

Decision Number 60D [2018] 1177

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

AND

IN THE MATTER OF an application by **SEQUOIA LEIY
PARISH HEALEY** for a Manager's
Certificate under s 219 of the Sale
and Supply of Alcohol Act 2012.

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Hearing: 16 May 2018

Committee:

Ms C E Robinson (Chair)
Mr P Rogers
Ms A Keir

DECISION ON APPLICATION FOR MANAGER'S CERTIFICATE

[1] This decision relates to an application by Sequoia Healey ('the applicant') for a Manager's Certificate pursuant to s219 of the Sale and Supply of Alcohol Act 2012 ('the Act').

[2] A hearing of the application was held on 16 May 2018. The hearing was attended by the applicant, Constable Graeme Jolliffe and Inspector Martin Ferguson.

[3] The application was not initially opposed by the New Zealand Police within the statutory period specified by s 220 of the Act, however, since lodging the application Ms Healey was charged with and then had been convicted of driving with an excess breath alcohol of 895 mg per litre of breath. The offence occurred on 25 February

2018. These matters were brought to the Committee's attention by letter from the New Zealand Police.¹

[4] Up until the hearing there was also an outstanding issue with regard to whether the applicant had completed her LCQ training. At the hearing the applicant presented an email copy of her certificate. She is to provide a hard copy to the Committee for the record.

Evidence

[5] The applicant presented oral evidence. Ms Healey is currently employed at Meshino Café and has been given an opportunity to increase her responsibilities and hours by taking on a second in charge position which includes the role of a duty manager. Ms Healey provided an explanation of the events that lead to her committing the offence of excess breath alcohol. She told us that she was at a social event and had organised a designated driver, however, an altercation with a family member occurred which lead her to fear for her personal safety, so she left the event and drove herself home. In answer to questions from Constable Jolliffe she accepted that given she was three times over the legal limit she could have ordered a taxi. She elected not to due to her state of distress arising from the altercation with a family member

[6] Ms Healey also gave evidence as to her past history of offences. In the period March to September 2012 Ms Healey had four convictions. They included theft, a drug related offence, excess breath alcohol and driving while disqualified. Ms Healey acknowledged the past offending and explained that it was a bad patch for her personally. She said that since that time she had taken positive steps to change her life around including study, surrounding herself with good people and has worked full time. Her recent job offer was something she had been working towards and she said it was the 'best position I've ever been offered'. She was concerned that her split moment 'dumb decision' could potentially put her right back where she was 5 years ago.

¹ Letter from NZ Police to DLC, 4 April 2018.

[7] Constable Jolliffe asked Ms Healey if her boss still supported her new role. Ms Healey replied:

“I’m going to say no given other circumstances of another employee who has gone through a similar process recently ... they did support me up until another employee got charged with the same thing so the conversation we had was that for herself and the face of the business it was embarrassing for her to continue to support her staff through this.”

[8] In answer to questions from the Inspector, Ms Healey admitted that she had been ‘hungover’ at work and had been sent home on one occasion recently.

[9] Ms Healey explained that she only drank once or twice a month. When asked by Constable Jolliffe if she drank ‘a lot or just one or two’. Ms Healey replied, ‘yes and no’. We understood her to say she did drink a lot on some occasions such as a friend’s party but not all the time.

[10] Ms Healey said she understood the responsibilities of a duty manager but acknowledged that she did not always apply those responsibilities to her personal life and it was something she was working on.

[11] Before the hearing we were provided with the Inspectors Report² and statement of evidence from Constable Jolliffe in relation to previous convictions.³ This evidence was disclosed to the applicant. We accept the evidence of the past criminal and traffic history.

[12] On the basis of the evidence we heard we now determine the application in accordance with the criteria in s222 of the Act.

Decision and Reasons

Is the applicant suitable to be a manager?

[13] On the evidence before us we have concluded that the answer is no.

² Inspectors Report, 9 April 2018

³ Brief of Evidence G Jolliffe in relation to offence of 25 February 2018.

[14] The significance of the role of a duty manager is well known. In *Deejay Enterprises Limited* NZLLA 531-532/97 the Liquor Licensing Authority held:

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] Ms Healey's history, most recent offence and her evidence regarding her use of alcohol indicates a lack of maturity and responsibility around the use of alcohol. It falls below the standard we would expect from a duty manager.

Convictions

[16] Ms Healey committed an offence since lodging her application for a Manager's Certificate. We are obliged to consider the then Liquor Licensing Authority decision *GL Osborne* NZLLA 2388/95 ('Osborne guidelines') when considering the effect of previous convictions. Those guidelines as applied in a number of Alcohol Regulatory Licensing Authority decisions suggest that where there are two or more convictions a five year stand down period should apply. Although it is a guide, we are mindful that the Osborne guidelines have been applied consistently since 1995, with some modification, for example it is now accepted the time should run from the date of the offence.⁴ It is important that our decision continues to maintain a very high standard of persons holding a Manager's Certificate because of their front-line responsibility for ensuring the Object of the Act is met.⁵

[17] We are required to act cautiously and should only depart from the guidelines in exceptional circumstances so as to maintain consistency and high standards.⁶

[18] Although Ms Healey endeavoured to impress upon us that she had changed her ways, and that this very recent offence had extenuating circumstances, we do not find those circumstances to be exceptional. Ms Healey accepted she could have

⁴ SA Judd [2014] NZARLA 94, 95 and 96

⁵ *Police v Manson* [2015] NZARLA 590 at [23]

⁶ *Ibid*, [25].

taken a taxi but acted in the heat of the moment. This simply highlights the negative impact on good judgement when over consumption of alcohol is involved.

Recent industry experience

[19] The applicant is working at licensed premises.

Training and qualifications

[20] Ms Healey has undertaken appropriate training and holds a LCQ certificate.

Any other matters dealt with in a report made under s220.

[21] There are no other further matters that have not already been addressed above.

Conclusion

[22] We find on the evidence before us and having taken in to consideration the criteria set out in s222 of the Act that declining to grant a Manager's Certificate to the applicant is reasonable and accords with the object of the Act. Ms Healey's recent conviction does not give us confidence that she is suitable to hold a Manager's Certificate at this time. Accordingly, for the reasons set out above we decline the application for a Manager's Certificate

DATED at CHRISTCHURCH this 22nd day of May 2018.



Cindy E. Robinson

Chairperson of the Christchurch District Licensing Committee