

IN THE MATTER

of the Sale and Supply of Alcohol
Act 2012

AND

IN THE MATTER

of an application by Gail Denise
Maney for a Manager's Certificate
pursuant to s.219 of the Act

BEFORE THE WAIKATO DISTRICT LICENSING COMMITTEE

Quorum: Chairperson Andrew Baker
Members: Barry Smedts
 Jason Howarth

HEARING at Ngaruawahia on 26th November 2024

PARTIES

Gail Denise Maney – Applicant
Mr Andrew Braggins – Counsel for applicant
Ms Alannah Thomas – in support of Mr Braggins

Reporting Agencies

Mr Anthony Pipe – WDC Environmental Team Leader representing the reporting Waikato District
Council Licensing Inspector in opposition
Senior Sergeant David Hall – NZ Police in opposition

DECISION

Introduction

[1] We have before us an application by Gail Denise Maney for the granting of a manager's certificate.

[2] The inspector and Police have filed reports opposing the application.

[3] The application was lodged on 30th November 2023.

[4] Both reporting agencies reported with opposition to the application. The Police opposed relative to s.222(a) of the Act (Suitability). The inspector opposed relative to s.222 (a) and (b) (convictions).

[5] The matter was first brought before the Committee in July 2024 with a hearing initially set down for September 2024.

[6] The applicant had been convicted and subsequently sentenced on 1 June 2000 to life imprisonment for the offence of murder. At the time of making application for this manager's certificate, Ms Maney had been released from prison and was subject to parole.

[7] The matter of the murder conviction was subject to an appeal to the Court of Appeal and accordingly this application hearing was adjourned until the appeal had been determined.

[8] On 2 October 2024, Ms Maney was acquitted of the murder charge by the Court of Appeal. Subsequently the conviction was removed from her Ministry of Justice criminal history. This updated history was produced for the consideration of the Committee by Mr Braggins.

[10] As the reporting agencies had in our view quite correctly reported in opposition prior to the Court of Appeal decision, following the acquittal, they were asked to report again whereby they reaffirmed their opposition and the hearing was set down for this date.

[11] It was noted that the reporting Licensing Inspector was unavailable and unable to attend with their position represented by Mr Anthony Pipe who attended via electronic link due to ill health.

Opening Submissions for the Applicant

[12] Mr Braggins made opening verbal submissions whilst referencing written copies provided to attending parties.

[13] He spoke of the acquittal and the emotional toll that the conviction had on Ms Maney and how she had over the past four years, turned her life around. He stated that the incidents that led to the 2020 Breach of Parole charges were not convictions and were reliant on the suspicion of drug use that had not been supported by any evidence.

[14] He said these charges were now four years old and told the Committee that the most relevant case law is *Re Dawson [2017]* where the applicant had been convicted for serious drugs charges and the Authority had concluded that an appropriate stand down period was slightly over three years, that the applicant had sought to turn their life around and that the test for suitability is lower for a general manager's certificate than it is for a licence.

[15] He went on to say that as per *Dawson* the purpose of the stand down period is for the applicant to establish an incident free period which is for the overarching aim of demonstrating that the applicant can achieve the object of the Act.

[16] Mr Braggins brought a number of relevant case law excerpts to the attention of the Committee as detailed within his written submission that dealt with suitability and stand down periods including *Sheard [1996] 1 (NZLR) 751*, *Police v Casino Bar (No 3) Ltd [2013] NZHC 44*, *Wylie v Davis [2018] NZARLA 322*, *Re Pompey LLA Decision No PH623/2004*, *Judd [2014] NZARLA 94* and *Police v Manson [2015] NZARLA 590*.

[17] He addressed the proposal by the reporting agencies to include an undertaking regarding Ms Maney's roles in the kitchen and front of house by submitting it was not necessary and actually problematic for the business and premises and how it could be forced to operate. He said that Ms Maney understood what her responsibilities as a duty manager would be and that she knew she could be working generally in the kitchen whilst on duty as a manager.

[18] He noted that Ms Maney had been working at these premises for over three years without incident or issue and whilst the inspector had reported of concerns during the first interview, had subsequently reported following the second interview that the applicant had displayed a good knowledge of the Act and is aware of their responsibilities as a duty manager.

[19] Mr Braggins submitted that the business owner and applicant were attempting to put in place systems to have sufficient certified managers to meet the obligations of the Act and as such the applicant did not support the proposition of the agencies that she be appointed a temporary manager when needed, saying this was inappropriate.

[20] Mr Braggins ended his submissions by saying the twelve month period if the application was granted would provide an opportunity for the applicant to prove herself having turned her life around.

Evidence of the Applicant

[21] Ms Maney was sworn in and asked that her brief of evidence as provided be accepted as read.

[22] She stated that as a continuation of the acquittal process, an application to have the parole breaches removed from her history was being made.

