

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER

of an application by Vivek Goel
for the renewal of a Manager's
Certificate pursuant to s.224 of
the Act

BEFORE THE WAIKATO DISTRICT LICENSING COMMITTEE

Quorum: Chairperson Andrew Baker
Members: Barry Smedts
Jason Howarth

HEARING at Ngaruawahia on 15th October 2024

PARTIES

Mr. Vivek Goel – Applicant
Mr. Richard Simpson – advocate for the applicant
Mr. Vernon Reeve – character witness for applicant

Reporting Agencies

Ms Clare Sturzaker – Waikato District Council Licensing Inspector in opposition
Senior Constable Wesley Dabb – NZ Police in opposition

DECISION

Introduction

[1] We have before us an application by Vivek Goel for the renewal of a manager's certificate.

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

[3] The application was lodged on 8th July 2024 prior to the expiry date of the underlying manager's certificate of 3rd August 2024. The underlying certificate had been renewed unopposed on the papers in July 2021.

Evidence of the Applicant

[4] Mr Simpson during both introductions and when asked, provided a brief opening submission introducing himself and outlining the case for the applicant. He advised that Mr Goel was happy for his statement of evidence to be taken as read and was also wishing to make further comments.

[5] Mr Goel was sworn in and proceeded to briefly outline the circumstances of the offending that led to his convictions and incarceration advising that he felt pressure to save money for the Council he worked for at the time.

[6] He explained that when the allegations were made in 2017, he immediately left his job and started working for his father at an off licence premise in Hokitika and has been working within the industry since then. He was first issued a manager's certificate whilst working in Hokitika, prior to being charged or convicted. He later referred to this as his retirement plan.

[7] Mr Goel went on to explain how he had pleaded not guilty when charged by the Serious Fraud Office, that the initial charges did not include bribery which were added during the process and resulted in the matters being transferred to the High Court six weeks into the initial trial in 2019.

[8] He said that he felt remorseful as to how things had come out and had accepted the wording of the facts at the time but had since appealed the convictions but not the sentence on the basis that there is no evidence to support the bribery charges. He further stated that because he is appealing, it does not mean he is not remorseful of his actions and that the contracts involved never actually went ahead. He added that this had resulted in eight years of hardship for his family.

[9] Mr Goel said that the offending does not relate to his current work and that he had never breached anything within the Sale and Supply of Alcohol Act going on to say that his current role is approved by the Parole Board and by his Parole Officer.

[10] He asked that he not be "put in the same basket as hard core criminals" and that the Committee understands how important the job is to him and his family and that he has a lot of support from the community.

[11] When questioned by the Committee, Mr Goel advised after working at Bottle-O Hokitika, he moved to Tuakau where he began working at Bottle-O Tuakau and that he was working there prior to being convicted and starting his incarceration. He stated he now worked as a retail assistant at Bottle-O Pokeno after his father had sold his Tuakau Bottle-O.

[12] Whilst classed as a retail assistant, he was required to act as a duty manager and that the store policy was that every staff member must have their LCQ qualifications and do duty manager training.

[13] When asked if he had included details of the charges he was facing when he had applied for his renewal in 2021, Mr Goel stated he could not remember.

[14] He was asked several questions about the Act and responsibilities of a manager which he answered without faltering and demonstrating a good understanding of the Act related to those questions including the object of the Act.

[15] When asked about his prison sentence of three years and eight months, he confirmed that he had been released on parole after fourteen months but that it was possible for him to be recalled to serve the remainder of the prison sentence saying that it was up to the parole officer who makes monthly reports about what he is doing. He said he was monitored very closely by the parole officer who approves of his current job and responsibilities.

Evidence of the Witness

[16] Mr Reeve was sworn in and explained that he was both acting in his personal capacity and also noting that he is a Councillor on Waikato District Council adding that Mr Goel is a constituent.

[17] He stated that he had known the Goel family since they had arrived in Tuakau through community groups such as Rotary of which they supported as well during his time on the Community Board.

[18] He said he had supported Mr Goel when appearing before the Parole Board.

[19] Mr Reeve spoke of Mr Goel's positive influence over his sons describing the family as being superb and how good Mr Goel was as a solo father, adding that he supports the application for the renewal.

