

DECISION NUMBER **4175/2021**

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

AND

IN THE MATTER of an application by **Mohinder Singh Nagra** for renewal of a Manager’s Certificate pursuant to s.224 of the Sale and Supply of Alcohol Act 2012 (“Act”).

BEFORE THE NAPIER DISTRICT LICENSING COMMITTEE

Chairman: Mr Stuart Hylton
Member: Mr Keith Price
Member: Mr Ross Pinkham

HEARING at the Wharenui Conference Room, Ahuriri, Napier on Tuesday 30 March, 2021.

APPEARANCES

Mr Mohinder Nagra	Applicant
Ms Ravleen Thapar	To assist applicant.
Mr D Waugh	Napier District Council Alcohol Licensing Inspector – in opposition

DECISION OF THE COMMITTEE

Application

[1] Mohinder Nagra made application to the Napier District Licensing Committee (“DLC”) to renew a Manager’s Certificate (029/CERT/285/2014 – Hastings District) which he intends using at the ‘Bollywood Stars Restaurant Napier’ which holds a current Class 1 Restaurant Style ON-Licence.

[2] The application attracted opposition from the Inspector on grounds he believes the certificate cannot be renewed by the Napier District Licensing Committee. In his

report, the Inspector noted – *“I have enquired into this application and don’t believe the applicant can have his manager’s certificate renewed by the Napier District Licensing Committee, because he does not live or work in Napier. This is where section 219 applies”*.

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

[4] The applicant had previously attempted to renew his Managers Certificate at Hastings District Council but was advised by the Inspector in Hastings that his certificate could not be renewed in Hastings as he worked in Napier and not Hastings. The applicant was refunded his renewal fee by Hastings District Council and advised to renew his certificate at Napier City Council.

[5] Subsequent to notification that his application to renew his manager’s certificate had been opposed by the Napier City Council Inspector, the Applicant supplied a statement stating why there should be no opposition to the renewal of his manager’s certificate.

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

Inspectors Grounds for Opposition

[7] The Inspector in his report opposed the application on the following grounds - *“I have enquired into this application and don’t believe the applicant can have his manager’s certificate renewed by the Napier District Licensing Committee, because he does not live or work in Napier. This is where section 219 applies.”*

[8] The Inspector noted that *“the relevant part of section 219 is subsection (2)(a) & (b) which confirms that `an application must be filed with the following licensing committee: (a) where the applicant **intends to be the manager of any particular licensed premises**, the licensing committee with which the application for the licence was filed; or (b) in any other case, **the licensing committee for the district in which the applicant is residing**. The DLC can issue a new certificate, or renew an existing certificate if the applicant works or lives in the Territorial Authority that they have applied to”*.

[9] The Inspector in his report detailed the applicant’s initial application to renew his manager’s certificate with the Hastings District Council which resulted in the applicant being advised that the appropriate Committee to apply to was the Napier District Licensing Committee before refunding the applicant his application fee.

[10] Whilst being of the opinion the renewal application should be determined by the Hastings District Licensing Committee, the Inspector gave evidence in his report as to his knowledge of where the applicant lives, which companies he’s involved with and a view that the applicant does not work at Bollywood Restaurant, as claimed by the applicant.

Applicants Submission

[11] The applicant provided to the Napier District Licensing Committee a signed written statement co-signed by J Singh, JP, dated 3 February 2021.

[12] The statement outlined the reasons why there should be no opposition to the renewal of the applicant's manager's certificate.

[13] The applicant states that ownership of Bollywood Stars Indian Restaurant in Napier is legal grounds for him to renew his certificate. The applicant contended that he did not have to be actively working as duty manager to have grounds to renew if he was the owner.

[14] The applicant states that whilst he is not an employee, he does work at Bollywood when their isn't a duty Manager due to sickness, leave etc

Hearing

[15] The Chair noted at the beginning of the hearing that the opposition to the Manager's Certificate application was not due to the applicant's lack of knowledge, experience, suitability or past performance but due to the statutory technicality whether this District Licensing Committee could and then should renew his certificate according to the Act.

[16] The Chair summarised the applicants previous attempts to make application with Hastings DLC resulting in the applicant being advised to apply to the Napier DLC on the basis he worked in Napier rather than Hastings. The Chair noted that it was unfortunate that this application had not been sorted by both DLC's to date however today's hearing should provide the applicant with some certainty with his renewal application.

[17] The Chair highlighted that the hearing was solely focused on establishing whether the applicant met the criteria of section 224(2) of the Act i.e.

224 Application for renewal of manager's certificates

(2) Every application for the renewal of a manager's certificate must—

(a) be filed with—

(i) the licensing committee for the district in which the applicant is presently employed as a manager; or

(ii) if the applicant is no longer employed as a manager, the licensing committee for the district in which the applicant is residing;

[18] The Chair reminded parties that this DLC could only grant Mr Nagra renewal of his managers certificate if s. 224(2)(a)(i) could be established i.e. that the applicant is presently employed as a manager in the Napier District. If this could not be established then the renewal certificate could not be issued by the Napier DLC and the applicant would have to re-apply to the Hastings DLC under section 224(2)(a)(ii).

[19] All parties to proceedings agreed that this was the only section in play at the hearing and that the applicant met all the relevant criteria in terms of section 227 of the Act.

