

EAST AYRSHIRE LICENSING BOARD

Minute of the Special Meeting of East Ayrshire Licensing Board held within The Council Chambers, Council Headquarters, London Road, Kilmarnock on Tuesday 14 January 2020 at 1pm.

SEDERUNT: Councillor Tom Cook (Chair), Councillor Fiona Campbell, Councillor John Campbell, Councillor William Crawford, Councillor Drew Filson, Councillor Ian Grant, Councillor Lillian Jones, Councillor Claire Leitch and Councillor George Mair.

ATTENDING: Mr S McCall (Depute Clerk to the Licensing Board), Inspector J Peter and Sergeant D Dougan (Police Scotland), Mr I Hiles (Licensing Standards Officer), Mrs P Duncan and Ms S Duncan (Licensing Board Administrators).

APOLOGIES : Councillor Jacqui Todd.

1. SEDERUNT

Noted.

2. PREMISES LICENCE REVIEW

- 2.1 Review of premises licence for premises known as AKO News Ltd., 97A Glaisnock Street, Cumnock following receipt of a Premises Licence Review Application in terms of Section 36(3)(ZA) of the Licensing (Scotland) Act 2005 from Police Scotland.

The Depute Clerk advised that a Premises Licence Review Hearing had been requested following receipt of a Notice in terms of Section 36(3)(ZA) of the Act from Police Scotland that, having regard to the licensing objectives, Mr Mahmoudi is not a fit and proper person to be the holder of a premises licence.

Hamid Mahmoudi appeared before the Board, together with his wife, Masoumeh Abdollahzadeh who wished to address the Board on behalf of her husband.

Police Scotland was represented at the Review Hearing by Inspector J Peter.

The Depute Clerk confirmed that Mr Hahmoudi had no preliminary matters to raise and the hearing proceeded in accordance with the agreed procedure for hearings, which was explained to Hamid Mahmoudi and Masoumeh Abdollahzadeh.

Inspector Peter submitted that in terms of Section 36(1) of the Licensing (Scotland) Act 2005, the Chief Constable makes application for a review of the premises licence in respect of premises known as AKO News Ltd., 97A Glaisnock Street, Cumnock. The application was made in terms of the grounds set out at Section 36(3)(ZA) that, having regard to the licensing objectives, the

licence holder is not a fit and proper person to be the holder of a premises licence.

Inspector Peter reported that Mr Mahmoudi bought the premises known as AKO News Ltd., 97A Glaisnock Street, Cumnock from the previous owner, Hamid Karim Nasim. The sale agreement was signed on 26 July 2019. Mr Mahmoudi has been the premises licence holder and designated premises manager since 22 August 2019 when East Ayrshire Licensing Board granted the transfer and variation of the premises licence. Police Scotland made no comment regarding the transfer of the premises licence and there had been no premises licence reviews or personal licence reviews in relation to the premises since Mr Mahmoudi took ownership.

Inspector Peter advised that under the Licensing (Scotland) Act the premises are permitted the sale of alcohol for consumption off the premises only and that the permitted trading hours for the premises were Monday to Sunday from 10am until 10pm.

In support of the review application, Inspector Peter reported the following information for consideration:-

About 6.40pm on 9 October 2019 it is alleged that a male member of the public entered the premises at AKO News Ltd., 97A Glaisnock Street, Cumnock. The male selected items from an open display and made his way to the till area. He stood there for approximately five minutes with no sign of any staff member. The male then noticed the CCTV monitor which showed various images from cameras throughout the store. He observed a male lying on the floor in the store room on one of the images. The male made his way to the store room and observed a male (later identified as Hamid Mahmoudi) lying on a mattress. The male shook Hamid Mahmoudi vigorously in an attempt to wake him and was initially concerned that he may need an ambulance. Mr Mahmoudi appeared heavily intoxicated and was smelling of alcohol. He was helped to his feet and required assistance by the male customer to stand. There was vomit on the floor next to where Mr Mahmoudi had been lying. The male customer made his purchases and left the store. He returned home and contacted police to report the incident.

