

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

AND

IN THE MATTER of an application by **Charmaine Mary Bulled** pursuant to s224 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
Cr K Price

HEARING at NAPIER on Tuesday 5 July 2016

APPEARANCES

Ms CM Bulled	Applicant
Mr D Pereaux	In Support
Sergeant R Wylie	NZ Police
Mr J Sheehan	Chief District Licensing Inspector - to assist

RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE

1. At the commencement of the Hearing during the introduction of those appearing before the Committee, Mr Jason Sheehan, Chief Licensing Inspector for the Napier District Licensing Committee stated that he had concerns with the constitution of the Committee, and referenced s192(5)(a) of the Act as his concern. He stated that he had no need to expand but would like to go on record.

s192. Territorial Authority to establish and maintain list of licensing committee members, states at ss5 (a):

A person must not be included on the list if -

- a) *the territorial authority believes that person has, directly or by virtue of his or her relationship with another person, such an involvement or appearance of involvement with the alcohol industry that he or she could not perform his or her duties without actual bias or the appearance of bias;*

2. All committee members have been formally elected to the committee, following

Council procedures, outside the scope of this committee's functions as listed in s187. The Hearing should not be compromised by Mr Sheehan's stated concerns, and any further action could be made by way of appeal following the Hearing. His concerns will be brought to the attention of the District Licensing Committee secretary.

INTRODUCTION

3. This is an application by Charmaine Mary Bulled for the renewal of a Manager's Certificate. Ms Bulled has been qualified since 2008 and is presently employed by the Duke of Gloucester, which holds a Tavern style licence.
4. The application for renewal was lodged on 7 May 2016, and was subsequently opposed by the Police following conviction for driving with an excess breath alcohol level, and for failing to disclose the conviction by ticking "NO" on the renewal application in the conviction question box.

The Hearing

5. Sergeant Wylie, Police Officer in charge of the Alcohol Harm and Prevention Unit gave evidence indicating that the applicant had falsely ticked the NO box under the criminal conviction section of the application.
6. He produced a criminal and traffic history record indicating two previous excess breath alcohol convictions:
Dargaville 1977 and
Napier 7 February 2016 with a breath alcohol level of 457.
Sgt Wylie dismissed the earlier conviction of 19 years ago and stated that the conviction in February this year was against a minimum limit of 400 and could be regarded as at the lower end of the scale.
7. He further stated that the Police's main concern was the failure to honestly answer the question regarding the applicant's previous convictions. He advised that the conviction was being dealt with by lodging an application with ARLA and the advice to the Authority that Ms Bulled had agreed to a 28 day suspension of her Manger's Certificate.
8. Charmaine Bulled had not prepared any brief for the committee but admitted without reservation her failure to disclose previous convictions.
9. She stated that her previous renewal had been granted by the Marlborough District Licensing Agency and having moved to work in Napier since then, the reminder notice usually issued by Agencies was not available to her. As a consequence she stated that realization on the 5 May that her certificate was due for renewal by 7 May, a Saturday, she rushed the completion of the application giving little thought to the content.
10. Ms Bulled was remorseful and stated that she had always disclosed her previous conviction of 1997 and that her present employer, Mr David Pereaux, was aware of all convictions. This was confirmed by Mr Pereaux who was present in support of his employee.

DECISION AND REASONS

11. 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, these matters being –

s227 Criteria for renewal

In considering an application for the renewal of a Manager's Certificate, the licensing authority or licensing committee concerned must have regard to the following matters:

- a) the applicant's suitability to be a manager:*
 - b) any convictions recorded against the applicant since the certificate was issued or last renewed:*
 - c) the manner in which the manager has managed the sale and supply of alcohol pursuant to the licence with the aim of contributing to the reduction of alcohol-related harm:*
 - d) any matters dealt with in any report made under section 225*
12. Neither the Inspector nor the Police in their reports have indicated that the applicant has any failings in her ability to manage the sale and supply of alcohol. Indeed this has been firmly endorsed by her employer and his presence at the hearing in her support.
13. The conviction recorded in February of this year is of concern, but we accept that the necessary application will be lodged with ARLA and we further accept the Police recommendation that this incident should not be a barrier to a renewed certificate being issued.
14. It therefore remains that we shall only be concerned with the applicant's suitability to be a manager in respect of her dishonesty in not disclosing her conviction, occurring only a few months earlier.
15. The seriousness of this matter is best indicated by the Liquor Licensing Authority in decision **GARTNER [2012] NZLLA 840**. The Authority said at paragraph 10 –

*[10] When relating the failure to disclose the convictions to the criteria set out in s.121(2) of the Act [since revoked by s.222 of the present Act but identical wording, our comment] the Authority considers that the non-disclosure is relevant to the applicant's character: see for example **CD Rowson NZLA 1375/95**. If an application for a Manager's Certificate fails to disclose relevant material when making an application, then it follows that he/she might be reluctant to disclose to the authorities in the future important but detrimental matters relating to the management of the premises. The object of the Act, as set out in s.4, could be compromised.*

16. We seriously question the failure to disclose such a recent conviction for excess breath alcohol whilst still under driving disqualification; we are nevertheless satisfied of Ms Bulled's remorse at not completing the form correctly whilst rushing the application. Furthermore, we are cognisant of the reporting agencies satisfaction of the applicant's management ability and of

her employer's genuine support and accept that the object of the Act will not be compromised by granting her application.

17. Nevertheless the omission of disclosure cannot go unrecognized and we shall therefore grant the renewal of the Manager's Certificate but for a reduced period of 24 months.
18. The issue of the new Certificate and the Notice of Renewal does not relieve Charmaine Mary Bulled, the certificate holder, from serving any period of suspension that ARLA may impose.

DATED at NAPIER this 19th day of July 2016

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

DE Fellows
Chairman
Napier District Licensing Committee