

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER

of an application by **JASON
SCOTT MEDINA** pursuant to
S.219 of the Act for renewal of a
Manager's Certificate

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

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

HEARING at QUEENSTOWN 7th June 2018

APPEARANCES

Mr J S Medina - applicant
Ms S L D Dineen – Licensing Inspector – to assist
Sergeant I Collins – Queenstown Police – in opposition

RESERVED DECISION OF THE COMMITTEE

Introduction.

[1] Before the committee is an application by Jason Scott Medina for the renewal of a manager's certificate. Mr Medina is 43 years of age and originally from the United States of America but now holds a New Zealand resident visa. He has held a manager's certificate since 31st January 2015 and has passed the Licence Controller Qualification and LCQ Bridging Test. Mr Medina is currently employed at the premises 'Artisan Catering' and 'Akurua Wines & Kitchen by Artisan', and has been at these premises on a full time basis since August 2017 working in the positions of Duty Manager and Event Manager.

The Application.

[2] The application was received by the Agency on the 31st January 2018. In the application Mr Medina disclosed two convictions. The application was opposed by the Police based on suitability because of the convictions recorded against Mr Medina and dealings with him between 2008 and 2017 as follows:

<u>Offence date</u>	<u>Charge</u>	<u>Penalty</u>
22/07/2008	Operating a vehicle carelessly Excess Blood Alcohol Failing to stop or ascertain injury	Fine, Reparation, Disqualification from driving & court
03/10/2008	Drove while disqualified	Community Work & Disqualification

costs

[3] When giving evidence Mr Medina told us his passion has always been the hospitality industry and has worked in hospitality for 28 years. He acknowledged he is an alcoholic and after the drink driving offence in 2008 engaged with Alcoholics Anonymous and started a journey of sobriety. However, after six years of sobriety he started drinking again and everything went wrong culminating in the 2016 accident and another drink driving offence. At this point, Mr Medina became associated with the Salvation Army and completed 'The Bridge' drug and alcohol patient treatment program in Dunedin in May 2017. He chose this program because he believed it was more successful, but he has become a solid member of Queenstown AA and has started two daytime AA meetings for the benefit of hospitality workers. He believes his bad experience with alcohol enables him to spot problem drinkers and intervene appropriately when necessary.

[4] Mr Medina has the support of his employer, Ms Debbie Pickens who attended the hearing and gave evidence. Ms Pickens told us she knew of Mr Medina's alcohol problems before employing him and was confident he would stay sober and she was committed to supporting him. He works in a combination role as the Event Manager for Artisan Caterers and as a Duty Manager in the Akurua Wines & Kitchen by Artisan. Ms Pickens indicated he is exceptional at his job and many of the positive social media feedback comments mention Mr Medina as making the difference. The Managers Certificate is very important for his roles but if it was not renewed, she would still employ him.

[5] In response to questions, Ms Pickens told us that Mr Medina had never let her down and although there are strict guidelines, there was no special treatment for him. She did not have concerns about him having a relapse and is comfortable leaving him in sole charge, noting that the liquor licences they operate under always end around midnight.

[6] The reference provided by Kimberley Bright, Catering Manager for Artisan Catering, states that 'Jason is a strong leader with a positive attitude. His level of service is always of a high standard, efficient and professional yet with a friendly manner'. Mr Medina provided a further reference from Blue Kanu dated 6th March 2014. In this reference, Karen Hattaway, Director of Hattaway Hospitality Group wrote: 'I have always found him to be reliable, sensible and responsible in this trusted position in the company'.

[7] Mr Medina was also supported at the hearing by Mrs Marchand from the Salvation Army. She told us she had known him when he was drinking and helped him into 'The Bridge' program. She considered that he was incredibly respectful and keen to use his experience to help others. In her words, 'he can give back what he has walked through'.

The Police Opposition.

[8] The Police opposed the application on the grounds of the applicant's suitability as well as the convictions and other concerning incidents. Sergeant Collins submitted that in addition to the convictions listed above, the Police have dealt with Mr Medina on a number of occasions between 2008 and 2017, with multiple incidents during 2016 and 2017 where friends of Mr Medina had been concerned about his welfare and called the Police. In most of these cases Mr Medina was located very intoxicated and very emotional or unable to care for himself and required hospitalisation or being held at the Police Station for detox. The most recent incident was in May 2017.

[9] Sgt Collins further submitted the Police had concerns about the suitability of Mr Medina because almost every conviction and incident involved excessive consumption of alcohol. He did not consider alcoholism and a hospitality vocation a good mix. Sgt Collins noted that the Authority has made it clear in previous decisions that the holder of a manager's certificate

now receives greater scrutiny, and character and reputation are closely examined by the Agencies. He provided reference to several decisions to support this position.

[10] The Police acknowledged Mr Medina has some good references from his employers and there was never any issues regarding his cooperation or attitude when he was being dealt with by the Police. If he was to be granted a renewal of his Managers Certificate, Sgt Collins asked for it be for a truncated period to allow for further monitoring of his personal management around alcohol to ensure he is making better choices, and if necessary allow for reassessment of his right to hold a Managers Certificate.

The Licensing Inspector.

[11] The Inspector submitted that there was some confusion with Mr Medina's employment record in the application but after further checks it was confirmed that he started working part time at Artisan Catering on the 13th February 2017 and full time from 18th August 2017.

[12] The criteria in s222 and s227 of the Act that must be considered and the applicant assessed against were highlighted by the Inspector and she suggested we would need to consider the fact that it was two years since the date of Mr Medina's last offence. She also noted that the Police did not apply for suspension of Mr Medina's Managers Certificate following the 2016 offence in Paihai.

[13] Due to these factors the Inspector suggested we may choose to grant the certificate for a truncated period or renew the certificate subject to Mr Medina agreeing to a voluntary suspension for an agreed period. Case law was provided to support these options.

The Committee's Decision and Reasons.

[14] 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.

[15] 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.

[16] In this case Mr Medina gave a good impression in the witness box. He is passionate about the hospitality industry having worked in it for 28 years. He was honest about his alcoholism and has sought help from the Salvation Army and taken the necessary action to address his addiction. He is strongly supported by his employer. In view of all this, we are willing to accept that Mr Medina has learnt the lesson from the past and can be relied upon in the future.

[17] Taking into account the evidence we have been provided with, we have considered the options for renewal and favour renewal for a truncated period subject to a written undertaking by Mr Medina that he will only use the Managers Certificate where he is currently employed during the adjourned period. This option is endorsed by the Inspector and the Police and will serve as a 'probation' period for Mr Medina to prove he has his alcoholism under control and can maintain the high standard expected of a Duty Manager. Restricting the use of the certificate will reduce his exposure to higher risk alcohol environments. As the Inspector helpfully pointed out, a truncated renewal period is supported by the decision **White (2009) NZLLA 1021** which states:

"[33] In terms of the renewal process we considered refusing to renew the General Manager's Certificate. However, having heard from Mr White and taking into account his long standing employment in the industry, we are prepared to renew the certificate. In the circumstances we believe that the period of the renewal should be truncated. We hope that the reduced period of renewal will be a reminder to Mr White of his obligations under the Act."

[18] Mr Medina's Managers Certificate is renewed for 18 months until **11 December 2019** subject to him providing a written undertaking that during the currency of the adjournment he will only use the Managers Certificate while employed at 'Artisan Catering' and 'Akurua Wines & Kitchen by Artisan'.

DATED at Queenstown this 11th day of June 2018.



L A Cocks
Chairperson

