

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

AND

IN THE MATTER of an application by **TARUN KAMRA**
situated at **NEW WORLD WANAKA**
pursuant to s.219 of the Act for a
manager's certificate.

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

Chairman: Mr G B Pay
Members: Mr C Cooney
Mr P Jones

HEARING at WANAKA on 13th August 2024

APPEARANCES

Mr MR Walker – Lawyer for the applicant
Mr T Kamra – Applicant
Ms S Swinney – Queenstown Lakes District Licensing Inspector
Sergeant S J Matheson – NZ Police
Sergeant IP Madden – NZ Police (to assist)

RESERVED DECISION OF THE COMMITTEE

APPLICATION

- [1] An application by Tarun Kamra for a manager's certificate was received by the Queenstown Lakes District Council on 29th January 2024.
- [2] The application drew opposition from Police on the grounds of Mr Kamra's suitability and a hearing was duly held on 13th August 2024.
- [3] Mr Kamra stated he worked as a checkout operator at New World Wanaka. He also stated he had previously held a manager's certificate which was last renewed by Far North District Council on 27th June 2020. Mr Kamra provided evidence of having managed a restaurant in Kerikeri between 2017 and 2019. My Karma stated he had no convictions and provided evidence of having obtained a Licensed Controller Qualification in 2012.

- [4] Because an employer's reference submitted with the application was also dated January 2024, and because the reference in question made no mention of Mr Kamra requiring a manager's certificate for his job, a minute was issued by ourselves on 8th August 2024 requesting an update from his employer with confirmation that Mr Kamra requires a manager's certificate to carry out his duties.
- [5] A reply was received by Stuart Hore, owner/operator of New World Wanaka on 10th August 2024. He confirmed that Mr Kamra is currently employed as a Checkout Supervisor. He stated that it is "...desired/preferred that a Checkout Supervisor holds a Liquor Manager's Certificate....". Mr Hore goes on to state "At New World Wanaka we also have a Duty Manager role. Given the store is open 15 hours a day, 7 days a week, this role is to step in for the various Department Managers when they are not on site. For Checkout, this would mean they work with the Checkout Supervisor to support decisions in the absence of the Checkout Manager.....We are currently advertising for an additional Duty Manager, however, to date we have not received an application from Tarun and he has not expressed any interest in this full time role."

HEARING

- [6] A substantive part of the Police opposition was based on a complaint made against Mr Kamra which resulted in charges being laid in the Queenstown District Court. These charges were later withdrawn before the matters were heard and determined.
- [7] Because these allegations are likely to be highly prejudicial against Mr Kamra and after weighing-up the public interest in the matter, we made an order pursuant to s.203(3) to hold the whole of the hearing in private.
- [8] For the same reasons, we also made an order pursuant to s.203(5) prohibiting the publication of any report or description of the evidence relating to the charges in question.
- [9] No objection to these courses of action was voiced by any of the parties.
- [10] The hearing was held in accordance with the provisions of s.203A of the Act.

POLICE EVIDENCE

- [11] Sgt Matheson gave evidence for Police. He stated that in May 2019, Kaikohe Police served Mr Kamra was served a Harassment Notice pursuant to ss.8(1),(b) & (2) of the Criminal Harassment Act 1997. The notice covered My Kamra's ex-partner and her family. On the same day Mr Kamra was served a trespass notice for the address of his ex-partner.
- [12] Nearly two weeks after the serving of the notices, Mr Kamra went to the address of his ex-partner and was arrested for trespass. Police released him with a pre-charge warning and no further action was taken. Sergeant Matheson stated Mr Kamra

admitted to the arresting Police that he had consumed alcohol before committing the offence.

- [13] In October 2020, the Family Court in Kaikohe issued Mr Kamra a temporary protection order pursuant to ss.78 & 148 of the Family Violence Act 2018. The order protected the same people as the harassment notice. In January 2021 a final Protection Order was issued by the same court. To date this order is still in effect.
- [14] Sergeant Matheson then proceeded to give evidence about the matter that is the subject of the s.203 orders. Included in the evidence were two video clips and a selection of text message screenshots. The matter in question occurred in May 2023.
- [15] We were not presented with evidence from any of the Constables that dealt with Mr Kamra and Sergeant Matheson was unable to tell us how co-operative he had been through each process.

