

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER

of an application by **AXEL VINCENT**
pursuant to S.219 of the Act for a
Manager's Certificate

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

Chairman: Mr L A Cocks
Members: Mr E W Unwin
Mr J M Mann

HEARING at WANAKA on the 27th November 2019

APPEARANCES

Mr A Vincent – applicant
Mr N Bates – Licensing Inspector – to assist
Constable MJ Allen – Wanaka Police – in opposition

RESERVED DECISION OF THE COMMITTEE

Introduction.

[1] Before the committee is an application by Axel Vincent for a manager's certificate. Mr Vincent is 26 years of age, is originally from France and has been in New Zealand since November 2018. His visa expired on 17 November 2019 and he is covered by a bridging visa while his application for a new visa is being processed. He attained the Licence Controller Qualification (LCQ) on 25 September 2019 and successfully completed the QLDC oral test requirement (second attempt) on 7 November 2019. Mr Vincent is currently employed as a bartender at the premises 'Bar Number 8' (previously known as 'Gin and Raspberry'), and has been at these premises on a full time basis since 21 August 2019.

The Application.

[2] The application was received by the Agency on the 26th September 2019. In the application Mr Vincent disclosed a conviction for driving with an excess breath alcohol content. The application was opposed by the Police based on suitability because of the convictions recorded against Mr Vincent on the 25th March 2019 as follows:

<u>Offence date</u>	<u>Charge</u>	<u>Penalty</u>
02/03/2019	Operating a vehicle carelessly	Convicted and Discharged
02/03/2019	Breath Alcohol Level over 400 Mcgs/Litre of Breath. Blood/Breath = 884	Fine - \$1100 Court Costs - \$130 Disqualified from Driving - 7 Months

[3] When giving evidence Mr Vincent told us he has been in love with working in hospitality since age 18 and has experience in the hospitality industry all over France. During this time he worked in all facets of the industry to '...learn everything and be the best worker he could be.' He told us he took the opportunity to come to New Zealand to expand his knowledge in a new place.

[4] Mr Vincent confessed that three months after arriving in New Zealand he made 'one of the biggest mistakes of his life' by driving while intoxicated and crashed into a tree. He had no excuse for this and acknowledged it could have been much worse and could have affected the lives of others. After the crash and sentencing, Mr Vincent decided to move south from Waitangi to Wanaka for a new start.

[5] Mr Vincent was supported at the hearing by Mr Mark Robinson, the owner of Bar Number 8. Although he has had other businesses, this is Mr Robinson's first hospitality business and he does not yet hold a Managers Certificate. He told us the applicant is '...a talented bar person with an excellent knowledge of cocktails and drinks, has great customer service skills, is a responsible employee and has fitted in well with the rest of the team.' Mr Robinson went on to tell us that Mr Vincent has been given training in all aspects of the business including the Host Responsibility policy and how to deal with intoxicated people. His intention is for Mr Vincent to move into the role of Duty Manager and is confident he has the skills and maturity to step easily into the position.

[6] The applicant provided a reference from Ms Katie Higgins, Manager of Charlotte's Kitchen in Paihia where Mr Vincent was previously employed as a bartender. In this reference she described him as having '...exceptional competencies in the daily responsibilities of his role...efficient and hardworking nature...an excellent candidate for a Hospitality Manager.' She also stated that during Mr Vincent's employment he was fully trained on the Sale and Supply of Alcohol Act 2012 (confirmed by his ability to recite the object of the Act when asked), the premises Liquor Licence, dealing with intoxicated patrons and OSH requirements. She used him as a Temporary Duty Manager as required.

[7] When questioned, neither Mr Vincent nor Mr Robinson were aware that a two year stand down period after a drink driving offence has become the accepted practice through previous decisions and has been given the seal of approval by the Alcohol Regulatory and Licensing Authority.

The Police Opposition.

[8] The Police opposed the application under S.222(a) and (b) due to Mr Vincent's convictions for Driving with Excess Breath Alcohol and Careless Driving. Constable Allen gave evidence that at about 8pm on Saturday 2 March 2019, Mr Vincent was driving a motor vehicle on Tau Henare Drive, Waitangi and failed to negotiate a right hand corner hitting a bank on the right hand side of the road causing him to travel across the road and hitting a tree on the left hand side. Mr Vincent asked bystanders to call the Police. He admitted to the Police at the scene of the crash that he had consumed alcohol prior to driving and said 'I shouldn't have been driving I could have killed someone.' Excess Breath Alcohol procedures returned a result of 884 micrograms of alcohol per litre of breath. The legal limit is 400 micrograms.

[9] In response to questions, Constable Allen was of the view that Mr Vincent was intoxicated when he drove but would have been aware he should not be driving. She was not aware of any incidents at Bar Number 8 and there was no record of a Temporary Manager being appointed at that premises.

[10] Constable Allen provided reference to several decisions supporting the greater scrutiny, character and reputation required by applicants for Manager Certificates and submitted that because of his convictions, Mr Vincent does not meet the standards required to control and manage licensed premises. She proposed a two year stand down period from the date of conviction being the 25 March 2019.

The Licensing Inspector.

