application is refused

Authorities referred to in determination:

- *Palace Securities Pty Ltd v Director of Liquor Licensing (1992) 7 WAR 241*
- *Busswater Pty Ltd v Mr KV House and Mrs LV Verhoog (LC 17/2010)*

Background

- 1 On 24 October 2011, an application was lodged by Ms Svetlana Sergeevna Martin (“the applicant”) with the Director of Liquor Licensing (“the Director”) for the grant of a liquor store licence for premises to be known as Euro Deli’sh and situated at units 8 & 9, 1 Dundee Street, Leeming Park.
- 2 On 16 November 2011, the Director wrote to the applicant acknowledging receipt of the application and advising:

“While your Public Interest Assessment (PIA) may address those matters prescribed in section 38(4) of the Act, you may also wish to give consideration to section 5 and recent precedent decisions of the Liquor Commission, where it was determined that the PIA must be supported by objective evidence. The Commission has found that assumptions, opinions, speculation and generalised statements alone will not demonstrate that the application is in the public interest. In this respect, you may wish to consider providing sufficient supporting evidence that is objective, accurate and relevant to the(ir) (sic) application to support the claims made in your PIA.”
- 3 On 7 December 2011, a notice of objection was lodged by Ms M A Rogers, a private resident living opposite the store.
- 4 On 19 December 2011, the Commissioner of Police (“the Police”) lodged a notice of intervention.
- 5 On 22 December 2011, the applicant submitted a response to the notice of intervention lodged by the Police.
- 6 On 23 December 2011, the Executive Director Public Health (“EDPH”) lodged a notice of intervention.
- 7 On 24 February 2012, the EDPH submitted closing comments to the notice of intervention.
- 8 On 15 March 2012, the Director in decision A220110 refused the application.
- 9 On 5 April 2012, pursuant to section 25 of the *Liquor Control Act 1988* (“the Act”), Svetlana Sergeevna Martin lodged with the Liquor Commission (“the Commission”) an application for a review of the decision of the Director.
- 10 On 13 April 2012, a notice of intervention in relation to the review proceedings was lodged by the Police.
- 11 On 28 May 2012, the applicant lodged a review submission together with a number of supporting attachments.

- 12 On 29 May 2012, the Police lodged a submission to the notice of intervention, together with two attachments.
- 13 A hearing before the Commission was held on 13 June 2012.

Submissions on behalf of the applicant

- 14 The Public Interest Assessment (“PIA”) submitted by the applicant advised that Euro Deli’sh evolved from a Russian gift shop selling icons, amber, crystal and bone china in Christchurch, New Zealand and later, after more than 10 years operation, was moved to Fremantle. Known in Fremantle as Little Russia (wholesaler’s licensee) the business specialised in importing East European liquor ranging from Hungarian, Moldavian, Georgian and Armenian wines with Baltic Beers from Riga, Moscow, Warsaw and Rugen.
- 15 For the past four years the applicant has operated a Lucky 7 Convenience Store at Leeming Park, with a section of the premises specialising as a food shop supplying Slavic customers with such items as Baltic foods from Pierogi (Polish Dumplings), Barossa small goods, smoked eels, Arctic herrings and Russian and Latvian chocolate products.
- 16 The purpose of applying for a liquor store licence is to provide an “all in one shop” to meet the requirements of consumers of the specialised range of goods to be provided by Euro Deli’sh.
- 17 During the hearing Mr Martin submitted that there are 50,000 Slavic country immigrants in the area who would be catered for through the granting of the licence. While the separate “Little Russia” wholesale liquor business endeavoured to meet the needs of this market, retailers did not understand the product range, therefore an appropriate level of service has not been provided. It is intended that Euro Deli’sh meet consumer demands in this specialised area.
- 18 Population and dwelling characteristics for the City of Melville were submitted together with state and national alcohol related crime statistics along with details of proposed management strategies to address potential harm and ill-health issues.
- 19 It was submitted that the granting of the licence would have no adverse impact on the amenity of the area and that customers would find it much easier to purchase their groceries and alcohol products at the one outlet.
- 20 Having a BYO restaurant next to the premises would also benefit both businesses and make the area more attractive to customers.
- 21 In response to the Police intervention, it was submitted that it has always been the intention to serve the existing special interest customer base without any

discounting of what generally are higher priced products. This type of product will not be attractive to those who are looking for cheap alcohol.

- 22 With regard to the Lucky 7 convenience store, if granted the liquor licence, the applicant is prepared to close down that part of the operation in order to remove the requirement for juveniles to enter the premises.
- 23 It was submitted that the applicant and her husband have both held responsible professional positions over many years and both have completed a Responsible Service of Alcohol – Harm Minimisation course.

