

DECISION NUMBER 4287/2021

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

AND

IN THE MATTER of an application by **Amy Elaine Robinson** 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: Mr Graeme Taylor
Member: Mr David Fellows

HEARING at the Napier War Memorial Centre, 48 Marine Parade, Napier on Monday 11 October, 2021.

APPEARANCES

Ms AE Robinson	Applicant
Mr B Robinson	To assist Applicant
Sergeant D Power	NZ Police – in opposition
Mr D Waugh	Napier District Council Alcohol Licensing Inspector – in opposition

DECISION OF THE COMMITTEE

Application

[1] Amy Robinson (“Applicant”) made application to the Napier District Licensing Committee (“Committee”) for a new Manager’s Certificate which she intends using

at the 'The Filter Room' which holds a current Tavern Style On-licence and a Cellar Door Style Off-licence.

[2] The Applicant has eighteen months work experience at the Filter Room, holds a Licence Controllers Qualification and stated on the application form she had never been convicted of any offence.

[3] The application attracted reports of opposition from both the Police and the Inspector.

[4] The Police in their report dated 9 June 2021 opposed the application on the grounds of s. 222 (a) *suitability* and s.222 (b) *any convictions recorded against the Applicant*. The report noted two convictions for dishonesty offending that the Applicant had failed to disclose on the application.

[5] The first conviction was for a shoplifting offence committed on 10 May 2018 with the second conviction for a theft offence occurring on the 28 January 2019. The full summary of facts for the convictions and criminal history for the Applicant was produced by the Police as evidence at the hearing.

[6] The Inspector, in his report dated 30 June 2021, opposed the application in support of and on the same grounds as the Police opposition. The Inspector's report contained reference to relevant case law to assist the Committee.

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

The Hearing

[8] The reporting agencies agreed at the beginning of the hearing that the matter under contention was the Applicant's suitability in relation to the undeclared convictions, the dishonesty convictions, mongrel mob gang association and methamphetamine addiction. Other criteria matters in relation to the Applicants experience, training and qualifications were not in question.

Police Evidence

[9] The Police, in their statement of evidence, stated the Applicant at the time of the criminal offending was suffering from methamphetamine addiction issues and her partner was a patched mongrel mob member. The Police evidence stated "*It is likely that Robinson's dishonesty convictions are directly related to her addictions*".

[10] In answer to questions from DLC members, the Police advised they had not spoken to the Applicant about her application, non-disclosure or their concerns. Police advised they had no evidence that the Applicant had recent associations with the Mongrel Mob. Police further advised they question a person's suitability and motivations when convictions are not declared.

[11] In cross examination from the Applicant, the Police advised their intelligence unit had evidence the Applicant's partner was a patched Mongrel Mob gang member.

Inspectors Evidence

[12] Mr Waugh advised he was supporting the Police in their opposition and said Police did not oppose applications 'lightly'. In response to questions Mr Waugh advised he had not discussed the non-disclosure with the Applicant and his standard interview with the Applicant had not raised any suitability concerns.

Applicants Evidence

[13] The Applicant advised the Committee that she had turned her life around since the time of offending and drug addiction. She was now a mother to a two year old son and had 'kicked' her methamphetamine habit when she became pregnant.

[14] The Applicant said the two convictions occurred when she was drug dependant with the Petrol Station theft just an act of 'stupidity'. The application non-disclosure was due to believing the Warehouse offence was 'diversion' rather than a conviction and failing to declare the Petrol Station conviction was simply a 'memory lapse'.

[15] Under questioning the Applicant advised her partner was a patched Mongrel Mob member three years ago however he was now no longer a patched member or associated with the gang. The Applicant was aware 'to some degree' with her partners convictions and advised he was the father of her son.

[16] Under further questioning the Applicant declared she had no current addictions and was willing to take a drug test if necessary. The Applicant had filled out the application form together with her employer with sections 1, 3 and 4 completed by herself and section 2 by her employer.

[17] The Applicant admitted she had made mistakes in the past but now wanted to make a career in the industry, perform well in a manager's position and provide for her family. She advised her partner also had a job.

[18] The Applicant called Brett Robinson to give evidence on her behalf. Mr Robinson is the owner of the Filter Room Tavern and employer/uncle of the Applicant.

[19] Mr Robinson advised he did not condone gangs and addictions and had made this clear when he hired Ms Robinson. He advised that Ms Robinson was an incredible young woman who had turned her life around, placing the mistakes of her past behind her including the death of a previous partner. She now had a huge support network and had the personality and skill sets necessary for hospitality work. He was comfortable to leave her in charge of his licensed premises.

[20] Mr Robinson was aware of her convictions, her past and her partner. Mr Robinson talked of the Applicant's partner's situation and his efforts to remove himself from gang life including removing 'gang referenced' tattoos, getting a place to live, a job and becoming a father.

Deliberations

[21] The Committee in assessing a new manager's certificate must have regard to matters set out in s.222 of the act. 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](#).

[22] The Committee in considering the application and evidence is mindful of ARLA's decision in the case of G L Osborne LLA 2388/95 where the Liquor Licensing Authority said:

"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.

