

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

AND

IN THE MATTER of an application by **NALINI KUMAR**, 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 F. White
Mr J. Cocking.

HEARING at Napier War Memorial Centre on Monday 25th March 2019.

APPEARANCES

Mrs N. Kumar. Applicant.
Sergeant R.K. 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 Nalini Kumar for a Manager's Certificate.
2. An incomplete application was lodged by Mrs Kumar on the 19th February 2018. The application was put on hold pending the production of the Licence Controller Qualification (LCQ) certificate. After enquiries with the applicant, an LCQ certificate was produced in late July 2018. The application was then forwarded to the police, who opposed it following a court appearance by the applicant. The Inspector in the meantime had made visits to the applicant's place of work and had found other irregularities, he further searched the files and found evidence of a previous refused application. The matter was set down for a hearing on grounds of suitability.

The Hearing

3. Sgt. Wylie stated that he is an Alcohol Harm Prevention Sergeant based in Taradale, and part of his role is to vet Manager Certificate holders.
4. Following the receipt of the application, Sgt. Wylie stated that the police undertook relevant enquiries and found that Mrs Kumar was currently before the court, having being charged by the Inland Revenue Department, for knowingly signing false tax,

GST and PAYE returns to the value of \$127,029.60.

5. He produced the criminal/traffic history, which indicated that on the 14th November 2018, Mrs Kumar was convicted for evading payment of taxes and sentenced to 5 months Home Detention and 100 hours of Community Work.
6. Sgt. Wylie concluded that this was a serious offence which challenged the high standard of honesty the Police required of Manager Certificate applicants, and as such considered her to be an unsuitable person to hold a Managers Certificate.
7. Mr Waugh, the Liquor Licensing Inspector, stated that there were three separate areas where the applicant had failed to satisfy the criteria to hold a Manager's Certificate.
8. He first referred to a previous hearing when Mrs Kumar had made application for a General Manager's Certificate in Napier, which was opposed by the Inspector. In **Kumar [2012] NZLLA 1049 (25 September 2012)** the evidence indicated that having made application with the Napier DLA, and knowing it had been opposed, then chose to make application with Hastings DLA. The Inspectors of both agencies considered that she had engaged in devious conduct intending to mislead. The Authority agreed and in refusing the application stated;

"[6].....Further, the Authority found the applicants evidence confusing, inconsistent and self-seeking.

[7] In the circumstances the applicant is unable to satisfy the Authority as to her good character and reputation. She does not qualify for a General Managers Certificate."

9. Mr Waugh said that the second part of his opposition related to the applicant's court appearance and sentence handed down in November 2018 as presented by the Police.
10. The third part of his opposition related to a visit to the Red Chilli Indian Restaurant where Mrs Kumar was employed. He stated that Mrs Kumar was behind the counter and the restaurant was occupied by a single diner with a glass of beer. Mrs Kumar's name was displayed as the Duty Manager, alongside her LCQ certificate. When questioned about the false representation, Mrs Kumar said she thought she had a Manager's Certificate, indicating the LCQ certificate, and that the DLC office staff had told her everything was fine, which Mr Waugh said was untrue.
11. Mr Waugh went on to say that until recently Mrs Kumar had been a shareholder in Red Chilli Indian Restaurant Limited since its registration in 2009. He was of the opinion that the restaurant had been selling alcohol unlawfully since Mrs Kumar's application for a Manager's Certificate in February 2018, especially as she had to stop selling alcohol from the time of his visit, and is still not selling alcohol at present, as the company has no qualified duty manager.
12. This opinion was strengthened as he stated that at no time had he received, pursuant to s.231, any notification of the appointment of a manager, temporary manager or acting manager, from the company.

13. He submitted that any of these issues in isolation could lead to an application being opposed, but all three indicate that the applicant's poor character, reputation and honesty makes her unsuitable to hold a Manager's Certificate.
14. Mrs Kumar stated that she had been a shareholder in Red Chilli Indian Restaurant Limited since its registration in 2009, but this year had transferred her shares to her son as sole shareholder.
15. In respect of the recent conviction, she stated that she had no knowledge of the offence, and had no day to day involvement in respect of Prabhu Kripa Limited's tax affairs. However, as director of the company she said she was advised that she had no option but to plead guilty. She further stated that she was in the final stage of completing her sentence and believed she was being unfairly punished a second time for the same tax evasion offence.
16. Referring to the previous hearing for a General Manager's Certificate, she denied that she acted dishonestly, but acknowledged her imperfect understanding of the Act.
17. Mrs Kumar confirmed she had gained her LCQ certificate, and realised it was a mistake to act as duty manager, and further that the restaurant had not been selling alcohol since the Inspectors visit as there were no certificate holders on the staff.