Submissions on behalf of the Commissioner of Police

- 24 The grounds for the Police intervention are:
- if the particular application was granted (and conditions not imposed) public order or disturbance would be likely to result; section 69(6)(ii); or
 - any other matter relevant to the public interests; section 69(6)(iv).
- 25 A report prepared by the WA Police Liquor Enforcement Unit was lodged with the notice of intervention and provided evidence and representations on the public disorder or disturbance likely to result if the application were granted. It was requested that certain conditions be imposed in the event the licence is to be approved.
- 26 The information provided in the WA Police report included:
- data of reported criminal offences for the period between December 2010 and November 2011 as recorded in the Police Management System for the suburb of Leeming – listing 311 reported crimes;
 - data of police attendances, where intervention was required, for the period 1 December 2010 to 30 November 2011 as recorded in the Computer Aided Despatch system (CAD) for the suburb of Leeming – showing that the days of Friday, Saturday and Sunday accounted for 53% of all police attendances in the immediate area of the proposed premises;
 - data of CAD incidents for the period 1 November 2010 to 30 November 2011 that occurred within a 250 metre radius of the premises and nearby – 13 incidents for which police attendance was required with a 250 metre radius of the premises and 24 outside the radius but nearby; and
 - a list of the names and addresses of 7 licensed premises operating within 3 kilometres of the locality of the premises.

27 It was submitted that the application was not supported for the following reasons:

- there are already sufficient liquor outlets in the area to satisfy the needs of the public;
- the applicant has not submitted sufficient evidence to discharge its onus under section 38(2) of the Act;
- if the application was granted it would likely negatively impact on the amenity of the locality;
- the applicant has not demonstrated that it will cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries of the state;
- one stop shopping and convenience is not a primary objective of the Act when consideration is given to the granting of a liquor licence.

28 It was submitted that there is concern that another liquor outlet, in addition to the seven currently operating within 3 kilometres of the premises, may increase the likelihood of harm to at-risk groups in the area of the premises, where there is currently a level of public disorder occurring.

29 Accordingly the Police sought the imposition of the following conditions should consideration be given to granting the application:

- restricted trading hours;
 - Monday, Tuesday, Wednesday 9.00am – 6.30pm
 - Thursday 9.00am – 9.30pm
 - Friday, Saturday 9.00am – 6.30pm
 - Sunday 10.00am – 3.00pm
- installation of a CCTV video surveillance system to be operational from 6.00pm until one (1) hour after closing with recorded images to be retained for 14 days (or such period as the Director specifies);
- compliance with the Harm Minimisation Policy;
- juveniles prohibited from entering and remaining on the licensed area unless accompanied by a responsible adult;

- signage to be placed in all service areas stating:

Pursuant to the Act 1998 it is an offence to:

- *sell liquor to a drunken person;*
- *aid a drunken person in obtaining and consuming liquor; or*
- *supply liquor to a juvenile on licensed or regulated premises.*

Penalty: Up to \$10,000.

- The licensee, approved manager and any person engaged in the sale, supply and service of liquor must have successfully completed a course of training in the responsible service of alcohol;
- the licensee must maintain a training register that records training compliance for all staff;
- the licensee must maintain a register of incidents that take place at the licensed premises pursuant to section 116A of the Act and Regulation 18G, *Liquor Control Regulations 1989*;
- the licensee is required to comply with all requirements of the local authority;
- general conditions:
 - an approved manager must be present during hours of trade;
 - no discounting or advertising of liquor.

30 It was further advised that the applicant has not objected to the conditions sought.

Submissions on behalf of Executive Director of Public Health

31 The specific grounds of intervention by the EDPH are premised on the following:

- the integration of the sale of packaged liquor alongside the sale of general supermarket goods, as is proposed by this application, positions alcohol as an ordinary commodity similar to everyday grocery items, which can particularly impact on children and young people;
- this is a relevant harm and ill-health consideration as research shows that the presentation of alcohol as an ordinary commodity to children and young people can influence their choices to drink, and drink at an earlier

age. Earlier initiation to alcohol use has been demonstrated to contribute to future problematic drinking patterns and associated harms;

- the resident population of the suburb of Leeming includes a high proportion of children and young people who may patronise the store, with or without their guardians;
- local police have expressed concerns about the proximity of the venue to John Connell Reserve, which includes a children's playground and is a well-known meeting place for local youth, and a frequent meeting place for juveniles engaging in anti-social behaviour, drugs and alcohol activities;
- if granted, harm minimisation conditions on the licence may minimise harm and ill-health due to the use of liquor.

