

Decision No. **2217/97**

IN THE MATTER

of the Sale of Liquor Act 1989

AND

IN THE MATTER

of an application pursuant to s.135
of the Act for cancellation of
General Manager's Certificate
number GM 213/96 issued to:
SHARON LEIGH BELL-
GIRVAN

BETWEEN

SCOTT LYALL TAYLOR
(Police Officer of Auckland)

Applicant

AND

SHARON LEIGH BELL-
GIRVAN

Respondent

BEFORE THE LIQUOR LICENSING AUTHORITY

Chairman: District Court Judge J P Gatley
Members: Mr R J S Munro
Mr J W Thompson

HEARING at AUCKLAND on 7 and 8 October 1997

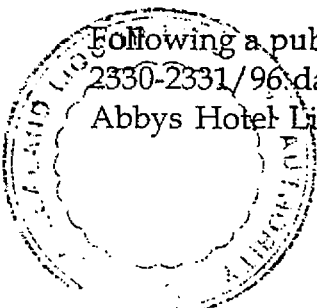
APPEARANCES

Senior Constable S L Taylor - applicant
W J Perring - Auckland District Licensing Agency Inspector - in support of
application
P D Swain as agent of respondent

DECISION

Background

Following a public hearing in Auckland on 25, 26 and 27 September 1996, in Decision
2330-2331/96 dated 6 December 1996 we granted on and off-licences to Tradewinds
Abbys Hotel Limited (Tradewinds) in respect of premises situated at 37 Wellesley



Street, Auckland, known as Tradewinds Abbys Hotel (Abbys). The sole director and shareholder in Tradewinds was Mrs Sharon Leigh Bell-Girvan (Mrs Bell-Girvan).

The applications were granted notwithstanding opposition from Mr W J Perring, Auckland District Licensing Agency Inspector and from Sergeant M Lopdell for the Police on various grounds but including an assertion that Mrs Bell-Girvan was being used as a front for people who the Authority accepted in the above decision were not suitable to hold a liquor licence, namely Peter Paul Madarasz and Mrs Bell-Girvan's brother, Stephen Anthony Bell.

At page 4 of Decision 2330-2331/96 we said:-

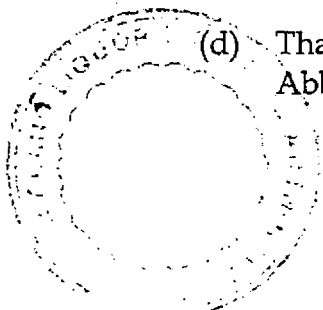
"We had the opportunity to make an assessment of Mrs Bell-Girvan when she gave evidence. Our conclusion is that she would be a competent person to lease or manage licensed premises. Whilst the Agency and the Police have valid concern as to the suitability of people in the background such as Mr Peter Madarasz and Mr Stephen Bell, with the exception of one incident on 11 May last when liquor is alleged to have been sold at Abbys without a licence, there is no evidence of Abbys having been problem premises since Mrs Bell-Girvan's company has taken over the lease. Our conclusion is that the applications by Tradewinds for on and off-licences should be granted;"

By application dated 10 June 1997 the Police seek cancellation of General Manager's Certificate number GM 213/97 issued to Mrs Bell-Girvan on the ground that she is not a suitable person to hold the Certificate.

Police Evidence in Support of Application

A summary of matters covered by Police witnesses follows:

1. At the earlier hearing resulting in Decision 2330-2331/96 Mrs Bell-Girvan had given evidence on oath -
 - (a) Denying that she or her company were a front for Mr P Madarasz
 - (b) That Mr Madarasz was not involved in Abbys other than as a shareholder and director of the head lessor
 - (c) That she did not think she was stupid person. *"As a business woman I raised a mortgage of \$170,000 odd to buy the business of Abbys Hotel. I simply would not allow someone else to oversee the operation of my business"*
 - (d) That Mrs Bell-Girvan employed Mr and Mrs Linstead as managers of Abbys who had previously been employed by Mr Madarasz.



