

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER

of an application by **KIERAN
COLE LARCOMBE** of
Queenstown pursuant to S.219 of
the Act for a Manager's Certificate

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

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

HEARING at QUEENSTOWN on 12th September 2017

APPEARANCES

Mr K C Larcombe – applicant
Ms T McGivern – Licensing Inspector – to assist
Sergeant T. Haggart – Queenstown Police – to assist

RESERVED DECISION OF THE COMMITTEE

Introduction.

[1] Before the committee is an application by Kieran Cole Larcombe for a new manager's certificate. The application was received by the Agency on the 30th May 2017.

The Application.

[2] Mr Larcombe is from Cairns, Australia and is 30 years of age. He successfully completed the Licence Controller Qualification (LCQ) in 2015 but has not passed the Queenstown Lakes District Council (QLDC) test requirement as part of the application process. He took the test on the 28th June 2017 but failed. He sat the test again on the 5th July 2017 but was again unsuccessful. On both occasions the Inspector stated that he lacked confidence answering the questions, and did not appear to have studied for the tests.

[3] Mr Larcombe was employed at "Lalaland" in Wanaka as a duty manager and is now the general manager and has been there since 26th May 2017. The references he provided with his application were missing necessary information (eg. no dates showing periods of employment) and this information was only provided after several communications from the Agency staff. The previous General Manager of Lalaland stated in his reference:

'Kieran actively promotes patron safety as a key element in ensuring the venue remains safe and will utilize available resources to ensure that standard is met. I believe he will be a key asset to the venue and to the local hospitality community.'

[4] He previously worked at “Coasters Tavern” in Christchurch as a supervisor from 28th April 2015 to 9th May 2017 and a reference from his employer stated:

‘Kieran has an astute understanding of the sale and supply of alcohol act, and has excellent skill in its implementation in the work place, providing guidance and training for less experienced staff.’

[5] Mr Larcombe did not declare any criminal convictions in his application.

The Police.

[6] Police vetting of this application showed no criminal convictions in New Zealand and it was not opposed. However, it was noted that when Mr Larcombe previously applied for a manager’s certificate in Christchurch, he declared two convictions for driving with excess breath alcohol in 2010 and 2012 in Australia. Christchurch Police asked Mr Larcombe to provide a copy of his criminal and traffic history from Australia to prove the dates of the declared convictions. He failed to do so and the Police opposed the application. Mr Larcombe then withdrew his application.

[7] In response to a query from the Police, Mr Larcombe advised he was not sure if he had to report his Australian convictions in this application and thought they were possibly covered by the Clean Slate Act. His Traffic Record provided by the Queensland Government showed he had a number of traffic convictions between 2008 and 2013 with two notable offences of driving with excess breath alcohol on 21st January 2010 and 17th March 2012.

[8] In a late report to the Licensing Inspector, Sergeant Haggart expressed concerns on Mr Larcombe’s suitability following a licensed premises check at Lalaland on 2nd June 2017 at around 9:35pm when Mr Larcombe was the only person working. His name was not on the Duty Manager sign and he claimed a female sitting in the corner of the bar who looked like a patron was the Duty Manager. With further questioning his story kept changing and he could not confirm who was meant to be the Duty Manager. This did not give Sergeant Haggart confidence in Mr Larcombe’s ability to manage a licensed premises.

The Licensing Inspector.

[9] The Inspector advised us that she took part in the premises check on 2nd June 2017 and received conflicting information from Mr Larcombe as to who was the duty manager. It transpired the person named on the duty manager board did not work at Lalaland but was a patron with a Manager’s Certificate so Mr Larcombe had asked her to put her name up. He didn’t disclose this to the Inspector and did not know who was the duty manager before he arrived at 9pm or who he had taken over from.

[10] The Inspector highlighted to us the criteria under s222 of the Act that need to be considered which include suitability, convictions, relevant experience, training and any other matters dealt with in the reports. She submitted that the Mr Larcombe’s suitability to hold a manager’s certificate is questionable considering:

- a. he has twice failed to pass the verbal test, showing a lack of understanding of the Sale and Supply of Alcohol Act 2012;
- b. his criminal convictions involving alcohol;
- c. his failure to respond and communicate with QLDC staff to obtain the correct references;
- d. his inability to recall events consistently and accurately during the incident on Friday 2nd June 2017; and
- e. his failure to comply with s214 of the Act on Friday 2nd June 2017 with regards to a Manager being on duty and responsible for compliance with and enforcement of the provisions of the Act and the conditions of the licence.

The Inspector did acknowledge that Mr Larcombe's alcohol related convictions in Australia are now seven and five years old and therefore the five years standown period the Committee commonly looks for, has been served.

[11] In her closing submission, the Inspector emphasised that a high standard is expected by ARLA and the Queenstown Lakes District Licensing Committee of those in the hospitality industry with the right to manage the sale and supply of alcohol to the public and referred us to relevant extracts from previous decisions as follows:

- a. In the Deejay Enterprises Limited (LLA Decisions 531/97 – 532/97) decision, it clearly sets out the relevant principles in relation to manager's certificates. The Authority stated in its conclusion:

'The broad pattern in recent years has been to gently raise the required standard for licensees and holders of a General Manager's Certificate....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 of patrons 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.....'

- b. In decision QLDLC 0014/17, the Committee stated:

'The applicant has failed to demonstrate that he has the necessary knowledge and ability at this time to be considered suitable to hold a managers certificate.'