APPLICANT'S EVIDENCE

- [16] Mr Kamra had no prepared statement for us but instead answered questions put to him by Mr Walker. He confirmed he works at the New World Wanaka for fifteen hours a week. Mr Kamra told us his primary job is as a driver for Mainfreight.
- [17] Mr Kamra informed us he has had experience as a duty manager at a Countdown supermarket in Kerikeri. He also told us he has had experience as a restaurant manager.
- [18] Mr Kamra stated he currently holds a "P" endorsement for his driver's licence but has no current plans to utilise this.
- [19] When questioned by us, Mr Kamra stated he was not affected by alcohol when he was arrested for trespass as the Police had alleged. He further stated he had been the victim of what seems to have been a vendetta by his ex-partner and her family and allegations made by them were not true. He did not elaborate on why he was arrested for trespass.
- [20] Mr Kamra told us he has an intent to utilise his manager's certificate, if granted, in premises other than supermarkets.
- [21] We asked Mr Kamra about his assessment of the sobriety of one of the subjects in one of the videos presented by police, and how he might manage that person in a licensed premises if he were the Duty Manager. Mr Kamra told us he did not believe the person in question was exhibiting signs of intoxication. During this discussion with the Committee, Mr Walker pointed-out that the question was hard for Mr Kamra to answer as he believed a number of questions were being asked of him at the same time and therefore Mr Kamra could not answer. He also made reference to English being Mr Kamra's second language.

THE INSPECTOR

- [22] The Inspector submitted her report which provided us with information regarding the timelines of Mr Kamra's previous manager's certificate and subsequent renewals by the Rangitikei District Licensing Committee.
- [23] Mr Kamra's manager's certificate expired in June 2023.

POLICE SUBMISSIONS

- [24] Sergeant Matheson made submissions that seemed to rely on s.105 of the Act. We reminded him this is not the section the application is being determined under.
- [25] Sergeant Matheson drew our attention to the meaning of "suitability" as per *Re Sheard* [1996] 1 NZLR 751, "*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'.....*"
- [26] The Sergeant presented further case references that related to the suitability of licensees.
- [27] The Police submission concluded with concerns about Mr Kamra's character due to his failure to understand "...*boundaries within relationships.*" and his actions with regard to the incident subject to the s.203 orders.
- [28] Police submitted that as Mr Kamra has previously been the holder of a manager's certificate then he "...*has knowledge around intoxication and the appropriate behaviour and management of intoxicated persons.*"
- [29] Police also submit there is no onus on Mr Kamra to prove his suitability but suggest there is a "*burden*" on him to "...*put his best foot forward for the application to succeed.*" The Sergeant states "*Unfortunately, this application has failed on a number of grounds and police submit it must fail.*"

APPLICANT'S SUBMISSIONS

- [30] Mr Walker presented us with written submissions. He reminded us that Mr Kamra has previously held a manager's certificate, he has a Licensed Controller's Certificate and has passed the Queenstown Lakes District Licensing Agency Sale and Supply of Alcohol Act knowledge test.
- [31] Mr Walker submits that "*Mr Kamra intends to move into a full-time role with New World, however this is contingent on obtaining a general manager's certificate so he can transition into a supervisory role.*"

- [32] He further submits Mr Kamra is a suitable person to hold a manager's certificate "*and there has been no change in circumstances since his last certificate was granted*".
- [33] Mr Walker draws our attention to *Nishchay's Enterprises Ltd* [2013] NZARLA PH837 – "*...suitability is a broad concept, and the assessment of it includes the character and reputation of the applicant, its previous operation of the premises, its proposals as to how the premises will operate, its honesty, its previous convictions and other matters. It also includes matters raised in reports...and those reports may raise issues pertaining to the object of the Act...Thus, whether or not the grant of the licence will result in the reduction of liquor abuse is a relevant issue.*"
- [34] Mr Walker also refers us to para 758 of the same *Re Sheard* decision referred to by Sergeant Matheson, "*The real issue 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.*"
- [35] He also refers us to the *Judd* [2014] NZARLA 94 decision "*The test of suitability is lower for a General Manager's Certificate than it is for a licence.*"
- [36] Mr Walker submits that as Mr Kamra meets the "fit and proper person" assessment of the New Zealand Transport Agency then it follows that "*...he is in fact a suitable person to hold a General Manager's Certificate.*"
- [37] Mr Walker points out that Mr Kamra met the character threshold to be granted a Permanent Resident Visa on 23rd December 2021.
- [38] Mr Walker made submissions regarding Mr Kamra's protection order. He states that Mr Kamra did not understand the process involved with such an order and anyway could not afford a lawyer, hence the final protection order being granted. Mr Walker informs us there is an unopposed application before the Queenstown Family Court to discharge the order and that the Protected Person is supportive of a discharge.
- [39] Mr Walker also tells us Mr Kamra does not accept the allegations that formed the issue of the protection order.
- [40] With regard to the incident that is subject to the s.203 orders, Mr Walker made a number of submissions. He states that as the charges were withdrawn citing s.147 of the Criminal Procedure Act 2011, then Mr Kamra is deemed to have been acquitted and therefore "*not guilty..*".
- [41] He cautions us against weighing Mr Kamra's suitability against "*...allegations that have never been proven in court.*" and that the materials referred to in the Police report include untested accusations and a deemed acquittal.

