

Decision Number: 3915/2019

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

AND

IN THE MATTER of an application by **GAGANDEEP** 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: Councillor G. Taylor.
Mr J. Cocking.

HEARING at National Aquarium of New Zealand on Tuesday 27th August 2019.

APPEARANCES

Mr Gagandeep.	Applicant.
Mr A. Verma.	In Support
Mr D. L. Waugh.	District Licensing Inspector- in opposition.
Sergeant R. Wylie.	NZ Police- to assist.
Constable D.P. Power.	NZ Police- to assist.

RESERVED DECISION OF THE DISTRICT LICENSING

COMMITTEE Introduction

1. This is an application by Mr Gagandeep for a Manager's Certificate.
2. The application, lodged by Mr Gagandeep on the 20th June 2019, received opposition from the Licensing Inspector on the grounds of the applicants suitability and experience.

The Hearing

3. Mr Gagandeep opened by recounting the events around submitting his application, the toing and froing between counter staff and liquor licensing personnel, and confirmed that the application was accepted on 20th June 2019.

4. He stated that he successfully gained his Manager's Certificate in October 2014 when he was employed at the Indian Palace restaurant, and that the renewal was issued in 2015.
5. Mr Gangadeep said that he applied for the renewal of his certificate in October 2018, but following discussions with Mr Waugh, who questioned him about his involvement as a manager, and his full time employment as a taxi driver, he decided not to make application at that time.
6. He stated that since the expiry of his Manager's Certificate in October 2018 he had continued his taxi work. He was approached by the Manager of the Spice Hut to help out at his restaurant as they were renewing their BYO licence to a full On-licence. He stated that he began to work there on a voluntary basis occasionally since 23rd September 2018.
7. He further stated that he was working alongside Mr Arum Verma who had his Manager's Certificate so decided to re-apply for his own Manager's Certificate in order to relieve Mr Verma, once he had ceased full time taxi work.
8. Following his application he commenced paid employment with the Spice Hut in early July and he produced his BNZ bank transaction history showing wages from Spice Hut being deposited from 12th July 2019.
9. He confirmed that he had the required qualifications with a Licensed Controller Qualification Certificate issued in August 2013, and a Bridging Certificate issued in September 2014 both of which were produced in the Agenda papers.
10. When questioned by Mr Waugh that he only wanted his certificate so he could buy Sizzlers Restaurant, about which he had made recent enquiries with the Environmental Health Officer, Mr Gagandeeep denied this.
11. Mr Waugh suggested that he had used his Manager's Certificate in the past to allow other restaurants to display his name as a duty manager, which Mr Gagandeeep vehemently denied.
12. Upon questioned by Mr Waugh as to whether he had an employment contract with the Spice Hut, Mr Gagandeeep replied in the affirmative but stated he had not brought it along.
13. Following a question from Sergeant Wylie Mr Gagandeeep confirmed that he had been a self-employed taxi driver for 1 ½ years working 55-60 hours per week but had left the taxi business in May this year.
14. Mr Arum Verma stated that he was the manager and Duty Manager of the Spice Hut Restaurant, and confirmed he employed Mr Gagandeeep from early

July following a period of voluntary unpaid work. He had confirmed that Mr Gagandeep was covered by an employment contract.

15. The Liquor Licensing Inspector, Mr Waugh spoke to his report and questioned Mr Gagandeep's honesty in relation to his work experience. He was concerned that no proof of recent work was provided by Mr Gagandeep during his enquiries into his application.
16. Mr Waugh presented a job sheet made immediately after a conversation he had with Mr Gagandeep on 2nd August where Mr Gagandeep agreed he had not worked at the Indian Palace for 3 years but was still doing part time work, and on being questioned, where? Mr Gagandeep replied "*at Spice Hut*". When asked "*how many times have they paid you?*" he replied "*just once I think and that was very recently*".
17. In closing Mr Waugh stated that his interviews with Mr Gagandeep were confusing and that he felt he was clearly dishonest in regards to his employment.
18. Upon being questioned Mr Waugh confirmed he had no proof of his allegation that Mr Gagandeep had misused his previous Manager's Certificate by providing it for other restaurant managers to use.
19. Mr Gagandeep summed up by saying that he had been involved in the hospitality industry intermittently over the past 4 years, that he had a permanent part-time position at the Spice Hut and that he had all the necessary qualification requirements.

