

Application	2017/6937/1
<u>IN THE MATTER</u>	of the Sale and Supply of Alcohol Act 2012
<u>AND</u>	of an application by
<u>IN THE MATTER</u>	Sujanpreet Singh for a manager's certificate pursuant to section 219 of the Act

HEARING at the Waitomo District Council Chamber on 7 February 2020

WAITOMO DISTRICT LICENSING COMMITTEE

Chairperson: Mrs S Grayson
Members: Dr M Cameron, Mr R Murphy

APPEARANCES

Applicant – Mr S Singh
Licensing Inspector – Mr L Norris

DECISION OF THE WAITOMO DISTRICT LICENSING COMMITTEE

1. The application for a manager's certificate is declined.

REASONS

1. Mr Singh filed this application for a manager's certificate on 5 July 2019.
2. Police did not oppose the application. The Licensing Inspector opposed the application on the grounds that Mr Singh had not had sufficient experience controlling licensed premises and did not have a good understanding of the Sale and Supply of Alcohol Act 2012 (SAA).
3. In considering an application for a manager's certificate, the licensing committee must consider the following criteria (s 222 (SAA)):
 - a) Is the applicant suitable to be a manager?
 - b) Have any convictions been recorded against the applicant?
 - c) Does the applicant have any recent experience in controlling any premises for which a licence was in force?
 - d) Has the applicant undertaken appropriate training and completed relevant qualifications under section 218?
 - d) Have the Inspector and Police raised any relevant matters in their reports?

4. The Licensing Authority in *Markovski v Dalziell-Kernohan*¹ stressed the importance of having regard to all of the criteria in section 222 SAA and to undertake a balancing exercise and stated:

When considering an applicant's suitability to be a manager, it is important to note that the section relates to "suitability to being a manager". The criterion is not about an applicant's character in a general sense. This was emphasised in *Re Sheard* [1996] 1 NZLR 751 where Holland J stated at [758]: "The real test is whether the character of the applicant has been shown to be such that he is not likely to carry out properly the responsibilities that go with the holding of a licence:".

5. Mr Singh does not have any convictions and no concerns have been raised about Mr Singh's character. However, the issue of suitability has been raised because the Licensing Inspector questioned whether Mr Singh has sufficient experience and adequate knowledge to properly carry out the responsibilities of a Duty Manager.

Does Mr Singh have sufficient experience controlling licensed premises, a thorough understanding of the Act and skills necessary to carry out the responsibilities of a Duty Manager?

6. Mr Singh has been working at Te Kuiti New World for two years and he is the Store Manager five nights per week. Mr Singh was granted the Licence Controllers Qualification on 10 April 2019.
7. Mr Singh is well regarded by the store owner/operator Mr Brittenden. In a reference for Mr Singh, Mr Brittenden explained that Mr Singh's duties involve overseeing the whole store and supporting checkout staff to adhere to the safe and responsible sale of alcohol. As the Store Manager in the evenings, Mr Singh has the responsibility of supporting checkout staff whenever there are issues with a customer due to intoxication or lack of ID. At the hearing, Mr Brittenden gave evidence that a checkout supervisor with a manager's certificate (based at the checkouts) is normally rostered on as the Duty Manager for all of the hours that the store is open. However, Mr Singh needs to have a manager's certificate so that he can step in as Duty Manager on the rare occasion that a checkout supervisor is not available.
8. The Licensing Inspector, Mr Norris, raised a concern in his report that Mr Singh did not appear to have any direct retail experience of alcohol sales at Te Kuiti New World or any other licensed premises. In addition, Mr Norris interviewed Mr Singh and found that he did not have an adequate understanding of the requirements and responsibilities of a manager on duty pursuant to an off-licence.
9. In response to the concerns raised by the Inspector, Mr Brittenden explained that Mr Singh has worked at the self-service checkouts for about two hours per day, twice a week since November 2019, in order to gain more experience in the sale of alcohol. In addition, Mr Singh has completed the Supervisor Compliance Test and the New World Alcohol and Tobacco Essentials Staff Training Quiz.
10. A Duty Manager is responsible for ensuring compliance with the Sale and Supply of Alcohol Act 2012 and with the specific conditions of the licence for the premises. A Duty Manager must take steps to run the premises in a manner that minimises harm caused by excessive or inappropriate consumption of alcohol (section 214 SAA). The Licensing Authority has provided guidance that a prospective Duty Manager should have six months experience controlling a premises for which a

¹ [2016] NZARLA 118, paragraphs [10], [12] & [18]

licence is held.² This means practical experience serving alcohol under supervision of a Duty Manager, putting theoretical knowledge, such as identifying intoxication and ID checking, into practise.

