

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

AND

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

BEFORE THE DISTRICT LICENSING COMMITTEE AT NAPIER

Chairman: Mr. D.E. Fellows  
Members: Councilor K. Price  
Mr. J. Cocking.

HEARING at Napier City Council on Friday 17th March 2017

#### APPEARANCES

Mr. V. Vikas Applicant  
Sergeant R. Wylie NZ Police - in opposition  
Mr. D. L. Waugh District Licensing Inspector- in opposition

#### RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE

##### Introduction

1. This is an application by Vikas Vikas for a Manager's Certificate.
2. Mr. Vikas is seeking a Manager's Certificate, as he is intending to enter the hospitality industry. He is currently not working in licensed premises, but has completed the NZQA unit standards 4646 and 16705 and has provided a Licence Controller Qualification certificate as issued by Service IQ. dated November 2016. During his interview with the District Licensing Inspector Mr. Vikas displayed a satisfactory knowledge and understanding of the Act and of host responsibility.
3. The application for a Manager's Certificate lodged by Mr. Vikas on the 4th November 2017 was subsequently opposed to by the Police and the Licensing Inspector with the view that he is not a suitable person to hold the certificate.

##### The Hearing

4. Mr. Waugh, Inspector for the Napier District Licensing Committee, addressed his report, and entered as evidence his report and a letter from Mr. Richard Dunham Habgood accompanying the application from Mr. Vikas.

5. He stated that on 28th October 2016 he met Mr. Vikas, accompanied by Mr. Habgood, who were enquiring about the licensing requirements for Mr. Vikas to purchase Riccs Bistro, an ON licence premises of which Mr. Habgood was licensee. During the meeting Mr. Vikas stated he had no experience working in licensed premises but would be applying for a Manager's Certificate, and that no mention was made of him working for Mr. Habgood. He also advised Mr. Vikas that at least 6 months experience was required before consideration could be given to the issue of a Manager's Certificate.
6. Following the application from Mr. Vikas, Mr. Waugh stated he arranged for an interview on 9th November, and noted that Mr. Vikas claimed on his application he had 6 months experience working for Mr. Habgood and that Mr. Habgood had provided a letter of reference confirming he had employed Mr. Vikas for 6 ½ months as a waiter.
7. At the commencement of the interview Mr. Waugh confronted Mr. Vikas with his concerns as to the validity of the application in regards to his experience, and suggested to Mr. Vikas that if it was not true he could be committing an offence. He offered to stop the interview to allow Mr. Vikas to get some advice if he wished.
8. He stated that Mr. Vikas said he did not want to hide anything, and wanted to be 'straight up'. Following questioning Mr. Vikas stated the claim in Mr. Habgood's letter of experience was not true as he had only been working for Mr. Habgood for 6 weeks. Upon further questioning for proof of employment, in which Mr. Waugh asked for staff rosters and payment records, Mr. Vikas stated that there were none as he was working voluntarily.
9. Mr. Waugh stated that he did not believe Mr. Vikas and quoted from his report of his notes of the meeting-

*[IS (I said)] I don't believe the reference from Mr. Habgood is genuine, so if it is not you should tell me now.*

*[HS(He said)] Yes, it's not real.*

*[IS] So you haven't been working for him as the letter states and like you have written i (sic) your application?*

*[HS] No, I would like to withdraw that reference, can you remove it for me?*

*[IS] It can't be used as a reference but it needs to stay on file. Whose idea was it to make up the reference?*

*[HS] It was Richard's.*

*[IS] But you agreed to it knowing its contents were not true.*

*[HS] It was Richard's idea to help me get this done. Can we just get rid of it?*