About 7.20pm that day police officers attended at AKO News Ltd. and observed Hamid Mahrnoudi behind the till area, heavily intoxicated and unsteady on his feet. He was informed that a report would be submitted to the Procurator Fiscal for the offence committed in terms of Licensing (Scotland) Act 2005 Section 114(1). He was also informed that the Licensing Department would be notified of the circumstances. The premises were closed by Hamid Mahmoudi as no other staff member was available to operate the premises. Arrangements were then made to have Mr Mahmoudi conveyed to his home address in Glasgow. The attending officers then submitted details of the incident to the Licensing Department at Kilmarnock Police Office and the report was then submitted to the Procurator Fiscal. On 18 November 2019, Hamid Mahmood accepted his guilt and this was disposed of by means of a Procurator Fiscal fine.

On 10 October, 2019, PC Kerr contacted the Licensing Department, East Ayrshire Council and informed them that a review request would be submitted in relation to the Premises Licence and Hamid Mahmoudi's Personal Licence. PC Kerr then contacted Mr Mahmoudi the same day by phone and arranged a visit to the premises.

At 10am on 11 October 2019, Sergeant Dougan and PC Kerr attended at AKO News Ltd. and spoke with Hamid Mahmoudi. He was informed that a review of the premises licence and also his personal licence would be submitted to East Ayrshire Licensing Board. At the time of the visit, all documentation and relevant signage within the premises was in order.

Inspector Peter concluded that the events detailed showed that Hamid Mahmoudi was not a fit and proper person to be the holder of a Premises Licence and requested that the Licensing Board considers the aforementioned grounds for review and takes such steps as it considers necessary or appropriate for the purposes of the licensing objectives under the terms of Section 39(2) or 39(24).

Masoumeh Abdollahzadeh had no questions for Inspector Peter.

The Depute Clerk pointed out that the Divisional Commander had stated that having regard to the licensing objectives, Mr Mahmoudi is not a fit and proper person to be the holder of a premises licence, however had made no reference to any specific licensing objective.

Inspector Peter advised that the review related to the Crime Prevention and Protecting & Improving Public Health Licensing Objectives.

Masoumeh Abdollahzadeh thanked the Board for their time and stated that Mr Mahmoudi apologised and regretted the reported incident. She continued that her husband was a good man and that she had been shocked to find out what had happened as it was so out of character.

Masoumeh Abdollahzadeh explained that on the day of the incident, Mr Mahmoudi had received bad news, that his cousin had passed away in an accident. He had also learned that the Turkish Army had carried out an attack on Syria. She stated that her husband knows the licensing laws and did not mean to break the law but had found himself in a tough situation.

Masoumeh Abdollahzadeh advised that she had moved from Syria to this country with her husband and daughter approximately three years ago. As the family did not want to be supported, they had obtained a loan to purchase the business and were happy that they were able to build a future in this country. She continued that it was difficult settling in a different country, learning the language and building a business.

Masoumeh Abdollahzadeh concluded that her husband was a good man, that such an incident would not happen again and urged the Board not to take away the premises licence.

Inspector Peter had no questions.

The Depute Clerk reminded Board Members that in terms of Section 38(4)(a) of the Licensing (Scotland) Act 2005 it is a statutory requirement for Licensing Standards Officers to submit a report in respect of a premises licence review.

Mr Hiles, LSO, reported the premises are a single storey licensed convenience store located within a parade of commercial premises located in Cumnock Town Centre. The premises are permitted to sell alcohol from 10am until 10pm every day of the week. Mr Hamid Mahmoudi has traded from the premises since the Premises Licence transferred to him on 22 August 2019. He has also been the Designated Premises Manager from the same date.

Mr Hiles advised that he attended the premises on 26 September 2019 and carried out an inspection. Hamid Mahmoudi and Baghi Azarbad were present in the premises and advised that they were the only two persons who worked on the premises. Mr Mahmoudi produced his current Personal Licence issued by the City of Glasgow Licensing Board however, Mr Azarbad could not produce a training record.

During the inspection it was noticed that there was a poster in the front window and another poster in an advertising board outside the premises advertising a promotion of Blossom Hill wine, both of which were outside of the alcohol display area and in breach of Mandatory condition 13 of the Premises Licence. These were both removed with immediate effect.

On checking the alcohol display area for compliance of Minimum Unit Pricing, it was found that several Frosty Jack and Strongbow cider bottles were incorrectly underpriced by a few pence. These were immediately removed from display. The remaining products on display were Minimum Unit Price compliant. Guidance was provided to both persons present in respect of the above matters.

