

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

**AND**

**IN THE MATTER** of an application by **John Wiremu O'Halloran** pursuant to Section 219 of the Act for a Manager's Certificate

**BEFORE THE DISTRICT LICENSING COMMITTEE AT NAPIER**

Chairman: Mr DE Fellows  
Members: Mr J Cocking  
Mr RH Pinkham

**HEARING** at NAPIER on Thursday 22 January 2015

**APPEARANCES**

Mr JW O'Halloran Applicant  
Sergeant R Wylie NZ Police - in opposition  
Mr J Sheehan District Licensing Inspector - to assist

**RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE**

**INTRODUCTION**

1. This is an opposed application by John Wiremu O'Halloran for a Manager's Certificate.
2. The application for a new Manager's Certificate lodged by Mr O'Halloran on the 18 November 2014 was subsequently opposed to by the Police on the grounds he did not declare on his application any convictions recorded against his name or any penalties imposed. A police check revealed that he does in fact have a criminal conviction and in their view is not a suitable person to hold a Manager's Certificate.

**Background**

3. The applicant is currently employed by the Taradale Rugby Club as a bar tender. A position he has held for a period of around six years. His role with the Taradale Rugby Club has involved the sale and service of liquor to the public in premises operating under the authority of a sports club style club licence. More recently Mr O'Halloran has also been employed by the Sideline Bar as a bar tender. The Applicant is also working at two other employments not related to the liquor industry.
4. Mr O'Halloran has completed the NZQA unit standards 4646 and 16705 and has provided a Licence Controller Qualification certificate as issued by Service IQ. He has also successfully completed the LCQ Bridging Test and has provided a completion certificate. During His interview with the District Licensing Inspector, Mr O'Halloran displayed a satisfactory knowledge and understanding of the Act and of host responsibility. In the Summary of the Inspector's report Mr Sheehan has noted there is

no historical holdings or convictions recorded against the Applicant in the LLA and ARLA databases.

## The Hearing

5. Mr O'Halloran gave evidence stating that the reason he ticked the "no" box and did not disclose the conviction at the time of filling out his application was that he was not aware that he had any sort of criminal history. He was aware that he has had interactions with the police and the court, but was under the impression that, whilst no fine was imposed and he had immediately paid the amount of reparation, all matters were closed and did not believe any of them to have any impact on his application.
6. When questioned about a further misrepresentation by ticking the "no" box on the application for being a manager of any particular licensed premises, Mr. O'Halloran said "*I realise now that I should have ticked yes but at the time thought the question meant Manager of the Taradale Rugby Club not just Duty Bar Manager*".
7. In closing Mr O'Halloran said that in the past he has not always made the best decisions but he has always stood up and taken responsibility for his actions. He has now matured and has had no interactions with the Police since 2012. Mr O'Halloran stated he applied for his Manager's Certificate so he can be an active Bar Manager at the Taradale Rugby Club and the Onekawa Sideline Bar and he is now ready to take on the responsibilities that go with being a Bar Manager.
8. Sgt Wylie is the Liquor Licensing Alcohol Harm Prevention Sergeant for the Napier, Hastings and Central Hawke's Bay areas. He presented his evidence on the Police objections to the applicant's suitability to hold a Manager's Certificate on the following grounds -
  - a) the Applicant dishonestly claimed he did not have a criminal conviction when he applied for a Manager's Certificate
  - b) the Applicant has demonstrated he is obstructive and uncooperative with enforcement officers
  - c) the Applicant has been known to engage in the excessive and inappropriate consumption of alcohol leading to criminal offending
  - d) the Applicant has shown a disregard for the intent of the Sale and Supply of Alcohol Act 2012 and held little regard for the responsibilities required of those restricting the sale or supply of alcohol to him by abusing sales staff at a supermarket
9. Sgt Wylie presented the Summary of Facts in relation to the non disclosure conviction which saw the applicant convicted and sentenced in the Hastings District Court for wilful damage and sentenced to pay reparation of \$340. This stemmed from Mr O'Halloran's kicking the door of Diva's Bar in Havelock North when refused entry, causing the glass to crack and shatter.
10. Sgt Wylie also stated that a further check on the applicant revealed that he had appeared in the Napier District Court on charges of obstructing police and wilful damage. The applicant was formally cautioned by police for the obstruction and the wilful damage charge was withdrawn after the applicant completed Police diversion. When questioned by the Committee Sgt Wylie was unable to produce a date for this offence but claimed it was "*pre conviction*".

11. The Applicant was also the subject of trespass notices concerning three separate commercial premises –
- October 2009 – was trespassed for two years from UStay apartments in Wellington by the occupier, reason given was suspected illegal drug use.
  - February 2012 – was trespassed from Pak'nSave after a complaint was received that the applicant became abusive towards a female staff member after she refused to serve him alcohol. No other action was pursued.
  - July 2012 - A Trespass Notice was issued by Diva Bar for six months, reasons being violent behavior and damage.
  - There also appears to be another incident on 4 February 2011 where the Applicant was arrested in Wellington for Obstruction. At this time he was extremely intoxicated and was unable to look after himself and was held in Police custody. During this time he punched the Perspex cover of the light fitting and pulled out the fluorescent tube, where he continued to pull out the contents of the fixture and fed them under the cell door.
12. In answer to these submissions, Mr. O'Halloran said they occurred at a time in his life when he was remorseful, as his close friends in Napier were departing for University education in Wellington. He visited them on many occasions and admitted he had behaved in an immature manner, and was in his late teens early twenties at that time. He was adamant in his denial of drug accusations whilst at the U Stay Apartments.