[23] She also stated that prior to the 2020 parole breach charges she had used drugs but since that time, had not which was supported by the drug tests undertaken as part of her parole requirements and as produced as evidence.

[24] When questioned by the Committee, Ms Maney said she was continuing to undertake training for the role as a duty manager and was learning every day.

[25] She stated, when asked about the removal of the protective nature of parole, that being employed full time meant she spent about sixty hours a week at work and was doing everything right in her life acknowledging the opportunity she has and how she was growing as a person through her work with food and people.

[26] She described her current role as head chef, managing the kitchen, training staff and doing the ordering. She said this coming year she was moving into a role of restaurant manager and less time as chef saying that there were seven kitchen staff who would step up and that she would become the third duty manager.

[27] When asked why the first interview with the inspector had turned into a training session as reported by the inspector, Ms Maney stated that she did not realise she had needed to study about the premise and it's licence and had spent her time prior studying the Act but had done better the second time.

[28] She described the business as focussed on food more than alcohol.

[29] When asked about the importance of the job to her wellbeing , Ms Maney said that it was extremely important through her ability to now earn money and have responsibility, opportunities she had not had for most of her life.

Evidence of the Police

[30] Senior Sergeant Hall was sworn in.

[31] He stated that the position of the Police was that they were opposed to the granting of the application now but that this position could change in the future saying “not now but later” was their position.

[32] He said that the Committee should take into consideration *Night Pearl (2021) Limited [2024] NZARLA 122-124* as the most recent case dealing with suitability. A copy of this decision was made available to all parties during an adjournment.

[33] He stated that the concern for Police was not in regard to the quashed murder conviction but more about compliance with the Act and possibility that the applicant could be acting as duty manager whilst undertaking her duties in the kitchen hence his support for the inspector’s proposed undertaking.

[34] Senior Sergeant Hall was asked when he believed it might be appropriate for the applicant to be considered as a duty manager to which he replied “*twelve to twenty four months*” and that the undertaking would provide assistance to Ms Maney in that time regarding her need to be out of the kitchen when a duty manager.

[35] He was asked if the undertaking was enforceable to which he replied that it was risk based and there to address two roles, saying Ms Maney should “*do one job and do it well*”.

[36] When asked if Ms Maney’s experience over past three years including front of house was relevant, he said it was “*absolutely relevant*” and that with that experience she should have done better in her first interview with the inspector.

[37] He was asked if there was any evidence of issues related to the applicant at the premises over the past three years, responding there were none he was aware of and added that Ms Maney had voluntarily attended training courses put on by the Police in Raglan regarding the sale and supply of alcohol.

[38] When asked if the proposed undertaking was common place or if he had supported it’s use before, Senior Sergeant Hall he could not recall it ever being used but that we would have to ask the inspector as he was simply supporting her suggestion.

[39] He was asked if the initial twelve month probationary period should the application be granted would provide sufficient time to cover his concerns. He replied that he would prefer a further twelve months before granting the application.

Evidence of the Inspector

[40] In the absence of the reporting inspector, her supervisor Mr Pipe was sworn in via electronic link.

[41] Mr Pipe spoke to the inspector's report, stressing the importance of the role of duty manager and in particular that a duty manager should be present at the front of house and not working in the kitchen.

[42] He reiterated the suggestion of the inspector for an undertaking in that regard and referenced the case Haddon [2011] NZLLA895 that dealt with that scenario as the basis for such an undertaking.

[43] He also spoke of the issue regarding the 2020 breaches of parole, accepting that whilst these did involve alcohol, they were drug related and the breaches themselves should not be minimised in any way and had an impact on suitability.

[44] He too was asked if the undertaking was enforceable, responding that it provides certainty and assistance to the applicant and employer regarding definition of roles and responsibilities. He added that the inspectorate had no concerns as to how the premises was currently being run.

Closing Statements from the Agencies

[45] The Police said in closing that Raglan was a relatively small and remote township with over twenty licensed premises which is a lot for a town of that size. Senior Sergeant Hall has witnessed alcohol related harm in the town and thus he wants to make sure all those involved in the sale and supply of alcohol knows their jobs and responsibilities.

[46] The inspectorate had nothing to add.

Closing Statement from the Applicant

[47] Mr Braggins made a closing statement on behalf of Ms Maney saying that during the Court of Appeal process, Ms Maney was required to take four weeks leave which shows that the business is able to manage in the kitchen without her acting as Chef. This supports the position that she is capable of taking on front of house duties when needed.

[48] He emphasised that an undertaking was not needed should the application be granted as Ms Maney was aware that she cannot work in the kitchen whilst the duty manager however he offered that she would agree to an undertaking based on the wording at the end of paragraph three of her brief of evidence namely "*I know I cannot be working in the kitchen when I am duty manager.*"

[45] Referring to the first interview with the inspector, Mr Braggins submitted that this had been a year ago and since that time Ms Maney had received more training and experience including the training mentioned in Senior Sergeant Hall's evidence. He did not believe this was a substantive issue.

