

**IN THE MATTER**

of the Sale and Supply of Alcohol Act  
2012 Act

**AND**

**IN THE MATTER**

of an application by **Rachel Lea  
Whatham** pursuant to s.219 of the Act  
for a Managers Certificate

**BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE**

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

**HEARING** at QUEENSTOWN on 18<sup>th</sup> May 2015

**APPEARANCES**

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

**INTERIM DECISION OF THE COMMITTEE**

**Introduction.**

[1] Before the committee is an application by Rachel Lea Whatham (hereafter called the applicant) for a Manager's Certificate. Ms Whatham is a 28 year old Australian citizen who has been working for the same employer at "The Stables Restaurant" in Arrowtown as well as the "Surreal Bar" in Queenstown for a number of years. She previously held a manager's certificate which was granted on 24 May 2011. Although she claims that this certificate was renewed for a year, there is no evidence to support that contention.

[2] The application was filed with the Queenstown Lakes District Council on 26<sup>th</sup> January 2015. It was accompanied by certificates that the applicant had gained the required Unit Standards and undertaken the bridging qualification. The application was supported by her employer Mrs M C Stadler, who described her as a highly effective manager both in customer care and monitoring of staff and their host responsibility standards.

[3] The application drew an adverse report from the Police concerning an incident on 18<sup>th</sup> December 2014 when the Police discovered a patron who appeared to be sleeping at "Surreal Bar" at the time when Ms Whatham was acting as a temporary duty manager. The Police report contended that Ms Whatham was "hostile, aggressive and unprofessional" towards the Police and her conduct therefore reflected on her suitability to be the holder of a manager's certificate. The application was accordingly set down for a public hearing.

**The Evidence Tendered by the Police.**

[4] Blair John Duffy has been working with the Police in Queenstown for ten years and currently holds the rank of Sergeant. At about 2.00am on Monday 18<sup>th</sup> May 2014, he was working nightshift and travelling in a patrol car with another constable. He noticed a person in the smoking area of the bar who appeared to be asleep. He saw an associate punch him as they went past, presumably to wake

him. The constable who was with him spoke with the person to assess his level of intoxication. He was approached by Ms Whatham who claimed that the person was not intoxicated.

[5] The Constable duly reported that in his view the person was not intoxicated and the patron was sent on his way. However by this time Ms Whatham had become quite aggressive claiming that the Police had been intimidating staff and patrons on previous visits and either falsely or incorrectly recording statements made by staff. The conversation between the two lasted about 20 minutes and the Sergeant described Ms Whatham's behaviour as the worst he had encountered in his time as a police officer. He said that her conduct became the issue. He gave examples of the applicant's behaviour which he described as hostile, aggressive and unprofessional.

[6] The Sergeant considered that Ms Whatham appeared to lack an understanding of that the role of the police was regarding licensing checks. He said that he tried to explain but it was a lost cause. He subsequently had a meeting with the licensing Sergeant and Mrs M C Stadler, the licensee. Regrettably, Ms Whatham had been unable to attend the meeting. He thought that Mrs Stadler was receptive to his version of the events as he described them.

### **The Evidence tendered by the Applicant.**

[7] Ms Whatham had prepared a detailed brief of evidence. She had written notes of her memory of what had been said the following afternoon. She initially placed the blame for the incident entirely on the Sergeant. She described the Sergeant's behaviour as intimidating and aggressive. She considered that he invaded her personal space, bullied her and continually yelled over her. She admitted that she had been defensive but denied that she was rude (although this was never claimed). There was nothing in her brief of evidence to support her application. It was all about the incident. She did however say that she would be happy to meet with the Sergeant and apologise to him. When asked why she would do that (given her allegations about him), she stated that she would expect him to apologise to her as well.

[8] Mrs Stadler was good enough to come to the hearing in support of the applicant. She confirmed that she had worked with Sergeant Duffy and had never had an issue with him. She stated that throughout Ms Whatham's employment there had never been an issue with (a) her management of the premises and (b) her attitude to the Police, (apart from the current issue). She correctly pointed out that previous cases had dealt with convictions rather than behaviour. She confirmed that in her view Ms Whatham was one of the most confident managers she had ever had the pleasure of working with. She described her as responsible and professional.

### **The Licensing Inspector.**

[9] The Inspector provided a full report in which she drew our attention to a number of relevant cases determined by the Liquor Licensing Authority. We considered that the 1997 decision of *Deejay Enterprises Limited* LLA 531/97 – 532/97 was most relevant as it explains why it is important that people working in the industry have a good working relationship with the reporting agencies. There will often be cases where managers and licensees will be required to confer and co-operate with the Police as well as the Inspector and the Medical Officer of Health. In that case the Authority stated:

*“The 'guiding hand' or 'hands-on' operator of any company or the potential holder of a General Manager's Certificate now receives greater scrutiny from both the Police and other reporting Agencies. Character and reputation are closely examined. The law and human desires frequently take 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 by holders of General Manager's Certificates.”*

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

[10] In normal circumstances we would be required to make findings of fact but Ms Whatham asked no questions of the Sergeant and her side of the story was not put to him at all. There was however a number of factors that need to be commented on. The Sergeant was taking notes at the time. Indeed when she gave evidence Ms Whatham stated that he was continually writing in his notebook. We had the opportunity to view the Sergeant's notes. The Sergeant has known Mrs Stadler for a number of years and she was surprised that he was the person who had spoken with Ms Whatham.