2. On 3 June 1997 an application was filed by The Commissioner of Inland Revenue to place Tradewinds into liquidation.
3. An Agreement for Sale and Purchase of a Business dated 1 June 1997 was produced between the vendor Tradewinds and a purchaser Tradewinds Abbys Holdings Limited. Mrs Bell-Girvan was the sole director and shareholder of both companies. The Agreement was signed by Mrs Bell-Girvan on behalf of both parties with possession date given as 9 June 1997 or on such date as a temporary authority is issued.
4. A Deed of Assignment of (sub) Lease dated 1 June 1997 was produced between Tradewinds as assignor and Tradewinds Abbys Holdings Limited as assignee. Mrs Bell-Girvan signed as assignor and assignee. The Police were advised by solicitors for the building owners that the purported assignment was invalid as it did not have the consent of the building owner.
5. A copy of the oral judgment of Master Anne Gambrill CP No.758/97 was produced on an application by the Commissioner of Inland Revenue to wind up Tradewinds based on a debt of \$231,129.81 owed to the Inland Revenue Department. At page 4 Master Gambrill said:-

"I think the proper situation is to take carefully into consideration the history and account of this particular company and its actions and I find it quite unacceptable that this company has paid no GST or PAYE since March 1996 yet continued to trade and operate a hotel, have staff employed and handle liquor on which GST is paid by every taxpayer.

I do not accept that the principal shareholder in the company, who gives as an excuse the suggestion that she will now be able to supervise her business properly, yet previously she has been unable to supervise her business adequately. I believe there is a public interest in this matter in that this taxpayer who has had a substantial shareholding in this company and has been in control of the company, yet she has not made the payments of tax".

6. A first report of the liquidator dated 14 August 1997 was produced which recorded:-

"Based on our initial investigations it appears that money was directed out of Tradewinds Abbys (Hotel Limited) by associated parties to fund other ventures. The director Sharon Bell-Girvan claims not to know of these transactions. These matters are under investigation by the liquidators. In addition we have concerns that parties may have acted as 'shadow directors' of Tradewinds Abbys (Hotel Limited), and the liquidators are also investigating these matters".

Mr K J Linstead gave evidence detailing personal drawings by Mr Peter Madarasz from Abbys Hotel income totalling \$150,797.29 together with a sum of \$107,462.58 that Mr Madarasz had directed be paid for his company,



Tradewinds International Limited. Schedules produced by Mr Linstead confirmed drawings by Mr Madarasz from September 1996 through to January 1997 notwithstanding the evidence given by Mrs Bell-Girvan at the earlier hearing that:

7.1 she was in control of the company and that the only involvement of her brother and Mr Madarasz was that they were directors and shareholders of the head lessor;

7.2 Mr Madarasz *"is not involved in Abbys"*.

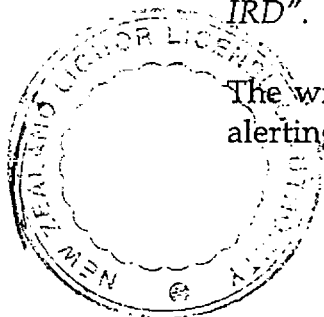
8. Mr R G McMillan, manager of the Ponsonby Branch of Westpac Bank, gave evidence of an account being opened on 13 October 1995 in the name of Tradewinds Abbys Hotel Limited with three signatories to the account being Peter Paul Madarasz, Ken John Linstead and Janine Ann Baker. Early in 1997 Mr McMillan was contacted by Mrs Bell-Girvan to say that she was regaining control of her company and that Peter Madarasz was no longer involved with her. On 4 June 1997 a trading account in the name of Tradewinds Abbys Holdings Limited was opened at the branch. The signing authorities for this account were Sharon Bell-Girvan, George Couttie, Ken Linstead and Janine Baker.

Mr McMillan said that on 10 July 1997 he was informed by the liquidator that Tradewinds was in liquidation. Shortly after he was advised that Tradewinds Abbys Holdings Limited had also been placed in liquidation.