[46] He submitted that neither of the reporting agencies had said that *Re Dawson* was wrong regarding stand down, directing the Committee to paragraph 12 of that decision as being most helpful and relevant, saying that the Authority had said that people who have been convicted of drug charges can prove themselves after three years. He said that if the Police were suggesting that there be a new test for people to prove themselves, it was not the role of the Committee to determine that.

[47] He went on to comment on some of the case law raised by the agencies, questioning their relativity. He spoke of how the applicant was required as head chef, to comply with a number of other regulations that are monitored by the likes of the Council and that she had shown she is capable of doing that.

[48] He also spoke of how over the past four years, Ms Maney has been subjected by way of her being on parole to a level of scrutiny including drug testing that no other applicant of this type would have to go through and that over that period she has an “*unblemished record*”.

[49] Mr Braggins ended by suggesting that instead of an undertaking, it could be recorded within the decision that Ms Maney has guaranteed that when in duty manager role, she will be front of house and not working in the kitchen.

Committee’s Considerations and Decision

Legislation the Committee must have and have had regard to in this matter:

[50] Section 3 of the Act describes the purpose of the Act.

[51] Section 4 of the Act sets out its object relating to safe and responsible sale, supply, and consumption of alcohol; and minimisation of alcohol related harm caused by excessive or inappropriate consumption of alcohol.

[52] Sections 216 to 223 set out the requirements, processes, reporting and decision making in regard to manager’s certificates.

[53] In particular, Section 222 sets out the matters a committee MUST have regard to when considering a application of this type.

[54] A significant number of previous cases as listed both within this decision and in the evidence of the agencies and counsel for the applicant have been considered.

[55] Considering each of the criteria of s.222 we find the following:

- a) Suitability to be a manager** –we have listened to and observed the applicant give her evidence, considered the submissions of her counsel and noted the lack of direct evidence of the agencies in regard to a lack of suitability. We are satisfied, based on all that is before us, that the applicant is suitable to be a manager.
- b) Convictions recorded against the applicant** – the applicant has a significant number of historic convictions. We have not considered the quashed conviction but have considered the breach of parole charges in 2020. We make the following comments:
 - i. We accept the most relevant case law in this instance is *Re Dawson* and take guidance from the Authority that a period of slightly over three years is an appropriate period of time for a person to prove themselves.
 - ii. Four years has passed since the breach of parole charges and in that time Ms Maney has been the subject of strict monitoring related to her parole conditions and has an unblemished record during that time including not further convictions.

- iii. We accept Ms Maney's statements that she has entered a new stage of her life, putting her very chequered past behind her and relishing her new found responsibilities associated with her role at her place of employment.
- c) **Any Experience** – We are satisfied that Ms Maney has sufficient experience, accepting the comments within paragraph twenty nine of the inspectors report that she has “met the required experience”. This criterion was not opposed by any agency.
- d) **Training** – We are satisfied Ms Maney has undertaken relevant and recent training, accepting the inspector's comments in paragraphs thirty and thirty one of her report and the evidence given at the hearing by the Police that Ms Maney has attended training courses in Raglan.
- e) **Other matters** – the agencies proposed an undertaking that Ms Maney undertake that when named as duty manager, she would not be rostered to be working as a chef in the kitchen. We make the following comments:
 - i. We are not satisfied there is sufficient evidence to support this undertaking or any similar undertaking.
 - ii. Ms Maney has stated in her evidence “*I know I cannot be working in the kitchen when I am duty manager.*” We are satisfied that is sufficient and consistent with how other applicants of this type in similar employment situations are treated by the reporting agencies.
 - iii. Regarding the reference to *Haddon [2011]*, we believe the issue within that case was more about the layout and design of the premises when the duty manager was working in a kitchen that did not have a view of the bar or restaurant area and not about the splitting of the roles which is the concern of the inspector in this case. Our opinion is that the case does not have sufficient relevance to require the undertaking.

[56] We cannot ignore Ms Maney's past and in particular the number and type of historic convictions, however we are of the opinion that everyone deserves the right to put their past behind them and have the opportunity to prove themselves.

[57] As was explained at the conclusion of the hearing when providing a verbal decision, the Committee, having considered the evidence and all matters to which we must have regard within the Act, we are satisfied that this application meets the purpose and object of the Act, and accordingly **GRANT** the issue of the managers certificate for a period of one (1) year which may issue immediately.

[58] We refer any party who wishes to appeal this decision or part of this decision to sections 154 through to 158 of the Act.

DATED at Auckland this 27th day of November 2024.



Andrew Baker
Commissioner
Waikato District Licensing Committee

On behalf of: Barry Smedts
Jason Howarth