*[IS] No you submitted it with your application.*

10. Mr. Waugh said he was concerned about the outcome of the interview, and at 2.00 pm that day met with Sergeant Wylie and Snr. Constable Glentworth, advising them of his interview.
11. On cross examination Mr. Vikas asked why he continued with the written test, which he passed, if he questioned his suitability, to which Mr. Waugh replied that such matters were not of his decision.
12. Sgt Wylie stated he did not wish to present evidence as it concurred with the Inspectors evidence, and referred to his report, which stated that he had spoken to the applicant on 11th November, who admitted he had no more than 6 weeks experience working at Riccs Bar, and that the letter he relied upon to support his application was factually incorrect.
13. Asked if such a submission was a criminal offence, Sgt Wylie stated that this could be considered an offence under the Crimes Act, however on this occasion as Mr. Vikas had no previous convictions and that at present he had not gained a benefit from his action, and the Police considered it was of little public interest, no further action was likely.
14. Mr. Vikas had not prepared a submission, but stated he had worked in the hospitality industry for 12 years with 'MacDonalds'. He did not recall the meeting with the Inspector where it was expected that 6 months experience was required, and submitted his application as he thought 6-7 weeks would be sufficient experience.
15. He had mistakenly written 6 months experience on his application and had not read the reference from Mr. Habgood as he was in a rush to get the application in. Under cross examination he agreed that the letter was written on 31st October, but he had not read it and said he received it on the day he submitted his application.
16. He further stated he was under stress at the time as his purchase of Mr. Habgood's business was on his mind. He further stated that he was no longer buying the business and was not in employment in the hospitality industry at present.

### Decision

17. We must have regard to the matters set out in section 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.

18. Mr. Vikas' qualifications, his results from his test undertaken at interview with the Inspector, and Mr. Waugh's confirmation that he had a satisfactory knowledge and understanding of the Act and host responsibility, satisfy us of his recent training.
19. The Police have confirmed there are no convictions recorded against the applicant.
20. We have deep concerns over the experience in any premises in which a licence is in force, and the scope of that experience. Mr. Vikas states he had 6 weeks working in Riccs Bistro, but is unable to provide any proof of such employment. Reliance upon a letter from an employer which was knowingly fraudulent leaves us with severe doubts as to any experience gained.
21. However, even with just 6 weeks experience this would not be enough to satisfy the general requirement for the granting of a Manager's Certificate. Under these circumstances we may have been inclined to adjourn the Hearing until such time as the necessary experience is gained, but as Mr. Vikas is not employed in any capacity in the hospitality industry, this option is not available.
22. Of graver concern is the honesty of the applicant in stating that he had 6 months experience. Our concerns can be summarized as follows:
  - i) The coincidence that 3 days following a meeting with the licensing inspector, at which time no mention was made of any employment or experience working with alcohol when accompanied by Mr. Habgood, and following the Inspectors request of at least 6 months experience being required, that a letter of reference is written stating that 6 months experience has been gained.
  - ii) We do not believe that Mr. Vikas did not read Mr. Habgood's letter of reference, stating he had been working as a waiter for 6 months serving alcohol.
  - iii) We do not believe that Mr. Vikas mistakenly wrote 6 months on the application when he meant to write 6 weeks.

These last 2 points are made when perusing the application form. At the question- "Has the applicant any experience, in particular recent experience, in controlling any premises for which a licence is in force?" Mr. Vikas wrote;

*"Working at Riccs Bistro & Bar in Napier for 6 months appx. Letter attached from employer".*

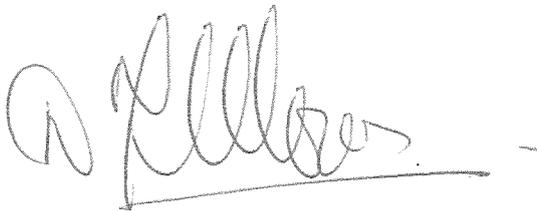
23. It is of little benefit that Mr. Vikas admitted the dishonesty prior to the hearing. That a criminal act had been committed weighed heavily against any opportunity of the granting of a Manager's Certificate. In reaching our decision we turn to the well quoted decision Deejay Enterprises Limited LLA531-532/97 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." (our emphasis)*

24. The evidence from the hearing satisfies us that Mr. Vikas Vikas is neither eligible nor suitable to hold a Manager's Certificate and the application is declined.

Dated at Napier City Council this 22nd day of March 2017

A handwritten signature in black ink, appearing to read 'A. P. ...', with a horizontal line underneath it.

Chairman  
Napier District Licensing Committee.