

DECISION NUMBER: 4051/2020

IN THE MATTER of the Sale and Supply of Alcohol Act 2012 (“Act”).

AND

IN THE MATTER of an application by **Qi Guo** for a Manager’s Certificate pursuant to s.219 of the Sale and Supply of Alcohol Act 2012 (“Act”).

BEFORE THE NAPIER DISTRICT LICENSING COMMITTEE

Chairman: Mr Stuart Hylton
Member: Mrs Faye White
Member: Mr Ross Pinkham

HEARING at the Napier War Memorial Centre on Wednesday 29th July, 2020.

APPEARANCES

Mr Qi Guo	Applicant
Mr D Waugh	Napier District Council Alcohol Licensing Inspector – in opposition
Mr R Wylie	Sergeant, NZ Police – to assist
Mr D Power	Senior Constable, NZ Police – to assist

DECISION OF THE COMMITTEE

Application

[1] Qi Guo made application to the Napier District Licensing Committee (“DLC”) for a Manager’s Certificate which he intends using at the ‘Friends Restaurant and Bar’ which holds a current Class 1 Restaurant Style ON-Licence.

[2] The application attracted opposition from the Inspector who in his statutory report stated - “I have opposed this application on the grounds that the applicant is unsuitable

to hold a manager's certificate. The grounds for my opposition can be found in s.222 (a), (c) & (d) of the Act".

[3] The Police in their report raised no matters of opposition to the application.

[4] Accordingly the matter was set down for Public Hearing.

Inspectors Grounds for Opposition

[5] The Inspector in his report opposed the application on grounds of suitability (s.222 (a)), experience (s.222(c)) and training (s.222 (d)), principally reasoned from the applicant's interviews and oral tests before the Inspector.

[6] The Inspector noted that on two occasions he interviewed the applicant who could not answer most questions, especially critical questions, and this was after some leeway with the questions and being asked the same questions on the second attempt.

[7] The Inspector noted the applicant could not advise him of any of the conditions on the licence where he currently worked and could not remember which other licensed premises he was supposed to have worked at prior to moving to Napier.

[8] This was the first time the Inspector had opposed an applicant on the basis they did not have sufficient knowledge to pass the interview and this is after over 500 interviews.

[9] The Inspector also noted the applicant had applied for and been denied a manager's certificate in 2019 from Auckland DLC when the Inspector opposed the application on similar grounds. The Auckland Inspector noted Mr Guo's lack of knowledge of the Act and host responsibility. The Inspector also noted that in his view the applicant's English was quite good and not the main issue with his lack of knowledge.

[10] Mr Waugh outlined in his report s. 214 responsibilities for duty managers and then argued that the applicant does not have the required knowledge of the Act, knowledge of the licence conditions where he works or adequate knowledge of his responsibilities, to be in a position to discharge duties as a certified manager.

[11] Mr Waugh in his report reinforced the value of the interview process in citing decision number PH 300/2006 where the authority stated in relation to the interviewing process of assessing the suitability of applicants for duty managers - *"In summary, it is the Authority's view that without the interview process, a number of undeserving applicants will receive their certificates. The candidate's lack of experience, lack of knowledge, and lack of employment support will be covered up. The certificate will become a tool to enable applicants to obtain employment, instead of the other way round. The certificate is likely to lose credibility"*.

[12] Mr Waugh in his closing remarks states – *"As covered earlier in my report, this is the first time I have opposed an application for a manager's certificate because the applicant does not have sufficient knowledge and experience, so I don't do this lightly."*

An applicant does not have the right to automatically be issued a manager's certificate just because they apply and the onus is on the Inspector to vet applicants and determine if they meet the criteria to manage a licensed premises.

A manager should be able to be left in charge of a licensed premises and have sufficient experience to comply with the Act and their licence. Qi GUO is a long way from being able to do this.

To issue this manager's certificate would in some ways, be setting up his employer to fail."

Hearing

Applicant's Evidence

[13] The applicant in speaking to his application did not advance on what was contained in his written application.

[14] Under questioning Mr Guo told the hearing that –

- He is currently working at Friends Restaurant and Bar.
- Part of his job was to take customers' orders for alcohol, sell alcohol to customers and manage staff.
- He required a Manager's Certificate to keep his job at Friends Restaurant and Bar.
- He was in charge of the Friends Restaurant and Bar five days a week when 'Sophie' was not there.
- He operates under a Temporary Manager when 'Sophie' is not there.
- His current work visa expires in 2022
- After finishing school in Christchurch in 2010, he went to Auckland to work before coming to Napier.
- He sat and passed his LQC in Christchurch, issued 16 September 2014.
- His work in Auckland was in a café that wasn't licensed and was voluntary.
- The time lag between his online License Controllers Qualification (2014) and interviews is the reason for his poor response to interview questions. Mr Guo also admitted that he hadn't paid a lot of attention to study before the interview as online comments suggested the test was easy.
- Since the last interview with Mr Waugh and the hearing, he had studied his responsibilities using a book and online resources and had taken advice from 'Sophie'.