[11] The Sergeant was quite objective when giving his evidence and seemed to have no concern about the way that the premises in question had been operated. Finally there was quite an important incident involving the patron retrieving a cigarette lighter before going home. It resulted in an allegation from Ms Whatham that the Police were allowing an intoxicated person back inside the licensed premises. Considering that the patron had been deemed not to be intoxicated, the incident itself was relatively harmless but Ms Whatham had no memory of it.

[12] The criteria that we must consider are set out in section 222 of the Sale and Supply of Alcohol Act 2012 as follows:

- (a) The applicant's suitability to be a manager;**
- (b) Any convictions recorded against the applicant;**
- (c) Any experience, in particular recent experience, that the applicant has had in controlling any premises for which a licence was in force;**
- (d) Any relevant training in particular recent training, that the applicant has undertaken and evidence the applicant hold the prescribed qualification required under section 218;**
- (e) Any matters dealt with in any report made under section 220.**

[13] Ms Whatham has no convictions but it is her character and reputation that are at stake. She has the onus of establishing her suitability to hold the certificate. As was stated at the hearing, the purpose of the new Act is set out in s.3. Generally speaking it is to put in place a new system of control over the sale and supply of alcohol for the benefit of the community as a whole. This new system must be reasonable and its administration is expected to help achieve the Act's objects.

[14] We believe that for this new system to work in the way that is expected there must be a level of mutual respect between those who work in the industry and those who are required to report on and monitor licensed premises. We accept that this may not result in full co-operation, but we believe that if the relationship is out of kilter, then the system will falter and fail.

[15] Nowhere is this understanding better illustrated than the decision of the Authority in re *Frith*, [2005] NZLLA 591. There was a similar issue pertaining to the applicant's attitude towards the agencies. The Authority stated,

*[19] The sole issue in this case is Mr Frith's suitability to be the manager of licensed premises. The onus is on him to establish his suitability.....*

*[21] Until such time as Mr Frith can show that he has got over his shock and disappointment, and has put the past behind him, he will in our view remain unsuitable to be the holder of a General Manager's Certificate. In the decision referred to above, we expressed concerns at Mr Frith's lack of faith in the Police and the Inspector. We are unable to see how he can manage licensed premises on his own, and uphold the law until that attitude changes. In terms of the definition of suitability in the Concise Oxford Dictionary, Mr Frith is not well fitted for the purpose. Granting him the privilege of a General Manager's Certificate when he is seeking to obtain redress against both reporting agencies would clearly be inappropriate.*

*[23] Since this responsibility was devolved to managers in 1999, there has been a drive to raise the standards of those charged with the responsibility of supplying liquor to the public. Current expectations are that the management of licensed premises is now conducted by persons of integrity who are committed to supervising the sale and supply of liquor, and concerned to give meaning to the term, 'host responsibility'. Mutual respect and co-operation between managers and the reporting and enforcement agencies, is a vital part of this expectation.*

*[25] Given Mr Frith's lack of insight, and current campaign to pursue his grievances against the reporting agencies until he has achieved a solution, as set out in his evidence and in his letter to the Police, he remains unsuitable to be the holder of a General Manager's Certificate. Even his comments in the application referred to in paragraph [4] above, are indicative of his state of mind.*

*[26] Mr Frith may care to ponder the comments in a recent decision N.B.T. Limited LLA PH 584-585/2005 as follows:*

*“From time to time in proceedings before us, parties seek to attack the messenger rather than the message. In doing so, they need to know that they are more likely to send out a signal about their own suitability to hold a licence. We accept that all parties are entitled to be dealt with fairly and professionally by District Licensing Agency Inspectors, the Medical Officer of Health, and the Police. Where this does not happen we have not hesitated to make comment. However, the great majority of all inspectors, and health professionals, and members of the Police who have appeared before us have been totally professional. We rely on them to monitor and enforce the Act. Without their assistance, there would be no point in having a licensing system. Those who seek to indirectly undermine and intimidate the reporting agencies need to understand that they are unlikely to receive any sympathy in this forum”.*

[16] It is clear that there is mutual respect between Mrs Stadler and the Police. Mrs Stadler seems to us to be very well aware of the need for tolerance and understanding. Given Mrs Stadler's unwavering support for her employee, it is clear that Ms Whatham could have a good future in the industry. If it is possible we think she should have an opportunity to be a manager. But that cannot happen unless the mutual respect that we have talked about is apparent and real. We think that she should have the opportunity to meet with the Sergeant under facilitated circumstances. Provided the meeting is reasonably successful, we would then like to hear from her as to her aspirations in the industry. After we have heard from her, we will then make a decision as to whether we believe that she is suitable to hold the certificate.

[16] Accordingly the application is adjourned to Monday 16 November 2015. During this period Ms Whatham may be employed as a temporary manager for a maximum of 6 weeks.

Dated this 3<sup>rd</sup> day of June 2015



E W Unwin

Chairman