[20] He was asked by the Committee if he was confident that Mr Goel had the trust of the community required for a role such as this to which he replied "yes, without question".

Evidence of the Inspector

[21] Ms Sturzaker was sworn in and she requested that her report be accepted as read and advised that she was available to answer any questions.

[22] She was asked a series of questions in regard to the process for assessing applications of this type advising that the process is the same regarding personal interviews which are undertaken for every application as it is important to test the knowledge of applicants.

[23] She added that when she asked Mr Goel about his convictions she explained the impact of those offering him options as to what he might like to do and that he had advised her he wished to continue with the application.

[24] In reference to her report, she was asked if it wasn't for the convictions, would Mr Goel have been found to be competent and able to be dealt with on the papers to which she replied that she had some concerns about some of his answers even though she had sent him through copies of the questions she was likely to ask. She was concerned about the level of his knowledge.

[25] Ms Sturzaker was asked about paragraphs 31 and 34 of her report that stated Mr Goel was "aware of their responsibilities as a duty manager" and "There is nothing to suggest that the applicant has not managed the sale and supply of alcohol with the aim of contributing to the reduction of alcohol related harm".

[26] She responded that whilst she had concerns at his answers initially she believed he had improved and that there were no issues with the way he was carrying out the role of duty manager at the moment.

[27] She also explained that she did not discuss the convictions with Mr Goel as that is a matter for the Police, however she did advise that she had contacted the Police by way of the then licensing Sergeant; who has now left that role; to ask if they were aware of the convictions and why they had not applied for a s.285 suspension or cancellation. She did not get a response to her question.

Evidence of the Police

[28] Senior Constable Dabb was sworn in and requested that his evidence be accepted as read and advised he was available to answer any questions.

[29] He explained that the charges that lead to the convictions were by the Serious Fraud Office (SFO) and not the Police which was why they did not show up in the standard Police data base check. He added that the applicant chose to have a trial by jury which was his right.

[30] S/C Dabb, was asked by the Committee why there had not been any s.285 application following the convictions, saying he could not explain it as the decision had been that of his former supervisor who has since moved on. He stated that if it had been his decision, he would have made the application but noted again that the SFO convictions did not show up in the Police portfolio.

[31] The first he was aware of the convictions was when they were highlighted by the inspector through the application form filled in by the applicant.

[32] When asked what his main concern was regarding Mr Goel's application, S/C Dabb stated that he was concerned about the nature of the convictions and the opportunities available for a similar pattern of offending and ability to leverage deals through that type of offending.

[33] He stated when questioned, that the convictions were for serious offences hence the involvement of the SFO, that holding a manager's certificate is a privilege not a right and his personal view was that the seriousness of these offences was very high. He held concerns that having committed offences to assist his Council employer save money, Mr Goel may undertake similar behaviour to help his father's business if there was ever a need.

[34] S/C Dabb ended by saying that since 2017, there was no Police record of any other matters of concern or evidence of any offending by the applicant.

Closing Statement for the Applicant

[35] Mr Simpson made closing statements on behalf of Mr Goel questioning how we had ended up here talking of how Mr Goel had successfully set up two off licence businesses and was considered a good operator.

[36] He referenced the Osborne, [1995] NZLLA 2388 (Osborne), comparing Mr Osborne; whom he described as a ratbag with a pattern of offending and dishonesty; to Mr Goel whom he described as not being a rat bag but a hard working good operator.

[37] Mr Simpson pointed the Committee to the criteria of s. 227, describing the four specific matters and saying that individually, none were fatal to an application if not met by Mr Goel.

[38] He went on to discuss the genesis of the Act and his view that it is a reformational Act providing the community greater opportunities to have their say in the alcohol licensing process and that District Licensing Committees needed to reflect what their communities say. If the community are comfortable with Mr Goel being a manager, then the convictions should not be fatal to the application.

[39] In regard to the convictions, he welcomed the appeal which will “provide a fresh set of eyes to the decision of the jury” and that they were not mentioned in the earlier 2021 renewal application (approved on the papers) as the statute says only convictions need to be listed and that Mr Goel has never tried to withhold information about them.

[40] Mr Simpson advised the Committee we have three options; to renew, to renew with conditions or decline. He urged us to renew as the statute says it is possible.