11. The licensing committee asked Mr Singh a number of questions about the Act, the responsibilities of a Duty Manager, and the conditions of the licence at Te Kuiti New World. Mr Singh was not able to accurately explain all of the conditions of the licence, including the licensed hours. Mr Singh was not familiar with the site plan and the exact location of the single alcohol area, and therefore did not know where alcohol can be displayed on the premises. Mr Singh could identify the four indicator keys in the SCAB Intoxication Assessment Tool, however, he did know how many actual indicators (signs of intoxication) must be present to meet the definition of intoxication, as stated in section 5 of the SAA. Mr Singh was not able to correctly explain what a restricted designation is and thought it was an area that was restricted to staff only. While the premises does not have a restricted designation, it is still important for Mr Singh to have an understanding of all types of designation. If he becomes a Duty Manager, then he could potentially work as a Duty Manager at any licensed premises.
12. We agree with Mr Norris that Mr Singh does not have sufficient experience controlling a licensed premises under the supervision of a Duty Manager. At the time of the hearing, Mr Singh has only had two months experience supervising the sale of alcohol for about four hours per week. In reality, this is a very low level of experience. In addition, Mr Singh does not have a thorough understanding of the SAA and the skills necessary to carry out the responsibilities of a Duty Manager. We believe that understanding how the law works only comes from direct experience and putting the “theory” in to practice.
13. To be fair to Mr Singh, this is partly due to a lack of practical experience and an inadequate training programme at Te Kuiti New World. Mr Brittenden acknowledged that the current training for Duty Manager’s does not cover the licence conditions, the single alcohol area (as described on the site plan), the SCAB Intoxication Assessment Tool and how to use it, or how to identify fraudulent forms of identification. The Supervisor Compliance Test and the New World Alcohol and Tobacco Essentials Staff Training Quiz are not comprehensive enough. We also noticed that question 1 of the Supervisor Compliance Test refers to the Sale and Supply of Liquor Act, instead of the Sale and Supply of Alcohol Act 2012.
14. In addition, Mr Brittenden was unaware that it is best practise for a Duty Manager to be present at the checkout area, actively supervising the sale of alcohol, as well as ensuring that the single alcohol area is compliant with the conditions of the licence at all times. He understood that a Duty Manager just had to be in the building. Mr Brittenden gave an undertaking that if Mr Singh’s manager’s certificate was granted and he was required to step into the role of a Duty Manager, while present in the role of a Store Manager, he would be stationed at the checkout area, actively supervising the sale of alcohol.
15. We have carefully considered all of the criteria in section 222 and undertaken a balancing exercise. On the one hand we acknowledge that Mr Singh does not have any convictions, holds an LCQ and is a responsible person who is well regarded by his employer. However, these positive attributes and factors are outweighed by a lack of experience and lack of knowledge. As stated above, a Duty Manager is responsible for ensuring compliance with the Sale and Supply of Alcohol Act 2012 and with the specific conditions of the licence for the premises. At the moment, Mr Singh is not clear about what a Duty Manager is legally responsible for and therefore we are not confident that he

² *Brockelsby, re* [2006] NZLLA 50 PH 50/200

would properly carry out the responsibilities of a Duty Manager.

16. In conclusion, the application for a manager's certificate is declined. We encourage Mr Singh to gain at least another four months experience in the sale of alcohol and to undertake further training on the responsibilities and obligations of a Duty Manager before making a further application for a manager's certificate.

Dated this 12th day of February 2020

A handwritten signature in black ink, appearing to be 'S. Grayson', written in a cursive style.

Sara Grayson
Commissioner
District Licensing Committee