Decision and Reasons

18. 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.*
19. We consider that the experience, training and qualification held by Mrs Kumar is acceptable for the approval of a Manager's Certificate. However the recent conviction and reports from Sgt. Wylie and Mr Waugh must be considered in assessing the suitability of the applicant. The police consider Mrs Kumar does not reach the standard of honesty they expect of an applicant following her recent conviction, and the Licensing Inspector has grave concerns of her poor character, reputation and honesty, dating back from her initial opposed application in 2012, to his inspection of the premises in February this year.
20. During our deliberations it was noted that the date of offence was recorded as 20/04/2010. We were perplexed about this 9 year delay between the offence and the conviction, and sought further information from the Police. They responded;

“Ms Kumar was charged with a representative charge spanning 20/4/10 - 22/9/15.

Basically they added all the sums from each individual offence and rolled it all into the one charge. From that I would guess her last actual offence (of the many) occurred September 2015.”

21. In considering our decision we take reference from **GL Osbourne LLA PH 2388/95**, where the Liquor Licensing Authority (LLA) referred to the High Court decision in relation to an On-licence in **DT Hayford v Christchurch District Licensing Agency**. The decision, whilst not absolute, indicates the period of time that could commonly be looked for, following serious convictions, against less serious convictions, when deciding the outcome of a Manager’s Certificate application. We consider this to be a serious conviction and accordingly refer to that decision which states;

“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.”

And further;

“.....In all situations we usually regard time as running from the date of offending.”

22. Using the guidelines from that decision, the last offence for tax evasion occurred three and a half years ago which renders the conviction relevant. The LLA hearing referred to by the Licensing Inspector was over six years ago, which, due to the passage of time, somewhat invalidates the importance of the reasons for that decision.
23. Our attention is however drawn to the operation of the Red Chilli Indian Restaurant where Mrs Kumar was working as part owner and eventually as an employee. We do not accept that she mistakenly took her LCQ certificate as a Manager’s Certificate. We also disbelieve her statement to the Inspector during his visit to the restaurant, that DLC staff had approved her position as a Duty Manager. She was also silent on the opinion expressed by the Inspector that the restaurant had been selling alcohol unlawfully as the company had not employed a Manager’s Certificate holder, and had failed to make any notification to the DLC. Consequently we echo the findings of the LLA in their 2012 decision that the evidence presented is self-serving, and concur with the Inspector, in his report, quite correctly questioning the honesty of the applicant. Therein lies the link with both Sgt. Wylie’s and Mr Waugh’s submissions regarding the conviction and the previous LLA hearing, which indicates a pattern of dishonesty.

24. In **Deejay Enterprises Limited NZLLA 531/532/97**, the Authority stated;

“... 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”.

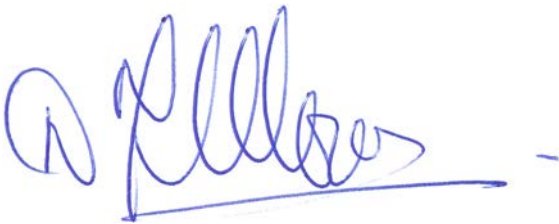
We are not convinced that Mrs Kumar is yet suitable to hold a Manager's Certificate.

25. Again we reference the **GL Osbourne** decision, where the Authority accepted that;

"...any decision on an applicant's lack of suitability to hold either a licence or a Manager's Certificate is not indefinite."

26. For these reasons the application is refused. We further confirm that there should be a stand down period of 5 years before a new application for a Manager's Certificate would be considered. This would allow an application to be made in September 2020.

Dated at Napier City Council this 3rd day of April 2019.

A handwritten signature in blue ink, appearing to be 'A. P. Osbourne', with a horizontal line underneath.

Chairman
Napier District Licensing Committee.