

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

AND

IN THE MATTER of application by
ANKITKUMAR PATEL pursuant to s.219
of the Act for a Manager's Certificate

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

Chairman: Mr E. W. Unwin
Members: Ms M. W. Rose
Mr J. M. Mann

HEARING at QUEENSTOWN on 14th December 2015

APPEARANCES

Ms J Mitchell – Queenstown Lakes District Licensing Inspector – to assist
Sergeant L K Stevens – N Z Police – in opposition
Applicant in person

DECISION OF THE COMMITTEE

[1] This is an application by Ankitkumar Patel for a Manager's Certificate. We remind ourselves that the criteria which we are required to consider are set out in Section.222 of the Act. The relevant criteria in this case are a) the applicant's suitability to be a manager and b) the convictions recorded against him. It could also be argued that a third criteria is Mr Patel's recent experience in controlling licensed premises.

[2] The application was filed with the agency on the 29th September 2015. The applicant was (not unnaturally), opposed by the Police for a variety of reasons relating to the applicants suitability and a conviction recorded against him.

[3] The evidence shows that Mr Patel has been involved in three incidents since he has been in New Zealand, all of which are alcohol related. The first incident occurred on the 28th May 2011 when Mr Patel was convicted in the Waitakere District Court for driving with an excessive breath alcohol level of 751 milligrams of alcohol per 100 millilitres of breath. Mr Patel was duly fined and disqualified. At the time he was working for a supermarket in Auckland. He subsequently shifted to Queenstown to work for the same supermarket brand, and he has been working for that supermarket since 2012.

[4] He was encouraged by his employer to apply for a Manager's Certificate so that he could become the Duty Manager of the supermarket, and carry the responsibility for the operation of the off licence.

[5] However, Mr Patel was arrested on the 21st September 2013 at about 1.00am. The facts show on that occasion he had been drinking at a bar but due to his intoxication was told to leave. He had to be physically escorted from the bar because he refused to leave. Although his friends tried to pull him away, he punched the bouncer on his head. He had

to be further restrained by other bouncers from committing further assaults. There was no injury to the bouncer but Mr Patel duly appeared before a court where he acknowledged his guilt and received the benefit of diversion. Diversion is a process under which persons are given a second chance at redeeming themselves by showing that they have learnt from the errors of their past.

[6] Regrettably Mr Patel did not appear to learn anything, because he became involved in a third incident shortly after midnight on the 1st January 2015. On that occasion Mr Patel was said to be waiting in a queue to go into licensed premises, and became involved in a fight. As a consequence he was arrested and taken back to the Police station where he given a warning which resulted in no criminal conviction. The Police assessment made at the time was that he was extremely affected by alcohol.

[7] Bearing in mind that two of the above matters did not result in a conviction, the combination of his conduct was sufficient for the Police to oppose the application on the basis that Mr Patel was unsuitable to hold a Managers Certificate. In her final submission Sergeant Stevens suggested that there should be a two year stand down period. In making that submission the Sergeant has taken into account that Mr Patel is working in Off-Licensed premises where his contact with persons who may have been drinking, and may need to show restraint, is reduced. She also took into account that his conduct referred to above did not lead to any convictions.

[8] Mr Patel has given evidence, and given a reasonably good account of himself. He has worked continuously since he arrived in New Zealand back in 2008. Part of that time through to 2012 was in Auckland with 'FreshChoice'. Subsequently he has been working for the same employer in Queenstown. His application to hold a Managers Certificate is supported by his employer who was not present at the hearing.

[9] More importantly, after being arrested on the 1st January 2015, Mr Patel has decided not to drink, partly because he may have learnt his lesson and more particularly because it clear that any further incidents involving the Police would result in his inability to remain in this country.

[10] The issue for the Committee as always is a balancing exercise. We have taken into account that there is a less likelihood of offending against the Act by a manager where there are off licence premises. Nevertheless the responsibility assumed by a manager is severe. We thank the Sergeant for her reference to a decision of the previous Authority under the name of Warren Richard Stewart LLAPH880/881/2005. In which it was said:

We believe that raising the bar for the holders of general manager's certificates and keeping it at a certain height has the potential to bring about a reduction in abuse of liquor nationwide. If certain otherwise meritorious applicants suffer in the process that may not be to high price to pay in order to achieve this long term goal.

[11] We agree with the Sergeant that a two-year stand down period is an appropriate period of time. In this case the granting of this application will be a process rather than an event. We have decided that the application will be adjourned for minimum of twelve months. In that time Mr Patel may be appointed as a temporary manager for no more than four weeks during the next twelve months.

[12] In that time Mr Patel will be required to sign an undertaking. The undertaking will be in a form that Mr Patel undertakes that; if granted a certificate it will not be used in any on licensed premises for a minimum period of at least twelve months until the renewal of the

manager's certificate. The undertaking or caveat may subsequently be removed or rescinded or varied by the Inspector upon request. The signing of the undertaking means that there will be a further twelve months where Mr Patel will be required to work only in off licence premises.

[13] The Committee's position is this: If, after 1st January 2017, there are no adverse reports received about Mr Patel's conduct over the previous 12 months, the application may be granted 'on the papers' at any time thereafter, subject to the undertaking which has been mentioned. Mr Patel needs to be aware that any breach of that undertaking would be seen as sign of unsuitability and would result in the cancellation of the certificate.

A handwritten signature in blue ink, appearing to be 'E. W. Unwin', with a large, sweeping initial 'E'.

E. W. Unwin
Chairperson

