

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

AND

IN THE MATTER of an application by **TRAVIS NEWTON CLARK** Pursuant to s.219 of the Act for a Managers Certificate.

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

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

HEARING at Queenstown on 30th August 2016

APPEARANCES

Mr T N Clark – Applicant
Ms S H Swinney - Queenstown Lakes Licensing Inspector – to assist
Sergeant T Haggart - NZ Police - in opposition.

[1] Before the Committee is an application by Travis Newton Clark for a Managers Certificate. The application was received in September 2015. Because Mr Clark was working as a night porter at a hotel in Queenstown, the agency placed the application on hold until June 2016, so that Mr Clark would undergo 12 months experience controlling the sale of alcohol rather than the six months experience that is normally required.

[2] In all other respects, the application was in order. Mr Clark submitted a reasonably positive reference from the hotel where he had gained employment in June 2015. He is a resident of the United States America and was 26 years old at the time of the application. He had gained his Licence Controller Qualification in August 2015.

[3] Not unnaturally, the application was opposed by the Police. The reason for the opposition was that on 26th February 2016, (whilst the application was still on hold); Mr Clark was driving a 200cc moped in Fernhill, Queenstown. He had been drinking at a licenced premises but he was unsure how long. He offered a female person a lift. She was pillion passenger wearing his motor cycle helmet. Mr Clark had purchased the moped through Trade Me, from a vendor in Christchurch. He had driven it down although he is not a holder of motor cycle licence. Not only was he not the holder of a licence he was not wearing the required motorcycle helmet.

[4] It was raining at the time. Mr Clark lost control of the moped on a moderate corner, and both he and passenger slid of the motor cycle into the grass verge. A subsequent evidential breath test revealed a result 500mg per alcohol per litre of breath. In March 2016 Mr Clark was convicted

in the District Court in Queenstown. He was fined and disqualified from driving for a period of 6 months.

[5] It has always been the case that recent convictions for driving with excess breath or blood alcohol are a bar to obtaining a managers certificate. The reasoning is that s. 222 of the Act has set out a number of criteria to which this Committee must have regard when considering an application for a Manager's Certificate. These criteria include suitability and convictions recorded against the applicant. For many years Committees such as this and other licensing bodies have been assisted by the historical decision of **G L Osborne 2388/95 NZLLA**. That case set the standard that a single drink driving offence such as this one would result in a minimum of two convictions free years from the date of offending. The application might then be given favourable consideration provided positive reports were received from the Police and the Licensing Inspector.

[6] The reasoning behind the decision was to ensure that the person who had committed the offence had learnt a valuable lesson and had shown that he or she was capable of greater commitment towards his or her responsibilities. Experience has shown that management of licensed premises has to be taken seriously because it is the manager who is responsible for ensuring that the licenced premises complies with the terms of the licence and Sale and Supply of Alcohol Act 2012.

[7] The object of the Act is that "The sale, supply and consumption of alcohol should be undertaken safely and responsibly and the harm caused by excessive or inappropriate consumption of alcohol should be minimised." Certificated Managers who commit offences such as this one involving irresponsible or excessive consumption are invariably taken before the Alcohol Regulatory and Licensing Authority and their certificates are either suspended or cancelled. Applicants who are hoping to become certificated are told to wait and learn.

[8] This is the perceived wisdom underpinning the Act which was clearly set out in the Police objection. Mr Clark elected to continue with his application and this public hearing resulted.

[9] In the course of preparation of the public hearing the Inspector discovered a post on Facebook placed by Mr Clark yesterday 29th August. In his communication Mr Clark stated that he was off the Asia to write a book, and the past few years in OZ & NZ had been amazing. He added "The past few years has served me well and now I feel confident is saying it's time to put the pen to paper. This is all I've ever wanted and it's time for the taking! With all this said some things never change. I'm a sucker for the bottle". Mr Clark denied any suggestion that this comment was an encouragement for others to drink or a reflection of a person who drank to excess.

[10] The Inspector in her usual efficient way checked with the hotel where Mr Clark had been working to discover that he ceased his employment on the previous Friday or Saturday, and he was no longer employed at the premises. This of course brings into consideration another of this Committee's policies or guidelines. We do not issue certificates which may be placed on a wall and admired from time to time. They must be working documents and will seldom be issued unless the applicant is employed in the industry.

[11] The reason for such a guideline is that current employment keeps one up to date with trends and current laws. It is not only important for managers to keep being upskilled but also to have the support of the licensee or the employer. In other words Certificates are not issued in a

vacuum. They have to be earned, and they have to be earned by people who are committed to working in the industry.

[12] Mr Clark not only suffers from not having current employment, but there is no employer here to support him. Because a manager is responsible for ensuring that the premises comply with the conditions of the licence and the law, it is important that he or she has the licensee's trust and support as well as supervision.

[13] Mr Clark was advised he was facing a refusal of his application and that he could withdraw his application. He declined that opportunity and said he would like it known that his reasoning for proceeding was that he had helped to prevent intoxication and accidents from happening. He argued that the experience of his accident and subsequent apprehension and appearance in the Court would help him to prevent similar harms caused by excessive alcohol consumption. He would like it acknowledged that in the past he has prevented alcohol related harm, and he believes he can continue to help others.

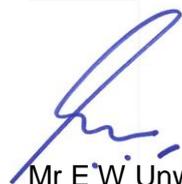
[14] It is fair to say that while Mr Clark is no doubt somewhat devastated by his own predicament, he is the cause of it. We do not necessarily accept that this willingness to assist others is the only the reason why he requires a certificate. A Manager's Certificate is a valuable document. It certifies that the holder can be trusted to manage licensed premises competently. It can be used in other countries for reference purposes and it can be useful for making applications for residency.

[15] Both the Police and the Inspector have referred to a number of cases involving applications of this nature. We refer in particular to the case of **Warren Richard Stewart LLA PH880/881/2005:**

“We believe that raising the bar for the holders of General Managers Certificate and keeping it at 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”

[16] For the reasons we have attempted to articulate this application is now refused

DATED at Queenstown on this 8th day of September 2016



Mr E W Unwin
Chairman