Committee’s Considerations

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

[41] Sections 3 & 4 of the Act describes the purpose and object of the Act.

[42] We note also Form 17 of the Sale and Supply of Alcohol Regulations 2013 in regard to the need for an applicant to include details of any criminal convictions.

[43] Sections 224 to 226 set out the processes for applications, reporting and decision making in regard to the renewal of manager’s certificates.

[44] Section 227 sets out the matters a committee MUST have regard to when considering a renewal application. We deal with those separately.

S.227(a) Applicant’s Suitability

[45] The Committee discussed the evidence at length and in particular the general suitability of the applicant and impact of the convictions for what we acknowledge are very serious criminal offences.

[46] In December 2022, the applicant was convicted on 20 charges and subsequently sentenced on 22nd March 2023 to a cumulative period of three years eight months imprisonment. On 2nd April 2024, having served fourteen months of the prison sentence he was released on parole with seven release conditions.

[47] As confirmed by the applicant during his evidence, should he breach one or more of those release conditions or on the recommendation of his Parole Officer, he may be recalled to continue to serve his prison sentence.

[48] We have spent some time considering whether an applicant who is still currently serving a sentence for serious criminal offences should be deemed as being a suitable person to hold a manager’s certificate. A position we agree is a privilege and not a right.

[49] The risk of being recalled to serve the prison sentence is not something we believe we can ignore and nor is the concerns we have in regard to the appropriateness of renewing a manager’s certificate to a person part way through a sentence for such serious offences.

[50] We do acknowledge however that the applicant is the subject of strict and structured monitoring by a Parole Officer who has approved his current employment including the relativity to specific release conditions raised by the Police in evidence.

[51] We form the opinion that the applicant is not a suitable person under the current circumstances to be the holder of a manager’s certificate.

S.227(b) Any convictions since the certificate was issued or renewed

[52] Albeit that the applicant has appealed the convictions, as it stands, there is undisputed evidence that the applicant has been convicted of twenty serious criminal offences; brought by the Serious Fraud Office, since his manager's certificate was renewed.

[53] We note that the applicant was either under investigation for those offences or had been charged when the certificate was either first granted or the 2021 renewal granted, however the Act and Regulations only require convictions to be disclosed. The applicant has complied with the legal requirements on this occasion but we note in his evidence he advised he could not remember if he had disclosed the charges he had recorded against him at the time of his 2021 renewal. Whether that would have meant a different process or result at that time is irrelevant.

[54] We have weighed up the severity and type of offences for which the applicant has current convictions for. We have considered Osborne and the more recent Cory Jason Tiari Millar, NZARLA PH 343/2014.

[55] In this case, we are influenced by the fact that Mr Goel's convictions are so recent, that he is part way through his sentence as mentioned in paragraphs [46] & [47] above in contrast to the convictions referenced in the cases in paragraph [54].

S.227(c) Manner in which he has managed sale and supply of alcohol...

[56] No evidence has been given to suggest Mr Goel has not met the expectations or responsibilities set down in the Act regarding this section and we have no concerns.

S.227(d) Other matters

[57] The inspector raised concerns within her report regarding Mr Goel's answers to some of her questions however other than her opposition based on suitability and convictions and as borne out during her evidence, we do not consider there are any matters under this section that create any concerns for us.

Committee's decision

[58] As outlined above, we must consider four criteria when determining an application of this type. Dealing with them individually there are two which we have no concerns about, however there are two for which, having considered all the evidence presented at the hearing, we are not satisfied with.

[59] We have given reasonable consideration to the seriousness and number of the offences alongside the fact that the applicant, having been convicted of those offence since the most recent renewal of his manager's certificate, is still serving his sentence and has a risk of recall to prison to serve the remainder of the prison sentence in certain circumstances.

[60] Accordingly, we **DECLINE** the application for the renewal of the manager's certificate.

[61] In accordance with s.228(3) of the Act, the underlying certificate shall now expire one month from the date of this decision.

[62] 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 21st day of October 2024.



A handwritten signature in black ink, appearing to read "A Baker".

Andrew Baker
Commissioner
Waikato District Licensing
Committee

On behalf of: Barry Smedts
Jason Howarth