

**ANGUS LICENSING BOARD – 9 JANUARY 2020**

**REQUEST TO RELIEVE THE FAILURE TO COMPLY WITH A PROCEDURAL  
REQUIREMENT**

**REPORT BY CLERK TO THE BOARD**

**ABSTRACT**

The purpose of this report is to request the Board to determine whether to relieve an applicant of a failure to comply with a procedural requirement in terms of Section 135 Licensing (Scotland) Act 2005 (“the 2005 Act”)

**1. RECOMMENDATION**

It is recommended that the Board:-

- (i) note that the Clerk has received a request from an applicant to relieve a failure to comply with a procedural requirement which requires to be determined by the board; and
- (ii) determine whether to relieve the failure to comply with the procedural requirement.

**2. BACKGROUND**

- 2.1 Nael Hanna was, until his estate was sequestrated, the premises licence holder of Café Byzantium, Monikie Park, Monikie (“Café Byzantium”). Atheer Hanna is the Designated Premises Manager of Café Byzantium. Atheer Hanna and Nael Hanna are brothers.
- 2.2 On 21 November 2019 the Clerk of the Board received a letter from Atheer Hanna’s Agents, Thorntons Solicitors, Arbroath, enclosing a Transfer Application in respect of Café Byzantium (**Appendix 1**) together with a letter of consent to the transfer of said premises from Agents, Harper MacLeod LLP, who act on behalf of the Accountant In Bankruptcy in respect of the sequestrated estate of Nael Hanna (**Appendix 2**). The application is to transfer the premises licence of Café Byzantium from Nael Hanna to their client Atheer Hanna’s nominee company, Café Byzantium Ltd, of which he is the sole director. A letter from Thorntons Solicitors dated 22 August 2019 provides background information to the application (**Appendix 3**).
- 2.3 Section 34 of the 2005 Act provides that there are certain circumstances when a premises licence can be transferred on the application of another person other than the licence holder. One of these circumstances is when the premises licence holder becomes insolvent. Section 34 also provides that such an application must be made within 28 days of the occurrence of the event. The event in question here is the sequestration of the premises licence holder, Nael Hanna. If such an application is not made within 28 days of such an event the licence ceases to have effect. The application was not made within 28 days of the sequestration.
- 2.4 Section 135 of the 2005 Act provides that the Board may relieve any applicant or other party to proceedings before the board of any failure to comply with a procedural provision if:-
  - (a) The failure is due to a mistake, oversight or other excusable cause; and
  - (b) The board considers it appropriate in all the circumstances to relieve the failure.
- 2.5 Where the Board exercises this power it may make such order as appears necessary or expedient to enable the proceedings to continue as if the failure had not occurred.

The failure in this case was the oversight of the premises licence holder not notifying the Board within 28 days of his sequestration.

**3. FINANCIAL IMPLICATIONS**

There are no financial implications arising from this report.

**4. NOTIFICATION**

The applicant, via his Agent, has been notified of the terms of this Report. They have also been invited to attend the Board.

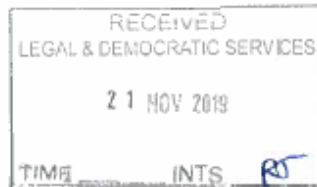
NOTE: No background papers were relied on to a material extent in preparing the above report.

**REPORT AUTHOR: Nannette Page, Team Leader**

**E-MAIL: [LAWlicensing@angus.gov.uk](mailto:LAWlicensing@angus.gov.uk)**

# Thorntons

Angus Licensing Board  
DX 530678  
Forfar



## Forfar

53 East High Street, Forfar, DD8 2EL  
Tel: 01307 466666 Fax: 01307 464643  
DX - 530699

19 November 2019

Our Ref: AJMC/JXF/CA25715.0001

Your Ref:

Please contact:  
Ms Anne McKeown  
01307 474403  
[amckeown@thorntons-law.co.uk](mailto:amckeown@thorntons-law.co.uk)

CONFIDENTIAL

Dear Sirs

Atheer Hanna/Cafe Byzantium Limited SC405911  
Premises Licence No. 93  
Application for Transfer of Premises Licence

Further to previous correspondence with regard to the above, we enclose of new the application for the transfer of the premises licence along with a letter of consent to the transfer from agents acting on behalf of the Accountant in Bankruptcy.

We also take this opportunity to return the principal Premises Licence along with a cheque in the sum of £46 in settlement of your fee.

The background to the bringing of this application with the consent of Nael Hanna's Accountant in Bankruptcy is as set out in our letter to you dated 22 August and 3 October 2019, copies of which are attached by way of a reminder.

The Accountant in Bankruptcy has now confirmed his consent to the transfer as set out in Harper Macleod's letter of 15 November 2019. That being the case, and in terms of Section 135(1) of the Licensing (Scotland) Act 2005 respectfully request that Angus Licensing Board relieve Atheer Hanna and the applicant company of the consequences of the Premises Licence not having been transferred within 28 days of the Premises Licence Holder's sequestration by receiving and allowing consideration of the enclosed application for the transfer of the licence to Atheer Hanna's nominee company, Café Byzantium Limited of which he is the sole director.

Dundee    Anstruther    Arbroath    Cupar    Edinburgh    Forfar    Kirkcaldy    Montrose    Perth    St Andrews

[thorntons-law.co.uk](http://thorntons-law.co.uk)

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All correspondence signed by a named individual is signed for and on behalf of Thorntons Law LLP.