Less serious convictions are also weighed. By way of an example is an isolated excess breath or blood alcohol conviction. In these and similar cases we frequently indicate that a minimum of two years from the date of conviction may result in subsequent favourable consideration."

[23] Subsequently the former Authority amended its view in regards to when the time of the stand-down period should start to run, and in Re Pompey LLA PH623/04, 6 September 2004, determined that *"the correct assessment of time is from the date of offending"*.

[24] The Committee also considered the more recent Police v Manson [2015] NZARLA 590 [25] that said:

"While we agree with the DLC that the Osborne decision is a guideline, rather than a rule, it is one that in our view should not be departed from lightly and only where justified by the circumstances. However, the Authority has in the past reduced the stand down period required to take into account exceptional circumstances. It would

be an extremely rare case where convictions such as these have been incurred and no stand down period at all was required.”

[25] It was established at the beginning of the hearing that the matters under contention were the Applicant’s suitability to be a manager due to their convictions, lack of disclosure of these convictions during application, association with the Mongrel Mob and methamphetamine addiction.

[26] The Committee considers below each of these matters, as raised in opposition, and in light of the evidence produced.

Convictions

[27] At the hearing Police evidence of the Applicant’s criminal history clearly showed the theft and shoplifting convictions took place on the 28/01/2019 and 10/05/2018 respectively. The convictions were not disputed by the Applicant.

[28] The Applicant advised the Committee that she was on methamphetamine at the time of the offences, admitted they were mistakes with the Petrol Station theft described as “me being stupid”.

[29] Whilst not wanting to minimise the Applicants convictions, the Committee considers the type and level of offending somewhere between the minor and serious offending referred to in the Osbourne decisions. The Committee also acknowledges the Applicants claims that she has been ‘clean’ since becoming pregnant 2-3 years ago and offer to undergo a drug test.

Non-Disclosure

[30] Clearly the two convictions should have been disclosed at the time of application and were not.

[31] We heard from the Applicant the reason for non-disclosure was a memory lapse in relation to the Petrol Station theft and believing she had received ‘diversion’ for the Warehouse shoplifting offence.

[32] In Antony Raymond Johns LLA 947/98, the Authority said that “*it takes a very serious view of any failure to report correctly a complete list of convictions.*”

[33] The Committee is not totally convinced the non-disclosure was a deliberate attempt by the Applicant to avoid responsibility or pervert the course of justice. It certainly was naïve and we hope the Applicant has learnt a lesson from the experience.

[34] The Committee notes there was no attempt by Police or the Inspector to interview the Applicant when the non-disclosure was identified within the application.

Mongrel Mob Association

[35] It was clearly established and admitted by the Applicant at the hearing that her partner and father to her child, had been a member of the Mongrel Mob. What was contended was whether he was still a member.

[36] The Police were of the view that the Applicants partner was still a Mongrel Mob member although there was no evidence proffered to support this claim.

[37] We heard from the Applicant and her witness that her partner had disassociated himself from the Mongrel Mob including removing tattoos associated with the gang. Similarly no supporting evidence was produced to support this claim.

[38] The Committee takes the claims about the Applicants partners' current association with the Mongrel Mob on face value. To disassociate completely from a Mongrel Mob membership must be one of the hardest acts to achieve. To what degree this has been achieved we are unsure however the Committee found the Applicants employer and uncle, a reasonably compelling witness.

Methamphetamine Addiction

[39] The Committee accepts that the Applicant had a methamphetamine addiction around the time of the offences.

[40] The Committee also has no reason to disbelieve the Applicants claim that she had 'kicked the addiction' some 2-3 years ago after she became pregnant. We also note the Applicant was willing to undertake a drug test and her employer was adamant he would not condone drug taking by staff associated with his licensed premises.

[41] The Committee heard that the Applicant was supported by family and friends to assist her in keeping her life on track.

Decision and Reasons

[42] It is clear to the Committee that the Applicant was not in a good place when the offences took place. Equally we accept that the Applicant has taken steps to turn her life around including wanting to perform a 'managers' role within the industry she is employed.

[43] That said, the offences occurred and the non-disclosure cannot be dismissed as insignificant or inconsequential.

[44] The question before the Committee is, taking into account the offences of the past, non-disclosure and wider evidence around the Applicants suitability, is she suitable at this time to be granted a managers certificate?

[45] In answering this question we are guided by the aforementioned case law particularly the *Osbourne* decision. We start from the basis that there should be a conviction free period. Currently the Applicant has been conviction free since 28 January 2019, being the date of the last offence.

[46] The reporting agencies did not offer any suggestion on what should be a suitable 'stand down' period.

[47] The Committee is mindful of the nature of the Applicants offences and the non-disclosure of the convictions. This is mitigated in some way by the steps the Applicant has taken to turn her life around shown by the current conviction free period and the knowledge the Applicant will continue to be employed in the extended family business under the supervision of her uncle, who convinced us of his confidence in her and his disdain for her past way of life.

[48] Taking all this into account, the Committee is of the view a three year conviction free period is suitable in this instance.

[49] Accordingly we will adjourn the matter till the end of January 2022. If there are no reports of additional suitability issues from either the Police or Inspector during that time, the application can be granted for a period of one year, on the papers.

[50] 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 15 day of October 2021



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Chairman – Stuart Hylton