

Decision No. QLDLC 0006/15

IN THE MATTER of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER of an application by
HOI YEUNG CHAN pursuant to s.219
of the Act for a Manager's 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 18th May 2015

APPEARANCES

Mr. Hoi Yeung Chan - Applicant
Ms J Mitchell – Queenstown Lakes District Licensing Inspector – to assist
Sergeant L K Stevens – N Z Police – in opposition

RESERVED DECISION OF THE COMMITTEE

Introduction

[1] Before the committee is an application by Mr Hoi Yeung Chan (hereafter called the applicant) for a Manager's Certificate. Mr Chan is thirty years old, originally from Hong Kong and is the holder of a New Zealand passport. He has never held a Manager's Certificate. Mr Chan's application was received by the Queenstown Lakes District Council on 27th January 2015 accompanied by the required Licence Controller Qualification incorporating NZQA unit standards demonstrating his knowledge of the Act and host responsibility requirements.

[2] Between the date of filing and the hearing date Mr Chan's circumstances changed. Originally he had sought the certificate to help manage a family restaurant in Queenstown. Since that time he has entered into a business arrangement to establish a second Chinese restaurant in Te Anau. Once this restaurant has been established in Te Anau, Mr Chan will continue to reside in Queenstown and will only act as manager in Te Anau when the managers there are unable to work or take leave. Mr Chan also intends to work as manager from time to time in the family business in Queenstown. In those circumstances we accepted jurisdiction to deal with the matter.

[3] The application drew a report in opposition from the Police questioning the suitability of the applicant to be a holder of a Manager's Certificate as he had acquired two convictions for driving with excess blood alcohol and excess breath alcohol within the last seven years. Furthermore, these convictions were not disclosed on the application form

as required.

The Evidence Tendered by the Police.

[4] The evidence from Sergeant L K Stevens showed that on 16 January 2008 Mr Chan had been drinking at a function. He subsequently drove a motor vehicle and hit the side of a bridge. He was later convicted in the Christchurch District Court for operating a vehicle carelessly and for driving with an excess Breath Alcohol Level. The level was 757 microgram's of alcohol per litre of breath. He was fined and disqualified from driving for six months. Mr Chan failed to learn any lesson from this experience and on 18 December 2012 at 3.18am he was stopped while driving. He had been drinking and a blood sample showed a level of 138 milligrams of alcohol per 100 milliliters of blood. Mr Chan was later convicted in the Queenstown District Court for driving with excess blood alcohol content and completed 200 hours of community work, and was disqualified from driving for 9 months.

[5] Sergeant Stevens was helpful in drawing the committee's attention to several of the Authority's decisions addressing the suitability and character of applicants. In concluding, Sergeant Stevens pointed out that Mr Chan had failed to disclose his convictions, and that fact brought into question his character and suitability to hold a General Managers Certificate.

The Applicant's evidence.

[6] Mr Chan gave his evidence without the aid of a written brief. In his evidence he stated that he is 30 years old and lives in Queenstown. His parents own the Mandarin Restaurant in Queenstown where he has been employed full time in a bar service role since 20th November 2013.

[7] Mr Chan stated the reason for his application was so that he could assist in managing part time his newly acquired licensed premise in Te Anau. 'China City' which was purchased last year from other family members who will continue to operate the business on a day to day on his behalf with Mr Chan commuting on a weekly basis to 'do the paperwork'. He would also act as relief manager for either one of the two certificated duty managers as required.

[8] Mr Chan stated that the omission of his two convictions in his application for a manager's certificate was a mistake. At the time, he told the committee, he was very busy filling in forms for all sorts of things and although he claimed to have disclosed the convictions on an earlier form and he had simply forgotten to fill in that part of the form. It is noted that he signed the agreement for a Police Report to be undertaken checking for previous convictions.

[9] Mr Chan clearly recalled the offences stating that the 2008 incident involved him driving his car and colliding with a bridge at 60KPH after leaving a friend's birthday party. The 2013 incident again involved him driving his car after a bit of a session with friends on 'Chinese Liquor'.

The Licensing Inspector

[10] The Inspector provided a full report in which she drew our attention to a number of relevant cases determined by the Liquor Licensing Authority in particular the 1997 decision of *Deejay Enterprises Limited* LLA 531/97 – 532/97, where 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.

[11] 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.**

[12] Mr Chang has two alcohol related criminal convictions, the first in 2008 and the second in 2013. Whilst the offences occurred prior to Mr Chang's current position with the Mandarin Restaurant the fact the second occurred just over two years ago understandably raises concerns with the Police.

[13] Mr Chang is an intelligent man, but it is difficult for the committee to assess as to whether the seriousness and/or the inappropriateness of his past behavior have made its mark. The time between the incidents is approximately four and a half years, the second being less than two and a half years ago. Whilst Mr Chang expressed regret for his actions in a number of ways we are not convinced that he is ready for the level of responsibility needed for a certificated manager.

[14] The well-known decision of G L Osbourne (LLA 2238/95) is of assistance where the authority stated:

“Without fettering ourselves with 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 or 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.”

[15] Mr Chang's failure to disclose his previous convictions on his application is a serious matter and compounds the issue. In **CD Rawson LLA PH 1375/95** the authority stated....

“...an applicant's failure to honestly answer the question regarding previous convictions weighs fairly heavily against an individual applicant being

considered suitable to hold a General Managers Certificate”.

And in Johns LLA PH 974/88 the authority stated...

“We take a very serious view of any failure to report correctly a complete list of convictions. The frequency and involvement of alcohol in the offences is similarly unhelpful for the applicant’s case.”

[16] The committee is dismayed that an applicant for a Managers Certificate could accidentally omit to disclose two serious criminal convictions especially considering the specific requirements of the application as well as the training that he would have had to undergo when obtaining his Licence Controller Qualification.

[17] For those reason we believe that Mr Chan is unsuitable to be granted a Manager's Certificate at this time. We think he needs a period of time to prove that he had learned something from his past. We assess that time as three and a half years from the last time he offended. In addition he needs to sign an undertaking in the standard form that when and if he is granted a certificate, it will only be used at the two nominated restaurants in which he has an interest. We ask that the Inspector make the necessary arrangement to have the undertaking prepared and signed.

[18] Accordingly the application is adjourned for twelve months from the date of this decision. Mr Chan may be employed as a temporary manager during this period of time but for no longer than a total of six weeks. Prior to the expiry of the twelve month period we will call for further reports. If they are satisfactory and disclose no other concerns then we will grant the application on the papers. If not then a further public hearing will be convened.

DATED at QUEENSTOWN this 17th day of June 2015



E W Unwin
Chairman