

**IN THE MATTER**

of the Sale and Supply of  
Alcohol Act 2012

**AND**

**IN THE MATTER**

of an application by **RODNEY  
MICHAEL BOWLER** pursuant to  
S.222 of the Act for a Manager's  
Certificate

**BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE**

Chairman: Mr E W Unwin  
Members: Mr L A Cocks  
Mr J M Mann

**HEARING** at QUEENSTOWN 6<sup>th</sup> April 2017

**APPEARANCES**

Mr R M Bowler - applicant  
Ms S H Swinney – Licensing Inspector – to assist  
Sergeant T. Haggart – Queenstown Police – in opposition

**RESERVED DECISION OF THE COMMITTEE**

**Introduction.**

[1] Before the committee is an application by Rodney Michael Bowler for a manager's certificate. The application was received by the Agency on the 8<sup>th</sup> November 2016. Mr Bowler disclosed no convictions although he has several. Such a failure to disclose is 'prima facie' evidence of unsuitability. However we are satisfied that the application form was filled in for him, and he was advised that convictions that had been incurred seven years previously were not relevant. As it happens there was a conviction for a relevant offence in January 2013, but having heard from Mr Bowler, we are prepared to give him the benefit of the doubt.

**The Application.**

[2] Mr Bowler is 57 years of age. His primary vocation is the ownership and management of an engineering business known as 'Aspiring Engineering'. In 2008 he became the owner of licensed premises in Wanaka, and was granted a Manager's Certificate on 30<sup>th</sup> September 2008, which he held for a year. He ceased to be the owner and the manager in 2009. On 1st November 2016 he became the owner of the "Luggate Hotel". The business is a typical rural pub providing refreshments, food and entertainment for the locals while acting as a community focal point. The hotel is managed by his partner who is also a director of the holding company.

[3] Mr Bowler would primarily like to be able to manage the premises on a Monday and Tuesday night to enable his partner to attend to the children in the family home next to the hotel. He has successfully completed the Licence Controller Qualification Bridging test, and

provided a glowing reference attesting to his work with the sport of rugby in the Upper Clutha region as well as his contribution to the youth of Wanaka.

[4] The application was opposed by the Police based on suitability because of the number of convictions recorded against Mr Bowler from 1991 to 2017. This list shows a pattern of violence and indicates a pattern of resentment against authority as follows:

Offence date	Charge	Penalty
19/10/1991	Refusing request for Blood	Fine and Disqualification
06/08/1996	Fighting	To pay costs
25/02/1999	Assault	Fine
23/07/2000	Refusing request for Blood	Fine and Disqualification
15/12/2001	Assault	Fine

[5] Notwithstanding this record Mr Bowler was granted a Manager's Certificate in September 2008. The inference is that he was then considered to be suitable as a period of nearly seven years had elapsed since his last offending date. It is worthy of note that all offending had resulted in a fine being imposed.

[6] We now look to see how Mr Bowler has behaved since 2008/09. On 7<sup>th</sup> January 2013 there was a confrontation at a home in Albert Town when a tenant ordered Mr Bowler from the property. Mr Bowler alleges he was pushed and responded with a punch to the victim's nose. In the District Court he was fined. In January next year, five years will have elapsed since the incident.

[7] On 10<sup>th</sup> February 2016 Mr Bowler was supporting his partner in a civil dispute between his partner and her former partner. There was an incident outside the Court between Mr Bowler and the former partner. Mr Bowler was charged with threatening to kill, a charge which carries a maximum of seven years imprisonment. He pleaded not guilty and there were several hearings but the case was never resolved. Finally on 23<sup>rd</sup> March 2017 (thirteen months after the incident), Mr Bowler pleaded guilty to a charge of disorderly behaviour. This is a charge which carried a maximum penalty of a fine. Mr Bowler was convicted and ordered to come up for sentence if called upon within the next three months. There was no penalty. Even if Mr Bowler was required to wait for two years, his so called 'probation' period would expire in February 2018.