- He had looked at the licence at Friends Restaurant and Bar and the permitted hours of trade were 8.00am to 4.00am the following day although the premises usually ceases to trade after 9.30pm. **Note:** The licence hours are 8.00am to 2.00am the following day.
- He had been studying the Act and managers requirements since failing both interviews.

[15] When asked by Mr Waugh what the Object of the Act was, Mr Guo gave a good accurate answer.

Inspector's Evidence

[16] Mr Waugh's opposition is well covered in his statutory report and summarised in paragraphs [5] to [12] of this decision.

[17] In summary at the hearing the Inspector told the Committee he did not oppose Manager's Certificates lightly, this was the first Manager's Certificate he had opposed on the basis of failed interview/s and insufficient knowledge, the interview and subsequent test was a legitimate method for Inspectors to enquire into and establish an applicant's suitability and that despite the Inspector's efforts to give Mr Guo opportunities to demonstrate his knowledge, fundamentally he had fallen short of required standard.

Committee's Decision and Reasons

[18] In considering this application the Committee had regard to the criteria for a new Manager's Certificate i.e. s. 222

Section 222

Criteria for manager's certificates

In considering an application for a manager's certificate, the licensing committee or licensing authority, as the case may be, must consider the following matters:

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

(b) any convictions recorded against the applicant:

(c) 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 i.e. Police and Inspector reports.

[19] The general inference or tenor of the Inspector's opposition to the application was the applicant's lack of knowledge in regards to the Sale and Supply of Alcohol Act, current knowledge of license conditions where the applicant works and basic knowledge of a manager's roles and responsibilities. Knowledge of roles and responsibilities is a key aspect when assessing a certified manager's suitability including the ability to be able to put this into practice when on duty.

[20] Of particular concern to this Committee in this regard was the applicants two failed 'tests' with the Inspector for this application on top of failing a similar test previously in Auckland. In fact the two reports from both Inspectors were almost identical in this regard and quite compelling.

[21] Whilst the applicant was able to articulate the Object of the Act when asked during the hearing, this was too little too late in terms of this application. Answers to other questions put to the applicant raised concerns about the applicants overall practical knowledge of his responsibilities as a manager.

[22] As the Authority has mentioned in a number of decisions a manager's certificate is a privilege and a key responsibility to ensure the sale and supply of alcohol is discharged in accordance with the Object of the Act. A prerequisite of being a responsible manager is having a very good knowledge of the Act and a manager's responsibilities.

[23] *In Page vs Police Christchurch HC AP 84/98* the Authority said the onus is on the applicant to prove they are suitable. In this respect both the concerns raised in the Inspectors report and evidence heard at the hearing, the Committee was unconvinced the applicant was suitable in terms of his overall industry knowledge and knowledge of the Act.

[24] The Authority has acknowledged the Inspector's examinations are a practical means by which applicant's suitability can be assessed. The Inspector expressed in his written and verbal submissions that considerable assistance was given to the applicant during the examinations and that this was the first time the Inspector has ever opposed an application based on this examination. We got the sense the Inspector did not oppose this application lightly and without good cause.

[25] The Committee in considering the evidence before it does not believe that the applicant adequately understands the nuances of the Act and the roles and responsibilities of a certified manager. In considering the various aspects that make up an applicant's suitability the Committee is of the opinion that the demonstrated lack of knowledge is a critical flaw in this application.

[26] For these reasons the Committee has come to the conclusion that the Applicant would not be a suitable person for whom a Manager's Certificate should be granted, at this point in time.

Conclusion

[27] For the reasons stated, the application by Qi Guo for a Manager's Certificate, **is declined.**

[28] However in declining the application we wish to note that this does not preclude Mr Guo from re-applying for a manager's certificate in the near future and with enhanced knowledge he can re-sit the interview and potentially pass the associated test.

[29] We refer any party who wishes to appeal this decision or part of this decision to section 154 through to 158 of the Act.

DATED at Napier this the 14 day of August 2020

A handwritten signature in blue ink, appearing to read 'Stuart Hylton', is written over a red circular stamp. The stamp contains the text 'NAPIER DISTRICT LICENSING COMMITTEE' around the perimeter and a small star at the bottom center.

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Chairman – Stuart Hylton