

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

Complainant: The Commissioner of Police
(*represented by Ms Leanne Atkins of WA Police*)

Respondent: Zafiro Pty Ltd T/A as Sapphire Bar
(*represented by Mr Peter Fraser of Dwyer Durack Lawyers*)

Commission: Mr Jim Freemantle (Chairperson)
Mr Greg Joyce
Mr Eddie Watling

Matter: Complaint for disciplinary action pursuant to section 95 of the *Liquor Control Act 1988* ("*the Act*")

Date of Hearing: 13 October 2010

Date of Determination: 3 November 2010

Determination: The Respondent is reprimanded pursuant to Section 96 1(a) of the Act over the conduct of its Liquor License No. 6070021766 dated 7 December 2009 during the period up to 3 June 2010.

Reasons for Determination:

1. On 5 July 2010 the Commissioner of Police lodged a complaint under Section 95 of the Act alleging there was proper cause for disciplinary action on the following grounds:
 - (i) the business under the licence is not properly conducted in accordance with the licence [section 95(4) (a)];
 - (ii) the licensed premises are not properly managed in accordance with the Act [section 95(4) (b)];

- (iii) the licensee has contravened a requirement of the Act or a term or condition of the licence [section 95(4) (e) (i)];
- (iv) the licensee has been given an infringement notice under section 167 and the modified penalty has been paid in accordance with that section [section 95(4) (fa)]; and
- (v) the safety, health and welfare of persons who resort to the licensed premises is endangered by an act or neglect of the licensee [section 95(4) (k)].

2. The remedies sought by the Complainant were:

- (i) imposition of a monetary penalty on the licensee of \$20,000.00 or as the Commission sees fit [Section 96(1) (m)];
- (ii) cancellation of Liquor Licence 6070021766, The Sapphire Bar [Section 96 (1) (e)]; and
- (iii) deem Mr Hamish SPRAGUE not a fit or proper person to manage licensed premises, and prohibit Mr SPRAGUE from being approved as a licensee, manager or in a position of authority for any licensed premises for 5 years [Section 96 (1) (n)].

3. On 29 September 2010, the Complainant filed a further submission in the matter raising the following points:

- (i) the Complaint relates to the period January 2009 to April 2010 during which period Hamish Ewan Sprague was the sole director and secretary of Zafiro Pty Ltd and the shareholder was Kumbaya Entertainment Pty Ltd as trustee for Kumbaya Entertainment Trust;
- (ii) in June 2010 Ferdinando Zappavigna (Mr Zappavigna) was appointed director and secretary of Zafiro Pty Ltd and Hamish Sprague resigned as director and secretary. Also the shares in Zafiro Pty Ltd were then transferred from Kumbaya Entertainment Pty Ltd to Zappavigna Holdings Pty Ltd (Mr Zappavigna's company);
- (iii) Mr Zappavigna confirmed that all personnel holding positions of authority with respect to the licensed premises, including the

- managers and crowd controllers during the period of the Complaint are no longer employed at the Sapphire Bar or associated with it; and
- (iv) the appropriate penalty is a reprimand together with an acknowledgement that the reprimand relates to conduct that occurred during the period specified in the Complaint and does not reflect on Mr Zappavigna.
4. On 1 October 2010, the Respondent filed a further submission which inter alia:
- (i) conceded the establishment of the complaint on the basis of the evidence;
 - (ii) agreed with the Commissioner of Police that a reprimand was an appropriate penalty provided it was clear that the reprimand did not extend to the conduct of the licensee since Mr Fernando Zaffavigna assumed control of the license on 3 June 2010; and
 - (iii) confirmed that the approved managers and crowd controllers employed prior to Mr Zaffavigna assuming control were no longer employed by the Licensee.
5. At the hearing the Complainant agreed that any reprimand should relate only to the period prior to the assumption of control by Mr Zappavigna.
6. Accordingly the Commission determines that a reprimand is the appropriate penalty.



JIM FREEMANTLE
CHAIRPERSON