

IN THE MATTER

of the Sale and Supply of Alcohol
Act 2012

AND

IN THE MATTER

of an application by **ELI
RAPHAEL DAVID BAKER**
pursuant to Section 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. Cock

Mr J. M. Mann

HEARING at QUEENSTOWN on 20th July 2016

APPEARANCES

Mr. E. R. D. Baker - Applicant

Ms S. H. Swinney - Queenstown Lakes District Licensing Inspector - To assist

Sergeant T. D. Haggart -NZ Police -In opposition

ORAL DECISION OF THE COMMITTEE

[1] This is an application by Eli Raphael David Baker for a Managers Certificate.

[2] The criteria to which we must have regard are set out in section 222 of the Act. In this case there are only two criteria that are relevant. The first is Mr Baker's suitability to be a manager, and the second relates to the convictions recorded against him. Mr Baker has been working in the hospitality industrial for some time. More particularly, he has been working at the "Frankton Arm Tavern" for a little less than 12 months.

[3] He has an advantage not available to every applicant for a certificate. Not only is his employer present to support him, but she is regarded by this Committee as one of the better licensee in the district, and would make an excellent life coach for Mr Baker if he is able to retain his employment with her.

[4] Mr Baker is 25 years of age. He has had an involvement with alcohol which has led him to the sort of harm described in section 4 of the Act, which states that the harm caused by excessive or inappropriate consumption of alcohol includes (inter alia) any crime, damage or disorderly behaviour. Less than four years ago, Mr Baker became involved in a series of incidents, all of which involved his intake of alcohol.

[5] On the 30th March 2012, Mr Baker was apprehended for driving with an excessive breath alcohol. His breath alcohol level was 716mg per alcohol per litre of breath. For that charge he was convicted and fined and disqualified. It is noted that he was nearly twice the legal limit.

[6] Two months later Mr Baker was involved with a shop lifting incident. He was moderately affected by alcohol at the time. He was given a pre-charge warning for shop lifting.

[7] In July 2012, Mr Baker was arrested for disorderly behaviour involving the abuse of a female passenger whom Mr Baker had just met as she was sharing a taxi. His explanation for the abuse was that he was drinking to excess. He received a diversion for that charge. Diversion is a Police initiative which enables a person who has committed an offence to be given a second chance, without having the stigma of a conviction recorded against him or her.

[8] In September 2012, Mr Baker was arrested for setting off a manual fire alarm which caused an evacuation of the building and the attendance of two fire appliances. He was said to be extremely intoxicated. As a consequence he received 6 months supervision and was ordered to undertake alcohol and drug assessment counselling and treatment. Mr Baker was treated and he although he said that the counselling was beneficial, he still continued to get into alcohol related trouble.

[9] On the 29th June 2014 he was found on a roof of a commercial building. He was moderately affected by alcohol and received a pre-charged warning.

[10] Finally on the 8th November 2015, Mr Baker was arrested for permitting premises to be used for cannabis. He was in a hotel room with two others. The Police had been called because of a suspected fight. Cannabis was located in the room.

[11] Although he now denies any responsibility for the offence, Mr Baker received a pre-charge warning. Included in the warning was a statement that it would be held by the Police and could be used to determine eligibility for any subsequent warnings, and may also be presented to a court in any future court proceedings.

[12] This hearing is not a court as such, but the fact remains that Mr Baker has been involved with the Police in one form or another on six separate occasions and on four occasions; he received the benefit of the doubt, and was given another

chance to turn his life around. In those circumstances we agree with the Police that there has to be period of time in which a person can establish to our satisfaction that he or she has learn something from the error of his or her ways. In some cases the extent and pattern of the offending makes it very difficult for anyone to show that they have reached the point where he or she is ready to assume some form of responsibility.

[13] Mr Baker is convinced that he has. We refer to the decision of **Graham Leslie Osborne** 2388/95 in which a stand down period of five years was suggested for serious offending. The decision also stated that less serious convictions such as an isolated drink driving offence disclosing no pattern of offending, were also to be weighed. Such a situation would normally result in a minimum stand down period of two years before an application might receive favourable consideration. In this case the Police have suggested a stand down period of two years from the date of the last incident and we accept the logic behind the recommendation.

[14] We return to what was stated at the commencement of this decision. In a way this application is as much about Ms Michelle Rodgers, the proprietor of "The Frankton Arm Tavern" as it is about Mr Baker. Normally we would decline the application and advise Mr Baker to wait until November 2017 to show that during the last two years he can be incident free, particularly involving the use and abuse of alcohol.

[15] Given that he is working for Ms Rodgers and given the work she does as licensee, we have decided rather than refuse the application, it will be adjourned for a minimum of twelve months. That means there will be a further hearing in July or August next year. At the hearing we expect to see Mr Baker and his employer if he is still in his current employment. If he has shown a complete lack of trouble or concern, and he still has the support of his current employer we'll then consider granting a Managers Certificate. In other words the grant of the certificate will be a process rather than an event.

[16] The interim period will be a difficult one for Mr Baker. Provided he retains his current employment, Mr Baker can be appointed for the first six months one day a week as a Temporary Manager. For the second six months or longer, he may be appointed as a Temporary Manager for two days a week. The application is adjourned accordingly on the above terms.

DATED at Queenstown this 27th of July 2016



E W Unwin
Chairman