If any further information is required at this stage, please do not hesitate to contact the writer.

We look forward to hearing from you.

Yours faithfully

A handwritten signature in black ink, appearing to read 'A. McKeown', with a long horizontal line extending to the right.

Anne McKeown  
Partner  
For Thorntons Law LLP

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Our ref: 526718/AH/APA  
Your ref:

Clerk to the Licensing Board  
Angus Licensing Board  
Orchard Bank Business Park  
Orchard Bank  
Forfar  
DD8 1AN

15 November 2019

Dear Sirs

**Café Byzantium  
Premises License Number 93  
Consent to Transfer**

We act for the Accountant in Bankruptcy and his authorised agent, Wylie & Bisset, 168 Bath Street, Glasgow who are instructed as trustee on the sequestrated estate of Nael Hanna. Nael Hanna is the current premises licence holder of cafe Byzantium, premises licence number 93.

On behalf of and as instructed by the Accountant in Bankruptcy and Wylie & Bisset, we are authorised to consent to the transfer of premises licence number 93 to Café Byzantium Limited, Monikie Country Park, Monikie, Broughty Ferry, DD5 5DQ.

For your reference we enclose a copy of the award of sequestration confirming our clients appointment and the letter of authority from the Accountant in Bankruptcy in favour of Wylie & Bisset to act as agent administrator in this sequestration.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Andrew Hunter', written over a horizontal line.

**Andrew Hunter  
Partner  
Harper Macleod LLP**

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Regulated by the Law Society of Scotland. A list of the members of Harper Macleod LLP is open to inspection at the above office.  
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Angus Licensing Board  
DX 530678  
Forfar

22 August 2019

Our Ref: AJMC/JXF/CA25715.0001

Your Ref:

Please contact:  
Ms Anne McKeown  
01307 474403  
[amckeown@thornlons-law.co.uk](mailto:amckeown@thornlons-law.co.uk)

CONFIDENTIAL

Dear Sirs

Atheer Hanna/Cafe Byzantium Limited SC405911  
Premises Licence No. 93  
Application for Transfer of Premises Licence – Section 34(1) and Section 135(1) of the Licensing  
(Scotland) Act 2005

We act on behalf of Atheer Hanna who has been trading the premises known as Café Byzantium, Monikie continuously since 2007. Initially, this was to be a joint enterprise with his brother, Nael Hanna and as such the Premises Licence Holder is named as Nael Hanna. As you will n doubt be aware, the premises are leased from Angus Council and the lease was also granted in favour of Nael Hanna. Our client, Atheer Hanna has however always been the Premises Manager.

In reality, Nael Hanna's involvement in the project was very short lived and it is in fact our client, Atheer Hanna as Premises Manager who has been trading the premises continuously since 2007.

On Friday of last week, 16 August 2019, an individual attended at the premises and introduced himself to Atheer Hanna as being the Trustee in his brother, Nael Hanna's sequestration. This came as a complete shock to Atheer Hanna. He has no idea that his brother had been sequestrated nor indeed is he aware of the exact date albeit he understands that it was several months hence.

Atheer Hanna therefore consulted us with a view to lodging an urgent application to have the Premises License transferred to him which was the advice he was give by his brother's Trustee in sequestration. This is now enclosed. Alongside that we would also on behalf of Atheer Hanna and in terms of Section 135(1) of the 2005 Act respectfully request that Angus Licensing Board consider relieving Atheer Hanna of the consequences of the Premises Licence not having been transferred within 28 days of the Premises Licence Holder's sequestration by receiving and

allowing consideration of the enclosed application for the transfer of the licence to Atheer Hanna's nominee company, Café Byzantium Ltd of which he is the sole director. As explained above, Atheer Hanna genuinely had no idea of either his brother's sequestration or of the requirement in terms of Section 34 of the Act for a licence to be transferred within 28 days of an insolvency event occurring.

Also enclosed is our cheque in the sum of £46 in settlement of your fee.

Alongside this there is another issue of which we have already made the Board aware. Although Atheer Hanna has been openly trading the premises continuously since 2007 and it is he who pays the rent to Angus Council and is also recorded as the tenant on the Assessors Roll, it would appear that an Assignment of the lease by Nael Hanna which was signed in 2013 approximately has never been given formal effect to by Angus Council. We are currently in discussions with Freya Guild of your Legal Department with a view to trying to resolve this issue urgently. Atheer Hanna has invested heavily in the premises over the years and developed a good business which without doubt helps attract visitors to the other facilities offered by Angus Council at Monikie Country Park and as such it is to the mutual benefit of both Atheer Hanna and Angus Council to resolve this issue. Arguably, the Assignment has been given effect to in any event given that Angus Council have continued to allow Atheer Hanna to openly occupy and operate the premises, they have accepted rent payments from him and have also recorded him as the tenant on the Assessors Roll. We will let you know as soon as we have any further information in this regard albeit we understand that you will be discussing the matter with the relevant team direct.

We look forward to hearing from you soonest. If any further information is required meantime, please do not hesitate to contact the writer. As you will no doubt appreciate this matter is causing Atheer Hanna a considerable amount of concern and disquiet.

Yours faithfully

Anne McKeown  
Partner  
For Thorntons Law LLP

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