32 It was submitted that during communication with a representative from the Drug and Alcohol Office, the applicant expressed her vision to create a lower risk type premises and indicated amenability to conditions on the licence. The suggested harm minimisation conditions being:

- the liquor section of Euro Deli'sh is to be distinctly delineated from the general items section (including Lucky 7 Convenience Store) by a permanent barricade that also screens the view of liquor products from the general items section;
- a designated cash register (till) is to be available in the liquor section for liquor sales;
- there is to be prominent signage at the entry to the liquor section which advises customers that juveniles are not permitted to enter;
- the sale of Ready to Drink(s) is prohibited;
- the permitted trading hours of the store be restricted to Monday to Friday 8.00am to 7.00pm, Saturday 8.00am to 9.00pm and Sunday 10.00am to 3.00pm;
- no advertising of alcohol (e.g. promotional signage, posters, and promotional items) is permitted to be displayed where visible from within the general area of the store including on windows facing the front facade of the store.

33 Further information was provided in response to specific comments made in the applicant's submissions in relation to the segregation of liquor products from the general store, a proposal to not proceed with the Lucky 7

Convenience store, separate point of sale for liquor products and a restriction on liquor products advertising.

Submissions on behalf of the objector

- 34 The ground stated in Ms M Roger's notice of objection is that the store is near a primary school and the selling of alcohol in this area will attract crime and young children will endanger themselves by temptation to steal from the liquor store.

Determination

- 35 Pursuant to section 38(2) of the Act, an applicant for the grant of a liquor store licence must satisfy the licensing authority that granting the application is in the public interest.
- 36 Advancing the objects, as set out in section 5 of the Act, is also relevant to the public interest considerations, (refer *Palace Securities Ltd v Director of Liquor Licensing (1992) 7 WAR 241*).
- 37 To discharge its onus under section 38(2) of the Act, an applicant must address both the positive and negative impacts that the grant of the application will have on the local community. It is not sufficient for an applicant merely to express opinions and make assertions about the perceived benefits of its application. Such opinions and assertions must be supported by an appropriate level of evidence, (refer *Busswater Pty Ltd v Mr KV House and Mrs L V Verhoog (LC 17/2010) at [36]*).
- 38 In this case the applicant seeks to establish a liquor store primarily for the purposes of selling liquor products from East European countries to the Slavic community living in Western Australia, primarily in the Leeming region.
- 39 Whilst the PIA lodged with the application addressed the issues of harm and ill-health and the impact of the granting of the licence on the local amenity, little information was provided to demonstrate that there is a requirement for the services to be made available.
- 40 General statements relating to the Slavic community market and the overall potential customer base do not constitute objective evidence that would give a clear indication that the granting of this licence is in the public interest and will cater for the requirements of consumers for liquor and related services.
- 41 The Commission notes that the Director wrote to the applicant on 16 November 2011 (refer paragraph 2) drawing attention to the need for objective evidence, also stating:

“Objective evidence could include market research findings; a feasibility study; target market survey or letters of support. Ultimately, what objective

evidence is provided in support of the application is a matter for the applicant to consider”

42 The intervention lodged by the Police on 19 December 2011 also drew attention to the fact that the information provided by the applicant was general and did not provide evidence that the granting of the application furthers the proper development of the liquor industry, the tourism industry and other hospitality industries.

43 Submissions, including letters of support and lodged by the applicant subsequent to the Director’s decision have not been considered by the Commission pursuant to section 25(2)(c) of the Act:

“When conducting a review of a decision made by the Director, the Commission may have regard only to the material that was before the Director when making the decision”

44 The interventions from the Police and the EDPH both sought to impose conditions on the licence in the event that it was granted, rather than oppose the application in all circumstances. The Commission notes that the applicant has indicated amenability to the imposition of conditions on the licence as proposed by the Police and the EDPH. Both interveners were explicit that the conditions ought to be viewed as recommendations and that the decision of whether or not to grant the application lay solely with the Commission.

45 With regard to the objection by Ms M Rogers, no evidence was submitted to support these claims, therefore the objector has failed meet the onus to validate the grounds of objection pursuant to section 73(10) of the Act. As a consequence, the Commission is unable to apply any weighting to the objection.

46 In arriving at its determination the Commission is required to evaluate the quality and level of evidence presented by the applicant to discharge its obligations under the Act. The Act places a clear onus on an applicant to adduce sufficient evidence to satisfy the licensing authority that the grant of the application is in the public interest.

47 The applicant has made strong reference to the consumer benefits of combining specialised liquor products with the range of grocery items that are available, however, one stop shopping and convenience is not a primary objective of the Act when consideration is given to the granting of a liquor licence.

48 On examination of all the material before it, and on the basis of the observations made in paragraphs 39 to 42 above, the Commission is not persuaded that there is sufficient evidence that the granting of this licence is in the public interest.

49 The applicant has thus failed to discharge its onus under section 38(2) of the Act and the application is therefore refused.

A handwritten signature in black ink, appearing to read "Eddie Watling", written in a cursive style.

EDDIE WATLING
PRESIDING MEMBER