[11] The Inspector considered Mr Vincent's suitability to hold a Managers Certificate as directed by s.222 of the Act in light of his criminal convictions and the Police opposition. He emphasised there was no question that the applicant has the relevant qualifications, experience in the industry, and is currently employed in a licensed premises. The Inspector rightly commented that the main issue is the nature of the offending, in particular the part played by alcohol and how this reflects on the applicant's suitability to be a manager.

[12] The Inspector helpfully provided the benchmark decision *GL Osborne* NZLLA 2388/95 that is relied on in matters of suitability, and the subsequent decision *Police v Manson* [2015] NZARLA 590 which refines the principles of the *Osborne* decision. In the latter decision, NZARLA stated at paragraph 25:

'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.'

The Committee's Decision and Reasons.

[13] When considering an application for a manager's certificate we are required to consider the matters set out in s 222 of the Act 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 had undertaken and evidence that the applicant holds the prescribed qualification required under section 218; and**
- (e) any matters dealt with in any report under section 220.**

When discussing 'suitability' Holland J in *Re Sheard* (1996) 1 NZLR 751 stated:

"Suitability is a word commonly used in the English language and is well understood. In an earlier decision the Authority has adopted the definition in the Concise Oxford Dictionary as 'well fitted for the purpose; appropriate'."

[14] In this application suitability due to the nature of the convictions is the basis for the Police opposition. As raised by the Inspector, the main issue is the nature of offending and the part alcohol played, and how this reflects on Mr Vincent's suitability to be a manager.

Although *Deejay Enterprises Limited* LLA 531 – 532/97 was decided well before the current Act came into force the comments made by the Liquor Licensing Authority are still relevant to-day. As the the issue is about the integrity and honesty of a manager:

"The guiding hand or hands-on operator of any company or the potential holder of a General Manager's Certificate now receive greater scrutiny from both the Police and other reporting agencies. Character and reputation are closely examined. The law and human desires of patrons frequently tug in different directions. 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."

[15] The hospitality industry is one of the few workplaces where the "off duty" conduct of managers is on the same footing as their "on duty" conduct. In *Henry v Strange* LLA 1632/96, the Liquor Licensing Authority stated:

"A serious question raised by this application is how off-duty conduct involving the consumption of alcohol should be weighed when considering the suitability of an individual to continue to hold a General Manager's Certificate."

In many occupations off-duty conduct is commonly ignored. An exception may arise when the conduct impacts upon work performance. Few trades or professions have a direct legislative link which requires that conduct - including out of hours activities, be considered under the quasi-disciplinary procedure of s.135 of the Act. Nevertheless, that burden is imposed by Parliament on licensees (under s.132) and managers under the Sale of Liquor Act 1989. Their conduct and suitability may be examined at any time if an application is brought before this Authority."

[16] Other cases have talked about the drive to raise the standards of managers. Current expectations are that the management of licensed premises should be conducted by persons of integrity who are committed to supervising the sale and supply of liquor, and concerned to give meaning to the term, 'host responsibility'. For example in *Warren Richard Stewart* LLA PH 880-881/2005 (a case that has close relevance to the present facts) the Liquor Licensing Authority stated:

"We believe that raising the bar for the holders of General Managers Certificates and keeping it a certain height has the potential to bring about a reduction in the abuse of liquor nation-wide. If certain otherwise meritorious applicants suffer in the process that may not be too high a price to pay in order to achieve this long term goal."

[17] In the well known case of *Graham Leslie Osborne* LLA 2388/95 the Liquor Licensing Authority set out guidelines suggesting the ways in which applicants with previous convictions should be dealt with. For example a stand-down incident-free period of two years was suggested for an isolated excess breath/blood alcohol conviction. Five years was suggested for serious offending or convictions relating to or involving the abuse of alcohol. Licensing Committees should deal with applicants. Such guidelines were given the seal of approval by the Alcohol Regulatory and Licensing Authority in its decision of *NZ LNQ Limited* [2014] NZARLA PH 229:

"The decision in G L Osborne NZLLA 2388/95 and subsequent authorities indicate that an applicant for a General Manager's Certificate is unlikely to be granted such a certificate until at least two years have elapsed conviction-free"

after a drink-driving conviction. Where there are two drink-drive convictions, the period is usually extended to five years."

We acknowledge this guidance but believe it is not sensible to have the stand down period start at date of conviction as this is an artificial date and dependent on the court's efficiency. Our position is that stand down periods will start from date of offence.

[18] This applicant has one drink-drive conviction and in this case has strong support from his employer, Mr Robinson. As emphasised by Mr Robinson, the applicant is very good at his job and has displayed the potential for an excellent future in the hospitality industry. This is supported in the reference from Mr Vincent's previous employer and suggests he is an '...otherwise meritorious applicant...'. But given the evidence showing he was twice the legal Breath Alcohol Level and had an accident, we do not consider there are exceptional circumstances to support deviating too far from the established two year stand down period from date of the offence, and therefore Mr Vincent's application for a manager's certificate will become a process rather than an event.

[19] The application will be adjourned for twelve months from the date of this reserved decision. During the last three months of the adjournment, we see no reason why Mr Vincent cannot be appointed as a temporary or acting duty manager. At the end of that period of time, we request further reports from the Police and Inspector. If those reports are favourable then we propose to grant the application 'on the papers' without further hearing. If the reports are unfavourable then a further hearing is likely.

DATED at Queenstown this 10th day of January 2020.



L A Cocks
Chairperson