- c. In decision QLDLC 0007/14 the Committee stated:

'It's abundantly clear that parliament expect that the management of licensed premises will be conducted only by persons of integrity who are committed to the reduction of alcohol related harm. The effect of these provisions is that a Manager Certificate has not only become a symbol of responsibility and competence.... As long as standards are kept high the value of a certificate will not be diminished. By making sometimes difficult decisions we hope to send a message that reinforces the new object as contained in s4 of the Act.'

The Applicant.

[12] Mr Larcombe told us he was currently the acting Bar Manager and Temporary Duty Manager of Lalaland and before this was a Bar Supervisor at the "Carlton" in Christchurch. Prior to this he had been a Food and Beverage Supervisor at Rydges Hotels and Resorts in Cairns, Australia.

[13] Mr Larcombe explained that he had not declared his convictions in the application because he was wrongly advised by a colleague that the time length for disclosure was five years. He now understands there was confusion between the Criminal Records (Clean Slate) Act 2004 and the guidance provided in GL Osborne (NZLLA2388/95) being '*...we commonly look for a five year period free of any serious conviction or any conviction relating to or involving the abuse of alcohol...*' His reason for not responding to emails from the QLDC staff in regards to the additional reference information required, was they had gone to junk mail which he hadn't been checking.

[14] On the night of 2nd June 2017 when the Police and Licensing Inspector visited Lalaland, Mr Larcombe told us he was under the impression he was only on a training shift as bartender. However, on arrival at work his Manager asked him to put his name on the duty manager board. When the Police and Inspector arrived, his Manager then told him to get one of the patrons, who has a manager's certificate, to put her name up. Mr Larcombe confirmed he did all this without hesitation and admitted he could not answer the Inspector's questions correctly and with confidence because he was unsure and confused due to incorrect information provided by his Manager.

[15] Mr Larcombe blamed the undesirable management at the time for the situation he was put in and told the owner of Lalaland, Mr Sanderson. Mr Sanderson subsequently changed the management and offered Mr Larcombe a higher role pending the attainment of his manager's certificate. From that time he told us he was required to learn front and back of house procedures, staff management and liaising with clients in relation to the operation of the business, while working a large amount of hours to cover staff shortages.

[16] The increased workload and long hours of work were the reasons Mr Larcombe gave us for failing the first QLDC Test. Being head butted by a customer the morning of his second attempt at the test left him shaken and unsuccessful again. When asked why he didn't ask to change the date of the test he said '...he wanted to persevere...' and didn't mention the head butt because he didn't want the attention. He told us he has since researched and produced a sample question document but has not yet passed the test.

[17] In response to questions Mr Larcombe expanded on his Australian hospitality experience and role as a supervisor at the "Carlton" which focused on bar staff supervision rather than the wider duty manager responsibilities. He also provided further references from his Lalaland employers, Mr Sanderson and Ms Benjamin which confirmed and supported all of his evidence.

[18] Mr Larcombe acknowledged that his application did not look the best but asked us to take into consideration the situation he was placed in. He submitted that he had walked into a place that was unprofessional and poorly managed but with the help of his employers and new staff, they have changed the direction of the venue to focus on bringing in more desirable clientele and maintaining a higher level of standard in relation to sale and supply of alcohol. He believes he is competent with a lot of experience and understands his responsibilities in relation to the reduction of alcohol harm in the community.

The Committee's Decision and Reasons.

[19] The suitability of Mr Larcombe to have a Managers Certificate is the issue. When discussing 'suitability' Holland J in *Re Sheard* (1996) 1 NZLR 751 stated:

"Suitability is a word commonly used in the English language and is well understood. In an earlier decision the Authority has adopted the definition in the Concise Oxford Dictionary as 'well fitted for the purpose; appropriate'."

[20] The Police and Licensing Inspector submitted the suitability of the applicant is questionable because of his performance during a licensed premises check at Lalaland on 2nd June 2017 when he was the only person working but could not answer questions correctly and was unsure and confused as to who was the duty manager. Mr Larcombe argued that he was put in a bad situation by undesirable management. We agree there was undesirable management at that time and an attempt was made to cover up the absence of a qualified duty manager. We are not so convinced that Mr Larcombe was confused as to what was going on, considering his experience and time in the industry. We therefore agree that this incident does make his suitability questionable. At the same time we acknowledge the effort he is making with the support of his employers to improve the

management and performance of "Lalaland". On balance we would like to be more convinced of his ability as a manager.

[21] The Licensing Inspector also questioned the applicant's suitability because of his inability to pass the QLDC Test, his criminal convictions and his poor communication with QLDC Staff who were processing his application. Mr Larcombe will have to pass the test and we expect his third attempt will be successful based on the assertions he made about the research he has done. Mr Larcombe has gone five years free of any serious conviction or any conviction relating to or involving the abuse of alcohol and therefore we will not hold his criminal convictions against his suitability. As to his lack of response to staff emails, we give Mr Larcombe the benefit of the doubt that failure to check his junk mail was inadvertent rather than wilful.

[22] Accordingly, this hearing is adjourned until 1st March 2018, at which time the Committee will:

- (a) expect the applicant to have passed the QLDC Manager's Certificate verbal test; and
- (b) have managed Lalaland without issue or police intervention.

[23] If we are satisfied that these two hurdles have been overcome then it is probable that a decision will then be issued granting the application on the papers. If there are still concerns then the hearing will be resumed by way of a public hearing.

DATED at Queenstown this 10th day of October 2017.



L. A. Cocks
Chairperson