Decision

20. 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.*

21. The Liquor Licensing Inspector is linking the lack of recent experience with the suitability of the applicant to be a manager.
22. The Police have not opposed the application and no evidence of any convictions has been recorded against Mr Gagandeep. We further disregard the allegation of dishonesty implied by the Inspector, where no proof was offered in regard of the mis-use of Mr Gagandeep's Manager's Certificate.
23. In respect of recent training, we note that Mr Gagandeep has been providing permanent part-time hours alongside a certificated duty manager in Mr Verma. From the bank entries it can be seen that Mr Gagandeep has been working at the Spice Hut between 15-26 hours a week over the past 7 weeks.
24. We further note that the Inspectors report states that at an interview on the 5th August 2019, the applicant displayed a satisfactory knowledge and understanding of the Act and of host responsibility. Consequently, we find that the training together with attainment of the prescribed qualifications are acceptable.
25. The applicant has previously held a Manager's Certificate for 4 years commencing in October 2014. Whilst it would appear that he had permanent work until 2016, his management has been infrequent and irregular until recently.
26. We accept that he has been providing his services on a voluntary basis and acknowledge his present permanent position.
27. The Inspector's report referenced **Gao [2005] NZLLA 973** where the authority said in paragraph [3]

'Mr Gao appeared before us today and explained that he is not currently employed but may look for work in the industry in future. It has been explained to Mr Gao that General Managers Certificates are not issued in a vacuum and that the holder of a General Managers Certificate is expected to have employment in the industry and the support of an employer'.

However we consider the relevance of this reference is weakened as the applicant before us is in paid employment in the industry

28. Of more relevance to this application is the Inspectors case reference of **McLean [2009]NZLLA 318**. However the presented paragraphs 8 and 9 do not fairly indicate a decision to decline this application and the case decision needs to be read in its entirety. Here the Authority were in somewhat of a dilemma as to whether they should make an exception to their general rule which was stated in paragraph 2 of the decision -

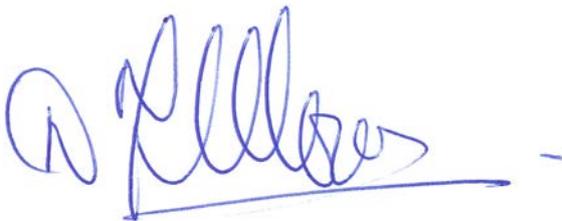
'[2].....To be successful, applicants should have the full committed support of an employer'.

29. In this case the McLean's application was adjourned for 9 months for him to gain experience working alongside his wife who was a certificated manager, but the business was sold before the adjourned hearing was held. Mr Mclean was seeking positions in licensed premises without success and was seeking his Manager's Certificate, hence Mr Waugh's reference to paragraph 8 and 9. However paragraph 10 provides us with sufficient reason to consider the granting of Mr Gagandeep's application -

*'[10] It is a regrettable situation from Mr McLean's point of view. However, there is nothing to stop him at any time applying for a certificate. **Provided he has the prerequisite work, trust and support, and assuming no other adverse matters had arisen in the interim, then the certificate would be granted without any further ado**'.(our emphasis)*

30. Having previously held a manager's certificate until October 2018, and since been actively involved in the industry alongside a duty manager, culminating in paid employment, we are satisfied that Mr Gagandeep meets the prerequisite requirements of having full committed support of an employer, is in paid employment, has the prescribed qualification and experience and meets the training requirements, which we consider as more of a refresher.
31. For these reasons we find the applicant's suitability is not in question and the application is therefore granted.
32. Providing no appeal is made within the 10 working days after receipt of this decision, the attached manager's certificate may issue.

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



Chairman.
Napier District Licensing Committee.