Following receipt of the Ayrshire Divisional Commander's review request on behalf of the Chief Constable of Police Scotland, a further visit was made to the premises on Tuesday 17 December 2019. At that time only Baghi Azarbad was present within the premises.

Mr Azarbad was unable to locate the training records or Premises Licence. Mr Azarbad made a telephone call to Mr Mahmoudi however was still unable to locate the relevant documents.

During this visit there were no posters outside the premises advertising alcohol, the alcohol display area was minimum unit compliant and the statutory notices were correctly displayed.

The letter from East Ayrshire Licensing Board requesting Hamid Mahmoudi to attend a Premises Licence and Personal Licence Review hearing was hand delivered to the premises.

Mr Hiles concluded that the Licensing Standards Officers were not present and did not witness the events surrounding the incident detailed in the Ayrshire Divisional Commander's letter and as such were unable to offer any further information at this time.

The Chair asked if Baghi Azarbad was a family member.

Masoumeh Abdollahzadeh advised that her husband had known Mr Azarbad for a long time, however he no longer worked in the premises.

Councillor Leitch asked if Mr Mahmoudi was alcohol dependent or if he turned to alcohol in times of trouble.

Masoumeh Abdollahzadeh stated that Mr Mahmoudi did not drink alcohol at all and that she was shocked by the situation.

Councillor Grant asked if something bad happened again would Mr Mahmoudi turn to alcohol.

Masoumeh Abdollahzadeh stressed that Mr Mahmoudi did not drink alcohol and assured that such an incident would not happen again.

Councillor Jones reminded Mr Mahmoudi that he had responsibilities as both Premises Licence and Personal Licence holder and asked what assurances could be provided that such an incident would not happen again.

Masoumeh Abdollahzadeh stated that her husband regretted the situation and gave her assurances that such an incident would not happen again. She continued that her husband had obtained a loan to purchase the premises as the family wanted to support themselves.

The Chair asked why there had been a mattress in the premises. Masoumeh Abdollahzadeh explained that Mr Azarbad had brought the mattress from his home to store in the premises.

The Chair asked if Mr Mahmoudi was the only person working in the premises who held a Personal Licence and Masoumeh Abdollahzadeh confirmed this to be the case.

Councillor John Campbell asked if the shop was still trading and if Mr Mahmoudi still operated the premises. Masoumeh Abdollahzadeh advised that the shop was trading and that her husband worked in the shop.

Councillor John Campbell asked if Masoumeh Abdollahzadeh could become involved in the licensed premises. Masoumeh Abdollahzadeh replied that she could not become involved as she was currently studying English at college.

Council John Campbell asked who was operating the shop while both Mr Mahmoudi and Masoumeh Abdollahzadeh were at the hearing. Masoumeh Abdollahzadeh advised that the shop was closed while they were both at the hearing.

In view of the seriousness of the situation, the Chair asked Masoumeh Abdollahzadeh if her husband had considered taking legal advice.

Masoumeh Abdollahzadeh advised that her husband paid £25 every fortnight in respect of the Procurator Fiscal fine in relation to the incident and that the family could not afford to consult a Solicitor.

The Depute Clerk expressed concern regarding the absence of any advice obtained by the licence holder and Members requested an adjournment.

Upon returning the Depute Clerk advised both Mr Mahmoudi and Masoumeh Abdollahzadeh of the options available to the Board, if the grounds for review were found to be established. He stated that in view of the impact that some of the options available to the Board could have on the business, the Board wanted to ensure that the licence holder had all the information available to him.

The Chair proposed that both the Premises Licence review hearing and the Personal Licence review hearing be continued to the Licensing Board meeting on 17 March 2020 to allow the licence holder the opportunity to obtain legal advice and consider any options available to him prior to the hearing. The Board agreed unanimously.

3. PERSONAL LICENCE REVIEW

- 3.1 Review of personal licence GC11775 for Hamid Mahmoudi, in terms of Section 84A of the Licensing (Scotland) Act 2005, following receipt of a notice issued by Police Scotland.

Continued until 17 March 2020.

There being no further business, Board ended at 2.10pm