9. Evidence was given by Janine Anne Baker *"as owner of a company specialising in hotel accounting and hotel systems"*. In June 1995 she had been approached by Mr Madarasz to *"straighten out the (Abbys) Hotel operation and put systems in place"*. Miss Baker recommended that Mr Madarasz employ Mr and Mrs Linstead as managers. Miss Baker was told by Mr Madarasz that Tradewinds was to be the company which managed and ran Abbys. The witness believed that the company was Mr Madarasz's - *"it wasn't until several months later that I became aware that the company was Sharon Bell-Girvan's"*. On 14 October 1995 Mr Madarasz's company, Abbys Boutique Hotel Limited *"went into receivership"* and the next day *"we commenced trading under the name of Tradewinds Abbys Holdings Limited"*.

Miss Baker confirmed that notwithstanding Tradewinds being Mrs Bell-Girvan's company the three signatories to the hotel cheque account were herself, Ken Linstead and Peter Madarasz. When tax problems were pointed out to Mr Madarasz he directed that other payments receive *"higher priority over IRD"*.

The witness produced a letter dated 20 May 1996 addressed to Mr Madarasz alerting him to the tax problems in which she said *"I have addressed this to you as*



you are the person I report to and you have made it clear that Sharon and Steve do not make the decisions".

It was not until November 1996 that Miss Baker met Mrs Bell-Girvan - at a meeting with Messrs Madarasz and Linstead - when Mrs Bell-Girvan was informed that Tradewinds monies were being used for Mr Madarasz's personal drawings and of the tax problems.

Miss Baker said that in January 1997 Mrs Bell-Girvan gave her written and oral directions that *"we were to answer directly to her. No more money was to go to Madarasz"*.

Miss Baker produced reconciliation statements confirming drawings from the Tradewinds account: -

P Madarasz - October '95 to January '97 \$103,000.

Tradewinds International Limited - a P Madarasz Company - October '95 to January '97 \$111,990.73

Haruru Falls Operation - again Peter Madarasz - October '95 to 31 March '97 \$186,475.74

Stephen Bell - February '96 to 31 May '97 \$58,061.04,

Mrs Bell-Girvan - February '97 to 30 June '97 \$16,896.47.

Mr Linstead said that in October 1995 Mr Madarasz had told him that Tradewinds was to be the operational company that managed and ran Abbys (following Mr Madarasz's company Abbys Boutique Hotel Limited going into receivership) but the (sole) director, Mrs Bell-Girvan *"wished to remain an investor with no day-to-day control or involvement"*. The witness also said that at the time of the hearing before the Authority in September 1996 Mr Madarasz was still in full control of Trade Winds and had an office in the hotel.

From evidence given by Mr W J Perring, Auckland District Licensing Agency Inspector, we learnt that Mr Madarasz departed the Abbys Hotel premises around August/September 1997. The Inspector also confirmed evidence given by other witnesses that from 9 June 1997 to 10 July 1997 Tradewinds Abbys Holdings Limited operated the hotel when that company did not have a temporary authority or an on-licence. The Inspector's evidence included:-

"The application for temporary authority made by Tradewinds Abbys Holdings Limited was not processed. As a result of inquiry the validity of the Sale and Purchase Agreement between the parties Tradewinds Abbys Hotel Limited and Tradewinds Abbys Holdings Limited was considered to be invalid in the knowledge that the process of winding up the company known as Tradewinds Abbys Hotel Limited and the agreement between the two parties was likely to be overturned as a voidable transaction pursuant to s.292 of the Companies Act 1993. It was also noted that the company and the director (Mrs Bell-Girvan) may have committed an offence pursuant to s.273(1)(ii) where it states, if a company is in liquidation or an application



has been made to the Court for an order that the company be put into liquidation, as the case may be, no person may (b) conceal or remove property of the company with the intention of preventing or delaying the liquidator taking custody or control of it. Enquiries established that the Inland Revenue Department as petitioning creditor was never informed by (Mrs Bell-Girvan) of the pending sale".

Respondent's Evidence

1. Mrs Bell-Girvan told us that she now resides at Haruru Falls where she operates a motel complex with a licensed restaurant. A company in which she is the sole director and shareholder has made application for an on-licence in respect of those premises. (That application is not as yet before the Authority).