Applicant's Evidence

[20] The applicant spoke to his application and read further written submission which is summarised as:

- An outline of his attempt to renew his manager's certificate at Hastings DLC only to be told to file with Napier DLC as that's where he occasionally worked.
- Police do not oppose his application and the inspector only opposes on the grounds it's applied for at the wrong DLC.
- The DLC will have to determine whether I work as a duty manager at Bollywood Restaurant in Napier.
- Whilst the Inspector has noted he has not been seen working at Bollywood's Napier, the evidence will show he has worked there occasionally in the evenings during busy times or when staff are away.
- If it's declined he would have to apply to Hastings DLC again, pay another fee and would only be granted a certificate for 12 months instead of 36 months.
- This awkward position is no fault of his own and has caused stress and legal costs.

[21] Under cross examination the Committee heard that the applicant had worked at Bollywood's as recently as 2-3 weeks back when he was filling in. The applicant was unable to produce any employment documentation to prove this casual working arrangement. Under further questioning he said he could produce timesheets if required.

[22] Ms Ravleen Thapar was also sworn in and gave evidence as Duty Manager at Bollywood's Restaurant.

[23] Ms Thapar advised how she organised the Bollywood's staff roster and gave evidence that she had relied on Mohinder Nagra to cover as duty manager when someone was sick or on leave. Timesheets are signed by the duty manager.

[24] She also advised that when Mr Waugh had enquired one day whether Mr Nagra had worked at Bollywoods as a manager, they would have answered 'no' as they would be thinking the term 'Manager' meant Restaurant manager rather than Licensing manager.

[25] When cross examined Ms Thapar was unable to provide a record of Mr Nagra's notice of appointment as manager or temporary manager at Bollywood's and was somewhat unaware of the requirement to have such a register under s. 231 and 232 of the Act.

Inspector's Evidence

[26] Mr Waugh's opposition is well covered in his statutory report and summarised in paragraphs [7] to [10] of this decision.

[27] Mr Waugh advised that his main points were covered in his report, most of the additional questions he had, had been answered and his reference to s. 219 was in error.

[28] Mr Waugh produced additional evidence in the form of a file note dated 29 March 2021 which recorded a conversation between himself and Ms Thapar from a visit to the Bollywood Restaurant on the 29 March 2021.

[29] In that statement it appears Ms Thapar was unaware of the duty managers list when asked for one by Mr Waugh. She advised she kept a duty roster and produced one for Mr Waugh without Mohinder Nagra's name on it. Mr Waugh was subsequently shown another roster a short while later for the same dates that now had Mr Nagra's name on it.

[30] Under cross examination Mr Waugh said he did not take the roster as produced because in his mind the document had been falsely altered.

Decision and reasons

[31] This is an unusual application which is opposed on technical grounds by the inspector. The Inspector is well within his rights to question this DLC's ability to grant such a renewal, to make necessary enquiries himself and to come to the conclusion that in his view the applicant does not currently work at a premise in Napier as a manager and therefore can't have his certificate renewed by this DLC.

[32] This Committee similarly has to hear all the information and evidence contained in the application and produced at the hearing and make its own mind up whether or not Mr Nagra 'is presently employed as a manager' within the Napier District.

[33] This is what s. 224(2)(a)(i) instructs a manager to do in order to have their certificate renewed. In interpreting this section the DLC takes the ordinary meaning for the words *presently* i.e. 'currently' and *employed* i.e. 'working or engaged', whilst the term 'manager' the Committee takes to mean manager as defined under the Act i.e. *'means a manager of licensed premises appointed under this Act'*.

[34] Therefore the Committee is attempting to establish whether Mr Nagra is 'currently working or engaged as a manager of a licensed premises in the Napier District'. As the renewal application was made in October 2020 the Committee is looking for employment as manager from around that period through to the hearing date as evidence of s. 224(2)(a)(i) compliance.

[35] In this regard compliance could have been easily established if the applicant or Ms Thapar had been able to produce a copy of the licensed establishments 'managers register' as required under the Act and Regulations. It appears Bollywood Restaurant does not keep a register which is not only unhelpful but raises questions about the Bollywood's management practices.

[36] The reason the Act has requirements for a 'managers register' to be maintained is so that authorities, such as this Committee or the enforcement agencies, can easily view who is or has worked at that establishment over the past two years in the capacity of manager, acting manager or temporary manager. This is a legal requirement.

[37] In lieu of such evidence the Committee must rely on other evidence before it.

[38] The Committee heard conflicting evidence around accounts of Mr Waugh's visits to Bollywood to seek evidence whether Nr Nagra worked there as a manager.

[39] The Committee is in receipt of two written and signed statements from both Mr Nagra and Ms Thapar, both of which state Mr Nagra has worked recently and on occasions at Bollywood Restaurant as duty manager to cover staff on leave.

[40] Whilst not overwhelming evidence, the Committee considers these statements, backed by verbal statements at the hearing under oath, as sufficient to meet the threshold to establish that the applicant 'is presently employed as a manager' within the Napier District and therefore is entitled to have his managers certificate considered and renewed by this DLC.

[41] In making this determination the DLC reminds the applicant, et al, of the need to maintain manager registers onsite as per s. 232 of the Act to avoid this type of issue arising in the future.

Conclusion

[42] For the reasons stated above, the application by Mohinder Nagra for renewal of his Manager's Certificate (029/CERT/285/2014), **is approved**, for a period of three years from the date when it was due to expire.

[43] 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 6 day of April 2021



.....
Chairman – Stuart Hylton