### **The Police Opposition.**

[8] Not unnaturally the Police opposed the application on the grounds of the applicant's suitability as well as the convictions. As Sergeant Haggart submitted, Mr Bowler did not meet the standards required to control and manage licensed premises. This was because of his criminal and traffic history, and because alcohol had been a factor in some of his offending.

### **The Licensing Inspector.**

[9] The Inspector submitted that there could be two sides to Mr Bowler's personality. On the one hand he owns and operates a successful engineering company and coaches and manages rugby teams, and is involved with Wanaka's youth activities. On the other, there is a tendency for violence related offending.

### **The Committee's Decision and Reasons.**

[10] There are two main principles in this case. The first is that Parliament has placed the management of licensed premises on the shoulders of the managers. Pursuant to s.214 of

the Act, a manager must be on duty at all times when alcohol is being sold or supplied to the public. Furthermore, a manager on duty is responsible for the compliance with and enforcement of the provisions of the Act and the conditions of the licence, as well as the conduct of the premises with the aim of contributing to the reduction of alcohol related harm. This places the manager as having a greater responsibility for the operation of the premises than the licensee. Nowhere is this principle better described than in the old decision of *Deejay Enterprises Limited LLA 531-532/97* in which the Authority stated:

***The guiding hand or hands-on operator of any company or the potential holder of a General Manager's Certificate now receive greater scrutiny from both the Police and other reporting agencies. Character and reputation are closely examined. The law and human desires of patrons frequently tug in different directions. The Police cannot be everywhere. Little but a licensee's or manager's character and suitability may stand between upholding the law and turning a blind eye. Self imposed standards in accordance with the law must be set by licensees and holders of General Manager's Certificates who control and manage licensed premises.***

[11] The second principle is that in the majority of cases the majority of applicants will reach a stage where they can show that they have learnt the lesson from the past and can be relied upon in the future. The Committee has a balancing exercise to perform. It must set a time during which an applicant can show that he or she is now suitable to manage the premises. Factors to be taken into account include the age, maturity and character of an applicant, details of the offending and the penalties imposed, the type of premises to be managed, and the applicant's commitment to the objects of the Act. It is our view that a Managers Certificate is a symbol of responsibility and competence. As long as standards are kept high, then the value of the certificate will not be diminished.

[12] Once again we rely on another old decision of *Graham Leslie Osborne LLA 2388/95* to assist. In the decision the Authority said this;

***"Without fettering ourselves in this or other applications, it may be helpful if we indicate that we commonly look for a five year period free of any serious conviction or any conviction relating to or involving the abuse of alcohol, or arising in the course of an applicant's duty on licensed premises. "***

***Less serious convictions are also weighed. By way of example is an isolated excess breath/blood alcohol conviction or a single driving offence disclosing no pattern of offending.***

***In these and similar cases we frequently indicate that a minimum of two years from the date of conviction may result in subsequent favourable consideration – providing suitable reports from both the Police and a Licensing Inspector are received."***

[13] With due respect to the members of the Authority at that time, this case illustrates that it is the date of offending that is important, rather than the date of conviction. Mr Bowler has already shown a willingness to abide by the law given that it is now fourteen months since he offended in a way that according to the charge and the penalty was no more than minor.

[14] In this case Mr Bowler gave a good impression in the witness box. Although he is not committed to the hospitality industry, he has made a substantial investment in it. He needs to assume some responsibility in the way his premises are operated. The on-licence application is currently awaiting a final report and the company is trading on temporary authorities. It seems to us that the evidence will be the same if the matter goes to a public

hearing. We suggest that its course might follow our decision. If Mr Bowler wants an earlier resolution he will have to alter the way that his company is directed.

[15] For the reasons we have attempted to articulate, Mr Bowler has some time to go before we can be confident that he will be a responsible, professional, and suitable manager. The application is adjourned to 1<sup>st</sup> April 2018. The Police and Inspector are asked to provide supplementary reports by that date. If these are satisfactory and Mr Bowler has not come to their attention in any negative way, then we will grant the application without further hearing. If there are further concerns then either there will be a further hearing, or the application will be declined.

DATED at Queenstown this 19<sup>th</sup> day of April 2017.

  
E W Unwin  
Chairperson