We summarise Mrs Bell-Girvan's evidence below.

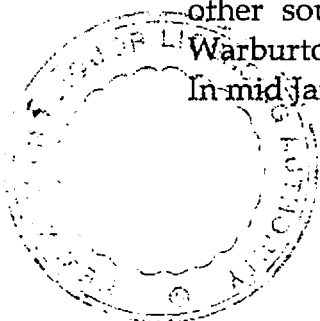
When the respondent purchased the business of Abbys it was her intention to be a silent investor. She relied on the advice of her solicitor, Mr R J Warburton, that management systems were in place and on Mr and Mrs Linstead to manage the hotel. She accepted that Janine Baker was contracted to do the accounting work. Mrs Bell-Girvan did not become a signatory to the bank account because *"at that stage I did not want to be involved in the day-to-day operation of the business"*.

The witness said:-

"I also discussed with Mr Warburton the reporting procedures and he said that Ken and Janine would report to him and he would oversee the financial operation in his capacity as my solicitor. At that stage, with hindsight, I was naive. However I believed that I had a professional adviser overseeing my investment and I was quite happy".

Tradewinds commenced trading pursuant to a temporary authority in October 1995 but the respondent said it was about August 1996 before she realised that Mr Madarasz had signing authority on the bank account. In 1997 Mrs Bell-Girvan replaced Mr Madarasz as one of the three signatories to the account. The respondent contends that the bank continued to accept cheques signed by Mr Madarasz. (That question will be resolved elsewhere).

In late November 1996 Mrs Bell-Girvan became aware that Mr Madarasz had been directing payments of money due to the Inland Revenue Department to other sources. The respondent said that at that stage she knew that Mr Warburton also acted for Mr Madarasz and she became extremely concerned. In mid January 1997 she instructed Mr G W Couttie to act as her solicitor.



Mrs Bell-Girvan discovered the rental for Abbys that had been paid to Tradewinds International Limited (her brother's and Mr Madarasz's company) as sub lessor but had not been paid to the building owner. Some \$112,000 was owed by Tradewinds for back rent.

The respondent described the Agreement for Sale and Purchase of the business of Abbys Hotel from Tradewinds to Tradewinds Abbys Holdings Limited (dated 1 June 1997 with possession on 9 June 1997) as follows:-

"Given the now apparent conduct of Madarasz and way that he had conducted the affairs of Tradewinds International Limited, and the problems it had, my advisors thought that a new company Tradewinds Abbys Holdings Limited (Holdings) should purchase the assets of Abbys to clean up our affairs. This company would obtain the head lease, apply for temporary authorities and operate the business. A contract was entered into between Abbys and Holdings for the purchase of the business. That contract was conditional upon Holdings getting temporary authority".

Mrs Bell-Girvan then described how the Inland Revenue Department vehemently opposed any adjournment of the winding up petition.

The respondent said that she had lodged a complaint against Mr Warburton with the Auckland District Law Society; he had also been given notice that Mrs Bell-Girvan would be suing him for \$1 million being her estimate of her loss through his negligent advice.

Mrs Bell-Girvan said that any evidence she had given at the September 1996 hearing before the Authority that she was not a front for Mr Madarasz was *"based on the information that was available and given to me by professional advisor Mr Warburton. If there is a conflict between that evidence and what I say today it is because I have now obtained the true and correct information"*.

2. Mr G W Couttie, Barrister and Solicitor, confirmed that he had been acting for Mrs Bell-Girvan and for *"companies associated with her"* since mid January 1997. Mr Couttie said that after he obtained a total overview of the Bell-Girvan family situation he suggested they would be better off settling certain assets into a family trust and restructuring Abbys to be part of this trust.

Mr Couttie's evidence included:-

"I commenced preliminary matters to effect the setting up of this family trust. Eventually a trust deed was signed and a new company Tradewinds Abbys Holdings Limited Incorporated. In addition Mrs Bell-Girvan had raised a further sum of money in excess of \$120,000 as a contingency against foreclosure by either the owner or head lessee of the building.



