

Decision No: 60D [2015] 1049

IN THE MATTER

of the Sale and Supply of Alcohol
Act 2012

AND

IN THE MATTER

of an application by L & J Trading
Limited for an On Licence
pursuant to s.99 of the Act in
respect to premises situated at
218 Marine Parade, New
Brighton, Christchurch, trading as
Spagalimi's New Brighton.

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE:

Chairman : Mr G B Buchanan
Members: Mr A J Lawn
Mr R Wilson

Hearing at the Christchurch City Council Chambers, CHRISTCHURCH on the 21st of May 2015.

APPEARANCES

Mr M Ferguson; Christchurch City Council Licensing Inspector
Sergeant J Harris for NZ Police

APPLICANT

L & J Trading Limited Mr Jie Lin

Introduction

- (1) This decision relates to an application for a new On Licence under section 99 of the Sale and Supply of Alcohol Act 2012.
- (2) This application relates to premises situated at 218 Marine Parade, New Brighton, Christchurch, known as "Spagalimi's, New Brighton". The premises have been previously licensed but that licence has since expired and the applicant now seeks a new Licence.
- (3) The premises are situated in an area on the eastern side of Christchurch City. The maximum number of occupants permitted on the premises is 40.

- (4) The Licensing Inspector opposes the licence. He expresses concerns regarding the suitability of this applicant to operate his licensed premises within the law.

The Application

- (5) Mr Lin is the applicant for the On Licence. He has been in the industry for a number of years and has previously held a Manager's Certificate. He is the sole shareholder of L & J Trading Limited ("the company").
- (6) Mr Lin acknowledged that there had been some problems with the management of the premises. He said that when he purchased the business in 2010, he began trading with one manager. Although he had previously held a Managers certificate, it had expired in 2007. Mr Lin has failed to complete the application process for a new Manager's Certificate.
- (7) Mr Lin told the committee that he did not think that he needed another Manager, as his girlfriend often worked the evenings and that she had her Manager's Certificate. When asked how many days a week his Manager worked, he told the committee that she worked 7 days per week. That was because his hours of business were only 4pm to 10 pm.
- (8) The licence for premises expired on the 10th of March 2014. Later in June 2014 the Inspector visited the premises and found that it was offering alcohol for sale. The Inspector advised him that his Alcohol Licence had expired and that he should not display or sell alcohol until he obtained a new On Licence.
- (9) In 2014 Mr Lin applied for a new On Licence. He said that he was confused by the process and that this was why he was so slow in completing the application details requested by the Licensing Inspectors.
- (10) When questioned by the committee regarding the Sale and Supply of Alcohol, his knowledge was very poor. Mr Lin was unaware that the former Sale of Liquor Act had been replaced.
- (11) Mr Lin explained that alcohol was only a small proportion of the company's income and that it mainly came from the sale of takeaway pizzas. He maintained that there was a need for a licence to sell alcohol as some people dined at the premises and wanted to have a glass of wine or a beer while doing so.
- (12) Mr Lin said that he now had a second staff member who had obtained a Manager's Certificate. He accepted that she had no knowledge of the liquor industry and had no previous experience.

Reporting Agencies

The Licensing Inspector

- (14) The Inspector's report had previously been supplied to the committee.
- (15) Mr Ferguson made submissions to the committee which outline his concerns regarding the suitability of the applicant.
- (16) Concerning the operation of the restaurant, the Licensing Inspector made the point that when he inspected the premises they were trading without a licence and likely, at times, without a Manager.
- (17) Mr Ferguson pointed out to the committee that the applicant showed very poor understanding of the requirements of a licensee and this was reflected in the inadequate manner the application was completed. He said it lacked any detail and it was one of the poorest he had seen. He told the committee that the Inspectors worked with licensees to help them with the process, but that Mr Lin did not seem to understand what was required, or did not care.
- (18) To a question from the Committee, Mr Ferguson agreed that one could consider the application to be incomplete, as it was so lacking in information requested on the form.
- (19) When asked if he accepted that the employment of a second Manager would improve the supervision of alcohol sales; Mr Ferguson stated that while Mr Lin did have a second staff member who recently obtained the necessary qualifications, a Manager's Certificate would not be granted as she had no previous experience. It would be likely that the Manager's Certificate would be issued after 6 months, during which time she could obtain the necessary experience.
- (20) Mr Ferguson submitted that he did not consider this applicant suitable to hold a licence.

Police

- (21) Sergeant Harris did not object to this application for an On Licence. He submitted that he did not have any information which would cause concern to the Police.

Decision

- (22) All the evidence presented to the committee was considered.
- (23) The application was duly advertised and no public objection or notice of desire to be heard has been received.
- (24) No objections were raised by the agencies concerning the likely impact on good order in the vicinity.
- (25) The committee makes the point that it is for the applicant to demonstrate that he is suitable to hold a licence, (see *Page v Police 24/7/98, Pankhurst J, HC, Christchurch AP84/98*). To do so he must satisfy the Committee that he meets the requirements of section 131 of the Act.

J M Clark LLA 1169/99

' A liquor licence is a privilege. It may colloquially be regarded as a 'package deal'. Both the burden and the benefit runs with the licence. Mr Clark as a licensee must accept those burdens and control the sale and supply of liquor in a satisfactory manner, or he will not continue to enjoy the privilege. Either the licensee can manage the premises, and on-licence satisfactorily or he cannot.'

- (26) The submissions from the Licensing Inspector raised concerns as to the applicant's suitability. We note that the standard of the application documentation completed by Mr Lin was very poor. Parts of it lacked any detail and did not provide the reader with adequate answers to the questions.
- (27) Mr Lin is not a "hands on" licensee, and thus does not appear to take a proactive approach to the management of his business. He is only at the premises over the weekend and relies on others to operate the business and ensure compliance with the Sale and Supply of Alcohol Act 2012.
- (28) The lack of proper management has resulted in the business being operated outside the law in respect to the Act.
- (29) We note that Mr Lin does not hold a current manager's certificate, although he has held one in the past. He will benefit from obtaining one, to bring him up to date with the new Act and his responsibilities.

Conclusion

We are satisfied as to the matters to which we must have regard as set out in s.131 of the Act and we make the following decision:

- The Applicant, Mr Lin, must obtain his Manager's Certificate before 30 July 2015.
- The applicant must resubmit his application, and supporting documentation for an On-Licence to the Licensing Inspector. This must be completed to the Inspector's satisfaction before the 30th July 2015.

We adjourn the case until we have received a report from the Licensing Inspector as to whether or not these conditions have been met

A decision on the issue of the licence will be made after receipt of the report by the Licensing Inspector as requested.

A handwritten signature in blue ink, appearing to read 'G. Buchanan', is written in a cursive style.

Mr G Buchanan
Chairman

Dated this 25th day of May 2015