### **Decision and Reasons**

13. We must have regard to the matters set out in s.222 of the act when considering any application for a Manager's Certificate. These are as follows:
- (a) *the applicant's suitability to be a manager.*
  - (b) *any convictions recorded against the applicant.*
  - (c) *any experience, in particular recent experience, that the applicant has had in controlling any premises for which a licence was in force.*
  - (d) *any relevant training, in particular recent training, that the applicant has undertaken and evidence that the applicant holds the prescribed qualification required under section 218:*
  - (e) *any matters dealt with in any report made under section 220.*
14. The issue here is the applicant's suitability in respect of a conviction recorded against him, his failure to disclose such conviction and the behaviour towards Police authority. We are required to exercise our discretion in a manner likely to promote the object of the Act set out in s.4 that the sale supply and consumption of alcohol should be undertaken safely and responsibly.
15. In the guideline decision of G.L. Osborne LLA 2388/95 the Authority stated:
- "Without fettering ourselves in this or other applications, it may be helpful if we indicate that we commonly look for a five year period free of any serious conviction or any conviction relating to or involving the abuse of alcohol or arising in the course of an applicant's duty on licensed premises."*

16. Relevant also to our consideration is the added statement by the Liquor Licensing Authority:

*“Less serious convictions are also weighed. By way of example is an isolated excess breath or blood alcohol conviction or a single driving offence disclosing no pattern of offending. Nevertheless all convictions must be weighed as required by s.121 (1) (b). In these and similar cases we frequently indicate that a minimum of two years from the date of conviction may result in subsequent favourable consideration providing suitable -01-22reports from both the Police and a Licensing Inspector are received.”*

17. We cannot make light of the objection by the Police of the suitability of the applicant. The occurrences in 2009 at the U Stay Apartments Wellington, where a Trespass Notice was issued alleging illegal use of drugs (strenuously denied by Mr. O’Halloran) and again in 2011 with the arrest for obstruction whilst intoxicated and further in 2012 when a Trespass Notice was issued by Pak’nSave Napier when O’Halloran used abusive behaviour towards a staff member for refusing to serve him alcohol, whilst were not proceeded in Court and no convictions were entered, are nonetheless very relevant in our deliberations.
18. More than 2 years have passed since this sole conviction for wilful damage whilst intoxicated and although outside the suggested 2 year period free of convictions, does nevertheless bring into consideration his suitability when placed alongside his behavior the previous 3 years.
19. This indicated a period in the applicant’s life which he admitted was due to immaturity and the break-up of his close friends who were entering University in Wellington. However, whilst we have been persuaded to accept his submission in evidence that

*“I have had no interaction with the Police for over 3 years and can hopefully show that I have matured and that the person I was a few years ago is not the person standing in front of you today.”*

The misbehavior at that time is significant.

20. In respect of the non-disclosure of the conviction, his honesty is not something we can make a ruling on and in light of his explanation, we are unable to say that his failure to disclose the conviction was the result of a deliberate attempt to avoid his responsibility. It is again noted that the offence was alcohol related in the form of a licensed premises.
21. Over the past 12 months, Mr. O’Halloran has steadily completed and achieved the necessary qualification required for a Manager’s Certificate.
22. In finally reaching our decision, we turn to the well known decision DeeJay Enterprises Limited LLA531-532/97 which said:

*“The guiding hand or hands-on operator of any company or the potential holder of a General Manager’s Certificate now receives greater scrutiny from both the Police and other reporting agencies. Character and reputation are closely examined. The law and human desires of patrons frequently tug in different directions. The Police cannot be everywhere. Little but a licensee’s or manager’s character and suitability may stand between upholding the law and turning a blind eye. Self imposed standards in accordance with the law must be set by licensees and holders of General Manager’s Certificates who control and manage licensed premises.”*

23. The two year conviction free period has passed, however, in our view it is too soon to grant the application in light of the previous pattern of alcohol abuse leading to disregard of Police authority. We were however, impressed with Mr. O'Halloran's realization of his past and his attempts to improve his situation, and have decided not to decline the application.
24. We will adjourn the matter for 6 months to the end of July, providing a 3 year conviction free period. If there are no other issues when that period has elapsed and upon references from his employer, the application will be granted on the papers.

**DATED** at NAPIER this 9th day of February 2015

A handwritten signature in blue ink that reads "D Fellows". The signature is written in a cursive style with a horizontal line underneath the name.

Dave Fellows  
**Chairman**  
**Napier District Licensing Committee**