On finalising matters relating to the trust and new company I instructed Mr Swain to lodge an application for temporary authorities in the name of the new company. I believed that we would have a deal whereby Tradewinds International Limited would surrender the head lease thus leaving the new company to conclude the arranging of a new lease direct with the landlord. Mr Bell, also a director of Tradewinds International executed an assignment of the head lease and it was on that basis that the new company had tenure to comply with the Sale of Liquor Act to enable it to get temporary authorities.

...

Constable Taylor and Mr Perring suggest that transfer of assets in such circumstances breaches s.273 of the Companies Act 1993. That might be their view. It is certainly not mine nor that of counsel instructed regarding High Court proceedings. In any event the documents had been drawn up well before any winding up petition had been received.

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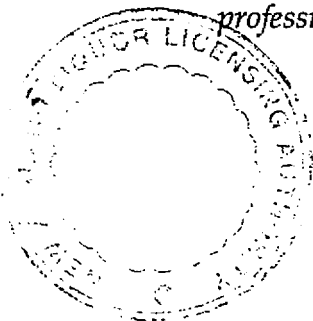
In January this year, shortly after I commenced acting for her, Mrs Bell-Girvan obtained the lease of the restaurant complex at Haruru Falls. She also negotiated a new management contract with the Body Corporate representing the individual owners. She has been operating under temporary authorities issued by the Far North District Licensing Agency. The substantive on-licence application has been filed. There are no objections to the application.

...

Since August this year Mrs Bell-Girvan has been resident on the premises there. I am in regular contact with her. I have arranged for an experienced restaurateur to assist her in setting up systems and advising her on proper procedures. Mrs Bell-Girvan has also employed a professional accountant in the area. There are no arrears of GST or PAYE tax. There are no outstanding accounts.

...

In my professional dealings with Mrs Bell-Girvan I have already found her scrupulously honest and totally reliable and readily willing to accept professional advice."



Authority's Conclusion

In our Decision 2330-2331/96 following the public hearing in September 1996 we gave Mrs Bell-Girvan the benefit of the doubt in the face of Police and District Licensing Agency Inspector submissions that -

1. She was allowing herself to be used as a front for other persons (Mr P Madarasz and her brother Mr Stephen Bell) who were unsuitable to hold a liquor licence.
2. Mrs Bell-Girvan or any company in which she had a controlling interest was not a suitable person to hold a liquor licence.

In arriving at our conclusions following the earlier hearing we had regard to the fact that with the exception of one incident there was no evidence of Abbys having been problem premises since Mrs Bell-Girvan's company had taken over the lease.

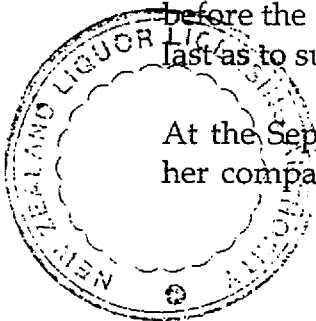
On the basis of the evidence presented at the hearing on 7 and 8 October last we are not persuaded that we should again give Mrs Bell-Girvan the benefit of any doubt in our minds and allow her to continue to hold a General Manager's Certificate.

We gave careful consideration to whether we should refuse the Police application for cancellation on the basis that managing a restaurant at Haruru Falls is quite different from managing hotel premises in Central Auckland. However we accept, as submitted in closing submissions for the Police, that a General Manager's Certificate cannot be endorsed so as to restrict the type of premises in which it may be utilised.

We have also considered that in relation to Abbys and the Haruru Falls Restaurant there has been no evidence of the sale of liquor to minors or intoxicated patrons while either of the two premises have been operating under Mrs Bell-Girvan's management. Weighing against that is the evidence, which we accept, that Mrs Bell-Girvan allowed Tradewinds Abbys Holdings Limited to operate Abbys without the benefit of a temporary authority or an on-licence from 9 June 1997 until the premises were subject to a liquidation order on 10 July 1997. We also accept the evidence of Mr Linstead and Miss Baker, not mentioned earlier in this decision, that Mrs Bell-Girvan allowed Tradewinds to sell liquor at Abbys without a licence or a temporary authority from 15 October 1995 to 30 October 1995 when the first temporary authority issued to Tradewinds.