DECISION

- [42] This decision is being made pursuant to s222 of the Act –

222 Criteria for manager's certificates

In considering an application for a manager's certificate, the licensing committee or licensing authority, as the case may be, must consider the following matters:

(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 that the applicant holds the prescribed qualification required under section 218:

(e) any matters dealt with in any report made under section 220.

- [43] In our opinion, the only issue in question is Mr Kamra's suitability and the matters raised by Police in their report pursuant to s.220 of the Act. He clearly has the training and experience required of him. We also accept that he has no convictions.
- [44] We also acknowledge that none of the parties carry an onus of proof. This includes any onus on Mr Kamra to prove his suitability to us.
- [45] For the avoidance of doubt, we have not attempted to ascertain what is factual with regard to the incident that is subject to the s.203 orders. To that end, the submissions of Mr Walker regarding this issue are accepted. Likewise we have not placed any weight on the allegations made by Police where we have been unable to hear directly from any of the Constables that dealt with Mr Kamra. We have however, taken into consideration video evidence and the overall tenure of the matters presented to us.
- [46] We did have the opportunity to view video footage that was the basis of a question to Mr Kamra. The question was designed to ascertain his ability to detect the signs of intoxication and his likely response should he be managing a licensed premises. We reject Mr Walker's assertion that this was confusing for Mr Kamra. The question was posed several ways and even in a way where a yes or no answer could be given. We found no evidence that Mr Kamra had difficulty understanding English or the questions we asked him. We found Mr Kamra's answer to be evasive. To detail the answer he gave us would risk breaching the s.203(5) order, needless to say we were not impressed with the answer when taking into account he must have viewed the same video footage as ourselves.
- [47] We agree with the essence of the Police assertion that an experienced manager should know the signs of intoxication the appropriate management of intoxicated persons. We expected My Kamra to "put his best foot forward" when given the opportunity. In our view, he did not take the opportunity.
- [48] When we asked Mr Karma about the circumstances where he was arrested for trespass, we found his answer to be similarly evasive.
- [49] We note Mr Walker's reference to the *Re Sheard* decision "*The real issue 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.” To our mind this is reinforced by Grice J in *Ole Ltd v Benge* [2024] NZHC 284 para 46:

“The listed factor of “suitability” is a discrete consideration from factors relating to the operation and management of the premises. Of course, the “suitability” must relate in general terms to suitability for operating a licensed premises. The case law confirms there are a wide range of factors which may be taken into account when considering “suitability”.

[50] We have also taken into regard the letter from Mr Hore, the owner/operator of New World Wanaka, and his statement that it is *“desired/preferred that a Checkout Supervisor holds a Liquor Manager’s Certificate....”*. He also tells us that Mr Kamra has not applied for the vacant duty manager position in the store despite Mr Walker’s submission *“Mr Kamra intends to move into a full-time role with New World, however this is contingent on obtaining a general manager’s certificate so he can transition into a supervisory role.”* We note Mr Kamra himself made no intimation that this was his intent. With regard to this we refer to *Re McLean* [2009] NZLLA 318, para 2, where Unwin J stated:

“....Our policy has been that certificates should not be issued in a vacuum but should be working documents. To be successful, applicants should have the full committed support of an employer.”

[51] We have considered the evidence presented to us which we believe is relevant and we have had the opportunity to hear from Mr Kamra. We do not agree with Mr Walker’s assertion that his “fit and proper person” assessment by the New Zealand Transport Agency translates to him being a suitable person to hold a manager’s certificate. We were not presented with any evidence of what the NZTA considered in making their decision. Likewise we have no idea what information Immigration NZ had to consider when issuing a permanent resident visa.

[52] We do note the issuing of the harassment notice, interim protection order and trespass arrest all occurred between 2019 and 2020. The matter that is the subject of the s.203 orders occurred in 2023.

[53] We have concerns that Mr Karma does not fully understand the responsibilities and expectations our community has for those who control our licensed premises. We also have concerns that Mr Karma may not fully comprehend how this corresponds to how he forms and manages personal relationships.

[54] During the hearing we asked the parties on their thoughts about us requesting Mr Kamra to sign an undertaking that he only utilise his manager’s certificate in supermarket or grocery premises for a set period of time. There were no objections to this but Mr Karma seemed reluctant. Mr Walker assured us he would advise him to accept any such proposal. After consideration we have decided it is not currently an appropriate course of action.

[55] We find that Mr Kamra is not currently suitable to be the holder of a manager's certificate and the application is refused.

[56] We invite Mr Kamra to reapply after a period of 18 months from this decision.

DATED at Queenstown this 24th day of August 2024.



G B Pay
Commissioner
Queenstown Lakes District Licensing Committee

