

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

AND

IN THE MATTER of an application by **Jessica Nichole Jones-Wakely** pursuant to Section 224 of the Act for the renewal of 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 30th July 2015

APPEARANCES

Ms JN Jones-Wakely	Applicant
Mr J Sheehan	Chief District Licensing Inspector
Constable C Glentworth	NZ Police

RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE

INTRODUCTION

1. This is an application by Jessica Nichole Jones-Wakely for the renewal of a Manager's Certificate.
2. Ms Jones-Wakely has held a Manager's Certificate since May 2014, this being the first renewal of her certificate. She is currently employed by the Gin Trap, which holds a Tavern style On-Licence, and carries out her duty manager responsibilities 4-5 shifts a week.
3. The application for renewal was lodged on 30th April 2015 and was subsequently opposed to by the Police and the Licensing Inspector following conviction for driving with an excess breath alcohol level, and for failing to disclose the conviction by ticking "NO" on the renewal application form in the conviction question box.

THE HEARING

4. At the commencement of the hearing, Mr. Jason Sheehan, Chief Licensing Inspector, advised the committee that following the excess breath alcohol level conviction of the applicant, application was made to the Alcohol Regulatory Licensing Authority for the suspension of her manager's certificate.
5. The decision (on the papers) from A.R.L.A. [2015] NZARLA 420 had been received immediately prior to the hearing, and stated at paragraph [3];

*"The respondent does not dispute the ground for the application and she has agreed to suspension of her manager's certificate. Accordingly, we make the following order by consent:
Manager's certificate number 30/CERT/0178/2014, issued to Jessica Nichole Jones-Wakely, is suspended for 28 days from Monday 17 August 2015."*

6. Mr Sheehan advised that as a consequence of the ARLA decision, both he and Constable Glentworth withdraw their opposition in respect of the conviction, and their concerns now rest solely with the failure to disclose the conviction. Furthermore, that as the matter was not in dispute by Ms Jones-Wakely, both their reports as presented in the file, could be considered on the papers, and that they were available to assist if required.
7. Ms Jones-Wakely gave evidence in respect of her non disclosure. She explained that when she received a fine of \$300 the court waived the mandatory 6 month driving disqualification after accepting the evidence presented by her doctor that the drugs she was taking, following a kidney transplant in 2012, had a bearing on the credibility of the accuracy of the breath alcohol level. She stated that she was therefore not aware that she had been convicted as no disqualification had been imposed.
8. Constable Glentworth confirmed this somewhat exceptional and lenient outcome of the court appearance.

DECISION AND REASONS

9. In considering an application for the renewal of a Manager's Certificate we must have regard to all the matters in s.227 of the Act. With the withdrawal of the opposition in respect of the EBA driving conviction and the favourable reports in other matters, we direct our attention to:

s227 (a) the applicant's suitability to be a manager:

in respect of the dishonesty in not notifying the conviction.

10. We are concerned that the conviction took place during the first probationary year of the Manager's Certificate, but accept that the conviction has been satisfactorily dealt with by ARLA, however the non disclosure offence is nonetheless one of dishonesty. We are therefore not prepared to renew the certificate for the usual three year period. The Police and the Chief Licensing Inspector have advised that they are prepared to accept a renewal for a lesser period of time.

11. The application for the renewal of the Manager's Certificate held by Jessica Nichole Jones-Wakely is granted. Given the exceptional leniency of the court in respect of the driving offence and the plausible explanation of the failure to disclose the conviction, renewal will be for a reduced period of 24 months and will expire on 1st May 2017 unless again renewed.
12. The issue of the Notice of Renewal for the lesser period does not relieve Jessica Nichole Jones-Wakely, the certificate holder, from serving the 28 days suspension from 17th August as determined by the Alcohol Regulatory Licensing Authority.

DATED at NAPIER this 4th day of August 2015

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

DE Fellows
Chairman
Napier District Licensing Committee