Mr Swain in closing submissions for the respondent submitted that the starting point in this application is when the on and off-licences issued to Tradewinds in December 1996. We do not accept that submission. The most damaging evidence reflecting on the suitability of Mrs Bell-Girvan is the contradiction between her sworn testimony before the Authority in September 1996 and evidence given at the hearing in October last as to subsequent events.

At the September 1996 hearing Mrs Bell-Girvan said on oath that Tradewinds was her company and she controlled it. The only involvement of her brother (Stephen



Bell) was that he was a shareholder and director of the "head lessor"; Mr Madarasz was also a director and shareholder of the "head lessor". *"He is not involved in Abbys"* Mrs Bell-Girvan said. *"I simply would not allow someone else to oversee the operation of my business"*.

In contradiction of that sworn evidence we have the evidence of Mr Linstead that at the date of the September 1996 hearing Mr Madarasz was still in full control of Tradewinds, he had an office in the hotel and signing authority on Tradewinds bank account. Putting to one side the question of whether Westpac continued to accept Tradewinds cheques signed by Mr Madarasz after he had ceased to be a nominated signatory of the account, the unchallenged evidence is that from October 1995 through to January 1997 Mrs Bell-Girvan continued to allow Mr Madarasz to be a signatory to her company's cheque account.

We also accept on the evidence that contrary to Mrs Bell-Girvan's assertion in September 1996 that Mr Madarasz was *"not involved in Abbys"* or that her brother was only involved as a shareholder and director of the "head lessor" Mr Madarasz was making drawings from the Tradewinds account through to 31 January 1997, through his company Tradewinds International Limited to 31 March 1997, and drawings were made by Mr Stephen Bell through to 31 May 1997. For those conclusions we have regard to reconciliation statements produced by Janine Baker and recorded as Exhibit 14.

There is a further contradiction in that having said in September 1996 that *"I simply would not allow someone else to oversee the operation of my business"* the respondent's evidence in October 1997 was that she had been let down by her professional advisor (Mr Warburton) who she had been quite happy to have overseeing her investment.

Overall the contradictions between evidence given by Mrs Bell-Girvan at the September 1996 hearing and evidence given by her and adduced by Police witnesses at the October 1997 hearing were such that we have to conclude that Mrs Bell-Girvan is not a credible witness.

In evidence given by Mrs Bell-Girvan at the October 1997 hearing, and in submissions on her behalf by her agent Mr Swain, an attempt is made to suggest that Mrs Bell-Girvan is innocent of all wrong doing and that Tradewinds being placed in liquidation with a loss to the Inland Revenue of \$231,000.00 was all the fault of Mrs Bell-Girvan's professional advisors. We do not accept that contention. From October 1995 when Tradewinds took over the running of Abbys Hotel pursuant to a temporary authority, with Mrs Bell-Girvan as sole director and shareholder, it was her responsibility to know who was signing cheques on her company's behalf, and making drawings from the hotel's earnings by way of cash drawings or by cheques drawn on the company's bank account.

The whole history of Mrs Bell-Girvan allowing her company to take over the operation of Abbys following Mr Madarasz's company Abbys Boutique Hotel Limited, going into receivership in October 1995, allowing Tradewinds to trade

without payment of GST or PAYE until faced with an Inland Revenue Department Petition for Liquidation in June 1997; formation of a new company Tradewinds Abbys Holdings Limited which was in turn placed in liquidation, does not give the Authority any confidence that the respondent would in future adequately carry out the responsibilities of the holder of a General Manager's Certificate or a licence under the Sale of Liquor Act.

For the reasons set out above we are satisfied that the ground of the Police application has been established ie that the conduct of Mrs Bell-Girvan is such as to show that she is not a suitable person to hold the Certificate.

We are further satisfied in terms of s.135(2) that it is desirable to make an order cancelling her certificate.

ORDER

General Manager's Certificate number GM 213/96 issued to Sharon Leigh Bell-Girvan is hereby cancelled.

DATED at WELLINGTON this 2nd day of December 1997



Judge J P Gatley
Chairman

