

Application Number: 036/CERT/086/2014.1

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012 ("Act").

AND

IN THE MATTER

of an application by **Kelly May Blinkhorne** for renewal of a Manager's Certificate pursuant to s.224 of the Sale and Supply of Alcohol Act 2012 ("Act").

BEFORE THE WHANGANUI DISTRICT LICENSING COMMITTEE

Chairman: Mr Stuart Hylton
Member: Mr Robert Moore
Member: Mr Hamish McDouall

HEARING at the Whanganui District Council Chambers on 4th October, 2017.

APPEARANCES

Kelly May Blinkhorne – Applicant

Carla Donson – To Assist Applicant

Warwick Zander – Whanganui District Council Chief Licensing Inspector – To Assist

Charlene Omundsen - Whanganui District Council Licensing Inspector – Report in Opposition

Constable Alan Keith James Thomson – Police: Report in Opposition

DECISION OF THE COMMITTEE

Application

[1] On the 8th August 2017 the applicant Kelly May Blinkhorne, applied to renew her Managers Certificate 036/CERT/086/2014.

[2] Contained within Kelly Blinkhorne's renewal application was a declared drink driving conviction issued on 5th March 2016 which resulted in a \$930 fine and 6th month

disqualification from driving. The applicant returned a reading of 752 (Mcgs) micrograms/litre of breath.

Opposition

[3] The file the District Licensing Committee (“DLC”) received included section 225 reports from Police and Inspector.

[4] The Police report dated 22nd August 2017 records opposition to the application presumably on the basis of the applicants declared drink driving conviction.

[5] The Inspectors report dated 23rd August 2017 records opposition to the application in stating *“The application does not appear to meet the criteria of s. 227 of the Act. I support the Police in their opposition to the granting of this application”*.

[6] Due to the reported opposition the matter was set down for public hearing in accordance with section 202(3) of the Act.

Hearing

Applicant’s Evidence

[7] The Committee heard evidence from the applicant that she had learnt her lesson from this regretful out of character mistake and still feels ashamed she committed this offence in the first place. The applicant said she has no desire to experience the humiliation or inconvenience of having no licence and how it impacted on her family’s day to day life.

[8] The applicant also explained how important it is for her to retain her Manager’s Certificate and to not have her Manager’s Certificate renewed will limit her future business opportunities.

[9] The applicant explained that when the offence occurred she was employed by Tim Watson at Mud Ducks Cafe. She advised Mr Watson immediately when the offence occurred. Mr Watson appreciated her honesty and continued to employ Ms Blinkhorne at Mud Ducks for a further 14 months. Mr Watson supplied a letter of support to the hearing.

[10] The applicant advised the Committee that through the rest of her career as a duty manager and business owner there had been no other concerns raised about her professionalism and no incidents recorded in that time.

[11] Under cross examination the applicant acknowledged this was her first drink/drive conviction and she had managed licensed premises off and on from around 2001.

Police’s Evidence

[12] Constable Thomson took his brief of evidence as read which recorded Police opposition to the renewal application due to suitability concerns following the applicant’s drink driving charge.

[13] Constable Thomson advised the Committee he had recently met with the applicant and established there were no other alcohol abuse issues or other alcohol related incidents on Police records. After speaking with the applicant he was content that the drink driving charge was an isolated incident.

[14] Constable Thomson told the Committee that when the applicant was convicted last year the Police 'system' should have alerted the matter to come before the Alcohol Harm Reduction Officer for consideration for possible application to the Alcohol Regulatory and Licensing Authority for s. 285 suspension or cancellation of Managers Certificate.

[15] Constable Thomson then referred to the Committee to case law ***Munro Vs Kidd 2010 NZLLA 632*** and ***Twiss, 2012 NZLLA 332***. Under questioning Constable Thomson advised that the normal Police process was not followed in this instance as the "alert" was not in place as it should have been. If it had, ideally this matter would have been dealt with by way of s. 285 suspension/cancellation.

[16] Constable Thomson advised the Committee that he believed Ms Blinkhorne would have incurred a 28 day suspension from the Authority if a s. 285 had been made. Constable Thomson confirmed he had no opposition to a probationary period or renewal of Ms Blinkhorne's Manager's Certificate.

[17] On further questioning Constable Thomson informed the Committee of the legal blood alcohol limits at the time of the offence as being –

- *From 1 December 2014, the alcohol limit for drivers aged 20 years and over lowered from 400mcg of alcohol per litre of breath to 250mcg per litre of breath.*
- *This means if you blow between 250mcg and 400mcg you receive a \$200 infringement and 50 demerit points.*
- *If you blow over 400mcg, you will go to court.*
- *If you blow over 650mcg you receive a mandatory 28 day suspension.*

[18] Constable Thomson told the Committee that a reading of 752 (Mcgs) micrograms/litre of breath was getting up there but a high reading is probably considered around 1000mcg to 1100mcg.

