

Decision No. 1202/96 - 1203/96

IN THE MATTER of the Sale of Liquor Act 1989

AND

IN THE MATTER of an application pursuant to s.132 of the Act for cancellation of on-licence number 007/ON/39/95 issued to BODRUM PARNELL LIMITED in respect of premises situated at 161 Parnell Road, Parnell, Auckland, known as "Bodrum Parnell"

BETWEEN

JOHN CONNELL PETERS
(Police Officer of Auckland)

Applicant

AND

BODRUM PARNELL LIMITED

Respondent

AND

IN THE MATTER of an application by BODRUM PARNELL LIMITED pursuant to s.18 of the Act for a renewal of an on-licence in respect of premises situated at 161 Parnell Road, Parnell, Auckland, known as "Bodrum Parnell"

BEFORE THE LIQUOR LICENSING AUTHORITY

Quorum:

Chairman: District Court Judge J P Gatley

Member: Mr J W Thompson

HEARING at AUCKLAND on 18 June 1996

APPEARANCES

A Dormer for Bodrum Parnell Limited

Sergeant M J Lopdell - NZ Police

Mr W J Perring - District Licensing Agency Inspector

DECISION



- 2.1 By long-term agreement for sale and purchase dated 15 September 1995 Bodrum/Joyce agreed to sell the licensed restaurant business trading as "Bodrum Parnell" to Tony Manfredi and Christos Manfredi with possession on 15/9/95. The agreement included the following at clause 23:

"23. Licence

The vendor warrant and undertakes that the premises at which the business hereby bought and sold is presently duly licensed under the Sale of Liquor Act 1989, and that it will facilitate a transfer of the licence to the purchaser upon payment in full of the Purchase Price."

The Sale of Liquor Act 1989 does not include any provision for the transfer of a liquor licence.

- 2.2 A "Licence Agreement" dated 13 December 1995 between Bodrum described as "licensor" and Tony Manfredi and Christos Manfredi (the Manfredis) together described as "the licensee" purported to give the licensee, in consideration of the payment of a weekly fee of \$1500.00, a licence to operate to occupy and conduct the business of the subject restaurant. The licence was said to be "inter-dependant" and "co-existent" with the agreement mentioned at 2.1 above. Clause 22 of the "Licence Agreement" provided:-

"Except as required by law, no announcement will be made by the licensor or the licensee as to the subject matter or terms of this agreement except at such time and in such form and manner as they shall agree."

Paragraph 11 of the "Licence Agreement" provided that the licensee would pay all expenses and outgoings connected with the conduct of the business.

The "Licence Agreement" did not make any mention of the requirements of the Sale of Liquor Act 1989.

3. By 24 October 1995 the trading name of the restaurant had changed from "Bodrum Cafe" to "Manfredis".
4. At various dates in October and November 1995 when Mr Perring visited the restaurant, no person holding a General Manager's Certificate or having been duly appointed an acting or temporary manager was on duty and responsible for compliance with the Act and the conditions of the licence as required by section 115 of the Act.

5. At no time subsequent to the agreements mentioned at 2.1 and 2.2 above being signed have the Manfredis made application for a temporary authority or an on-licence in respect of the premises at 161 Parnell Road.



Conclusion

The evidence adduced by the Police satisfies us that the grounds of the Police application have been established in that:-

1. Pursuant to the purported "*transfer of licence*" agreement Bodrum/Joyce allowed sales to be made by an unlicensed person - the Manfredis - from the subject premises and thereby committed an offence against s.151 of the Act.
2. Bodrum/Joyce committed an offence against s.165 of the Act - "*unauthorised sale or supply*" - in that the licensee allowed liquor to be sold or supplied at a time when the licensee was not authorised by the Act to sell liquor i.e. at a time when there was no manager on duty (s.115).
3. Bodrum/Joyce further demonstrated conduct such as to show that it/he is not a suitable person to hold the licence by:
 - 3.1 allowing liquor sales and consumption to take place in an area outside the licensed premises specified in the licence without making application in terms of R.7(3) of the Sale of Liquor Regulations 1990 to sell or supply or allow the consumption of liquor in a greater area of the premises.
 - 3.2 having been granted a "*bar/brasserie licence*" on the basis that the premises would be conducted principally as a restaurant allowing the premises to be conducted "*having the appearance of a tavern*" or a "*bar/nightclub*".

In the present case we are in no doubt that the conduct of Bodrum/Joyce as licensee has been such as to satisfy us that it/he is not a suitable person to hold the licence.

In terms of subs.(6) of s.132 of the Act we are further satisfied that it is desirable that we should make an order cancelling the licence. On-licence 007/ON/39/95 issued to Bodrum Parnell Limited is hereby cancelled and the application by Bodrum Parnell Limited for renewal of the licence is refused.

DATED at WELLINGTON this *2nd* day of *July* 1996


Judge J P Gatley
Chairman



