

IN THE MATTER of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER of an application by **Ashley Jean Briggs** pursuant to
Section 219 of the Act for a Manager's Certificate

BEFORE THE DISTRICT LICENSING COMMITTEE AT NAPIER

Chairman: Mr DE Fellows
Members: Councillor F White
 Mr RH Pinkham

HEARING at Napier City Council on Thursday 11 December 2014

APPEARANCES

Ms AJ Briggs Applicant
Sergeant R Wylie NZ Police – in opposition
Mr J Sheehan District Licensing Inspector

OBSERVED by Medical Officer of Health staff Alison Bullock and Jo Bliss

RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE

Introduction

1. This is an application by Ashley Jean Briggs for a Manager's Certificate.
2. Ms Briggs has held a Manager's Certificate in the past and has since allowed that Certificate to expire. She is currently employed by the Boardwalk Bar & Restaurant and is a senior member of staff with some supervisory responsibilities. Ms Briggs has completed the NZQA unit standards 4646 and 16705 and has provided a Licence Controller Qualification certificate as issued by Service IQ. She has also successfully completed the LCQ Bridging Test and has provided a completion certificate. During her interview with the District Licensing Inspector, Ms Briggs displayed a satisfactory knowledge and understanding of the Act and of host responsibility.
3. The application for a new Manager's Certificate lodged by Ms Briggs on the 28 September 2014 was subsequently opposed to by the Police with the view that she is not a suitable person to hold the certificate.

The Hearing

4. As Ms Briggs had provided no written evidence, and was very nervous, it was agreed that the police evidence in opposition would be heard first.
5. Sgt Wylie presented his evidence summarising his objection on the following grounds -
 - a) the Applicant failed to disclose her convictions
 - b) the nature of the convictions
 - c) that the latest convictions were obtained whilst being the holder of a current Manager's Certificate
 - d) previous drug related court appearances

Not only were they not disclosed but the applicant had deliberately ticked the 'no' box on the application form.

6. The defendant had three convictions -
 - 18 September 2013 possession of utensils for cannabis
 - 18 September 2013 procure/possess cannabis plant
 - 4 October 2006 driving with excess breath alcohol level over 400mcg with a breath reading of 706mcg

On the 16 September 2009 the Applicant appeared in the Napier District Court on charges of -

- Possession of utensils for cannabis
- Procure/Possess cannabis plant

In relation to that incident the Applicant was found in possession of a large amount of cannabis plant (14.45 grams). The presumption for having cannabis for the purpose of supply is 28 grams. The Applicant was not convicted for these offences at the time as she qualified for the Police diversion scheme and the charges were subsequently withdrawn.

7. The Applicant obtained her first Manager's Certificate on the 29 August 2013 and on the 12 September 2013 was arrested and later convicted on 18 September 2013. Had the information of her arrest and conviction come to the attention of the Police Licensing Unit, an application to suspend or cancel her Manager's Certificate would have been made at that time. As it did not, she was therefore able to utilise her Certificate until it expired. Sgt Wylie referred to the *GL Osbourne LLA PH 2388/95* decision by the Authority which indicates an applicant should be 2 years free of a minor or one-off conviction when applying for a Manager's Certificate or a renewal after a stand down. In this situation, the Applicant has made her application approximately one year from her conviction.
8. Sgt Wylie stated in general it is policy on a national level to oppose applications where the applicant has been convicted of offences. Ms Briggs offences did not occur on licensed premises.

9. He concluded that due to the fact the applicant had shown herself to be dishonest by her failure to declare her convictions and the details of those convictions he formed the opinion that she possessed an unsuitable trait to hold a Manager's Certificate.

The Applicant

10. Ms Briggs gave evidence stating that she did not disclose the convictions at the time of filling out her application as she did it without thinking because she was in a rush to fill out the papers and get them in as her licence had expired. She was told "*that it can be sorted out if I applied quickly and immediately*". She did not "realise" her non-disclosure until the day she was interviewed by the Liquor Licensing Inspector.
11. Ms Briggs went on to state she knew it was a mistake and regretted it, and would not let it happen again. She wanted to remain the holder of a Manager's Certificate as it was the only responsibility she had and was proud of it as previously she had never thought about doing anything serious within the hospitality industry. Ms Briggs grew to learn that she loved the work and loved to guide people into a fun work place and encouraged always working at a high standard and enjoying doing it. She also stated she is a well-respected senior member of the team at the Boardwalk and would hate to let them down even more. The nature of her convictions does not affect her work, never has and never will and she will not allow that. Ms Briggs does regret her old negatives and it is only now that she realises how it affects her life.
12. Answers to questioning Ms Briggs stated she is no longer a regular user of cannabis, has given up cigarettes and barely drinks alcohol. For the past weeks she has had no duty manager shifts, but works alongside another duty manager.

Decision

13. In considering an application for a Manager's Certificate we must consider all the matters listed in s.222 of the Act. All reports are favorable with the exception of:
s222 (a) the applicant's suitability to be a manager
s222 (b) any convictions recorded against the applicant
It is to these matters we shall direct our attention.
14. We are guided by the many other decisions by the Authority in similar hearings, and note that of concern must be the seriousness of the offence and the extent to which any offence was alcohol related.
15. We note that the conviction involving the breach of the drink driving laws occurred some 8 years ago, and we shall have no regard to this matter.
16. The drug offences dealt with by way of diversion are also on the edge of being disregarded, but whilst they occurred 5 years ago the period between that and the last 2 convictions is just 4 years and should therefore not be ignored.
17. Sgt Wylie indicated that the 2 convictions in September 2013 were at the lower end of the scale as reflected in the small amount of the fines and could be treated as minor offences.

18. Failure to renew a Manager's Certificate may also turn our attention to the applicant's suitability. However having changed her place of work, albeit with the same licensee, may have played some part in her lapse of memory.
19. We note that Ms Briggs has the ability to be appointed a Temporary Manager if called upon, consequently we shall follow the precedents that a 2 year offence free period should be served before considering the issue of a Certificate.
20. In all the circumstances we now adjourn the application for a period of 9 months. In the absence of any further adverse reports and with references from her employer, we shall grant the Manager's Certificate on the papers. If there are any further adverse reports then a further public hearing may be necessary.
21. The application is adjourned accordingly.

Dated at Napier City Council this 16th day of December 2014.

A handwritten signature in blue ink, appearing to read 'D Fellows', with a horizontal line underneath the name.

DE Fellows
Chairman