

**IN THE MATTER**

of the Sale and Supply of  
Alcohol Act 2012

**AND**

**IN THE MATTER**

of an application by **RYAN  
HIMENO KIM** pursuant to S.222  
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 6<sup>th</sup> April 2017

**APPEARANCES**

Mr R H Kim - applicant  
Mr N P Bates – Licensing Inspector – to assist  
Sergeant T. Haggart – Queenstown Police – in opposition

**RESERVED DECISION OF THE COMMITTEE**

**Introduction.**

[1] Before the committee is an application by Ryan Himeno Kim for a manager's certificate. The application was received by the Agency on the 10<sup>th</sup> August 2016.

**The Application.**

[2] Mr Kim is from USA and is 23 years of age. He is currently on a work permit which allows him to work as a waiter for the Yakitori Daruma Japanese Sake Bar in Queenstown. The visa expires on 18<sup>th</sup> June 2017.

[3] Mr Kim has successfully completed the Licence Controller Qualification (LCQ) and has passed the QLDC test requirement as part of the new application process. He has been employed at the Yakitori Daruma Japanese Sake Bar since November 2015.

**The Police Opposition.**

[4] The application was opposed by the Police based on suitability because of an incident that occurred on 27<sup>th</sup> August 2016 at the Yakitori Daruma Japanese Sake Bar involving an intoxicated male on the premises, where Mr Kim was temporary Duty Manager for part of that evening.

[5] The Police were called to the restaurant at approximately 11pm on 27<sup>th</sup> August 2016 to assist with a male who was behaving in a disorderly manner, refusing to pay his bill and

pushed the owner. The male displayed many of the signs of intoxication, was arrested for assault and later released with a pre charge warning.

[6] The Police spoke to Mr Kim and took a statement from him. Mr Kim was Duty Manager until approximately 9:45pm when he departed the restaurant as he was not feeling well and it was near closing time. When he left he believed the owner, Mr Okamoto had taken over as Duty Manager. He did not believe the male to be intoxicated while he was working as Duty Manager. He had ensured the male had been given water and other food while trying to choose what dishes he wanted. He believes the male had approximately 5 or 6 hot sakes during the time he was there as Duty Manager. The male had arrived shortly after he started at 6pm and was still there when he left at approximately 9:45pm.

[7] The Police acknowledged that Mr Kim has a good understanding of the Sale and Supply of Alcohol Act 2012 and the requirements and expectations placed on him as a Duty Manager. The influence and behaviour of the owner in allowing the male to have more alcohol when acting as Duty Manager after Mr Kim had left was also acknowledged. Further refresher training on detecting intoxication was proposed for Mr Kim and the owner but they were both overseas for extended periods and unable to complete it before the hearing. If this had been completed it is likely the Police would have withdrawn this opposition.

[8] The Police would like to see Mr Kim given the opportunity to be Duty Manger under the direction and supervision of a supportive and strong supervisor. The restaurant has changed ownership since this incident and the new owner has stated that Mr Kim will remain working there for him.

#### **The Licensing Inspector.**

[9] The Inspector submitted that the suitability of the applicant is what is in question and provided extracts from several cases where 'suitability' has been addressed, for the Committee to consider.

#### **The Applicant.**

[10] Mr Kim told us he considered this was an isolated incident and the cause was not simple negligence or lack of knowledge, but a range of factors that resulted in an unfortunate outcome. He was confident that enforcement of the Act was practised throughout the night while he was on duty with the male being provided adequate food, water and time to process the alcohol he was served. Mr Kim admitted that the amount of alcohol sold to the patron was more than average patrons amount but 'was nowhere near an inexcusable or irresponsible quantity. The customer was enjoying himself, chatting, and did not display any red flags that would suggest he was heavily intoxicated.'

[11] Mr Kim also told us that the male was talking on his phone frequently throughout the evening and understood the male had received a phone call just prior to the incident that changed his tone, mood and manner significantly.

#### **The Committee's Decision and Reasons.**

[12] The suitability of Mr Kim to be awarded a Managers Certificate is the question. 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'.

[13] Mr Kim has been working at the Yakitori Daruma Japanese Sake Bar as a waiter and temporary Duty Manager since November 2015 and therefore has relevant experience. He

has a very good knowledge of the object of the Act and his conduct as the Duty Manager during the time he was present prior to the incident was appropriate.

[14] Mr Kim departed the restaurant at approximately 9:45pm with the understanding that the owner, Mr Okamoto had assumed the role of Duty Manager. At this time Mr Kim observed that the male was enjoying himself, chatting, and did not display any symptoms that would suggest he was heavily intoxicated. What happened between 9:45pm and 11pm to change the tone, mood and manner of the male that resulted in the incident is not clear but as Mr Kim was not present during that period, we do not believe he can be held responsible. We suggest that owner, Mr Okamoto who was the Duty Manager during this period should bear that responsibility.

[15] In her submission for the Police, Sergeant Haggart suggested that if Mr Kim had completed some refresher training around early detection and intervention of patrons becoming influenced to prevent them becoming intoxicated, Police opposition may have been withdrawn.

[16] Considering the evidence presented and submissions made we are satisfied that Mr Kim is suitable to be granted a managers certificate. We acknowledge that refresher training can never go amiss but feel that the lessons learned from this incident and subsequent investigation by the Police and hearing has been as good if not better than further training. We have also taken into account that the restaurant is under new ownership and the previous owner, Mr Okamoto, is no longer involved. The new owner has confirmed that Mr Kim will continue to be employed at the restaurant.

[17] The application by Mr Kim for a Managers Certificate is approved.

DATED at Queenstown this 8<sup>th</sup> day of May 2017.



L.A. Cocks  
Chairperson