[19] Constable Thomson referred to his discussion he had with Ms Blinkhorne and explained the circumstances which led to Ms Blinkhorne committing the offence that day i.e. Ms Blinkhorne had walked into town to join some friends. A situation arose with one male companion who had consumed too much alcohol, became agitated but adamant he wanted to drive home. Rather than have that happen, Ms Blinkhorne decided to drive him home in his vehicle. Constable Thomson gave no further evidence.

Inspector's Evidence

[20] Ms Omundsen under questioning said she supported the Police in their opposition together with the no opposition to a one year probationary period.

[21] Mr Zander, in response to a question, advised the Committee that s.228 (2) allows the committee to impose a renewal up to three years. What typically has happened in the past with ARLA is they apply a truncated renewal of one year which is considered a probationary period. It still is a renewal and has the normal operations of a manager's certificate but allows the applicant to prove their suitability at an earlier stage.

[22] Mr Zander also quoted **Hesp 2014 (2014)NZARLA PH10** and read the following extract -

"The authority is prepared to allow Mr Hesp the benefit of the doubt and grant the application for renewal of the certificate. However the renewal term should be for a truncated period. This is to remind Mr Hesp that the way he conducts himself as a Manager must be exemplary. It also takes into account the nature of the Police's concerns and ensures Mr Hesp's conduct will remain under scrutiny for the next year."

Applicants Summation

[23] Ms Donson, on behalf of the applicant, summarised the applicant's case including her unblemished professional career, no previous convictions and that the conviction occurred outside of work hours. The applicant has no history of alcohol abuse or any alcohol related harm.

Committee's Decision and Reasons

[24] In considering this application the Committee considered the criteria under s. 227 i.e.

- (a) the applicant's suitability to be a manager:
- (b) any convictions recorded against the applicant since the certificate was issued or last renewed:
- (c) the manner in which the manager has managed the sale and supply of alcohol pursuant to the licence with the aim of contributing to the reduction of alcohol-related harm:
- (e) any matters dealt with in any report made under section 225.

[25] The matter in question, as raised within the s. 225 reports, is the applicant's suitability to be a manager considering her drink drive conviction in 2016.

[26] The Committee heard from the Applicant and the Police that the drink driving incident was a first and that there appeared to be no underlying alcohol abuse issues displayed by the applicant.

[27] The Committee noted the applicant's remorse and embarrassment for having made a poor decision and that the applicant had chosen to use the incident to highlight drink driving perils to others.

[28] The Committee also noted the Police evidence which stated that if their alert systems had worked the issue of the applicant's drink driving conviction would have been dealt with as a s. 285 suspension/cancellation at the time which most probably would have resulted in a 30 day suspension. This suspension consequence is highlighted in *Munro vs Kidd (2010)NZLLA632* which states – “*It is our view that if managers are guilty of breaches of the drink driving provisions of the Land Transport Act they must expect their certificates to be suspended for a period. The length of the period should represent a balance between the seriousness of the offending and the maximum term of six months. In the majority of cases such a result will be seen by the Authority as a desirable step towards the promotion of the object of the Act.*”

[29] Unfortunately this course of events did not materialise.

[30] The Committee holds the view that persons holding a managers certificate were in a position of responsibility which requires the exercise of good judgement around the sale, supply and consumption of alcohol. The incident and conviction demonstrated a lapse in judgement on the applicant's part and therefore the Committee believes there should be a consequence for that error in judgement.

[31] This view is supported by well referred to cases of ***Hesp (2014) NZARLA PH10*** and ***Deejay Enterprises Limited NZLLA 531-532/97***.

[32] In regard to the applicant's suitability to continue to hold a manager's certificate the Committee believed Kelly Blinkhorne had presented sufficient evidence at the hearing to suggest she had discharged her duties as a responsible manager in the hospitality industry in the past. This was supported by the two agency reports which reported no negative aspects to the applicant's managerial performance over the years.

[33] In this particular case we are satisfied that the applicant is suitable to continue to hold a managers certificate however due to the drink driving conviction the renewal should be issued for a truncated period as allowed for under s. 228 (2) of the Act.

[34] Accordingly the application for renewal of manager's certificate by Kelly Blinkhorne is granted for a two year period instead of the usual three years.

DATED at Whanganui this the 9th day of October 2017



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Chairman – Stuart Hylton