

6 September 2019

Decision of the District Licensing Committee in the matter of:

The Application for a New Manager's Certificate by Macaulee George Kingsnorth

Following the hearing of the above application on **4 September 2019**, please find enclosed the decision of the Christchurch District Licensing Committee.

Decisions of the District Licensing Committee may be subject to appeal under Section 154 of the *Sale and Supply of Alcohol Act 2012*. Any party to the proceedings before a licensing committee who is dissatisfied with the decision may appeal to the Alcohol Regulatory and Licensing Authority (ARLA). Such an appeal must be made within **10 working days** of this notice of decision.

Please find below a link to the relevant area of ARLA's website:

<http://www.justice.govt.nz/tribunals/alcohol-regulatory-and-licensing-authority/appeals-to-the-alcohol-regulatory-and-licensing-authority>

Please contact me if you have any queries.

Yours Faithfully



Mark Saunders
Hearings Advisor

mark.saunders@ccc.govt.nz

Decision No. 60D [2019] 2381

IN THE MATTER OF

the Sale and Supply of Alcohol Act
2012

AND

IN THE MATTER OF

an application by **MACAULEE
GEORGE KINGSNORTH** for a
Manager's Certificate under s 219
of the Sale and Supply of Alcohol
Act 2012.

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Hearing: 4 September 2019

Committee:

Ms C E Robinson (Chair)
Mr D Blackwell QSM
Mr R Wilson JP

DECISION ON APPLICATION FOR MANAGER'S CERTIFICATE

- [1] This decision relates to an application by Macaulee George Kingsnorth ('the applicant') for a Manager's Certificate pursuant to s219 of the Sale and Supply of Alcohol Act 2012 ('the Act').
- [2] A hearing of the application was held on 4 September 2019. The hearing was attended by the applicant, Mr Samuel Kumbaroff a referee in support, Constable Graeme Jolliffe and District Licensing Inspector Hamish Little.
- [3] The application was opposed by the Police and the Inspector on the grounds that the applicant had an alcohol related driving conviction within the last 2 years.

Evidence and Submissions

- [4] We asked Mr Little to confirm the Inspector's Opposition to the application on the grounds that the applicant has had a conviction within 2 years. Mr Little relied on the Osborne decision¹, which generally provides for a 2 year stand down period in the event of a single alcohol related conviction.
- [5] We asked Constable Jolliffe to read out the reasons for the Police Opposition and the statement of facts relating to the offence.
- [6] Mr Kingsnorth then explained the events of the offence and expressed his sorrow for that occurrence and confirmed that he had learnt his lesson. Mr Kingsnorth, who is from the United Kingdom explained that he had been working casually for a number of licensed premises operated by the Oxford Group whilst on a holiday visa. He had returned home after the driving offence and had initially not intended to return. He, however, changed his mind and wished to return to New Zealand and to make it his home. He has applied for a visa to stay on a more permanent basis. His application for a visa has been lodged but he has been requested to provide further information regarding his employment and skills. He told us that having a Manager's Certificate would improve his chances of receiving that visa.
- [7] Mr Samuel Kumbaroff then spoke on Mr Kingsnorth's behalf and gave him a positive recommendation. Mr Kumbaroff is the Operations Manager for the Oxford Group which owns a number of licensed premises. He spoke of Mr Kingsnorth's skills in the hospitality industry and his personal character and reliability. When asked by the Committee whether there would be a job opportunity for Mr Kingsnorth even if he did not hold a Manager's certificate, we understood him to say that the offer of employment was not contingent on holding a Manager's Certificate. He also explained that even with a Manager's Certificate there was no immediate expectation that Mr Kingsnorth would be solely responsible for one of the Oxford Group premises. For example, he said that he would not expect him to be on his own in say "Fat Eddies" (a popular bar on the Oxford Terrace in Central Christchurch) on a Saturday night, but he could begin by having responsibility on a Monday or Tuesday night.
- [8] Mr Kingsnorth submitted a number of references as to his personal character. We note that for the most part these are references in support of his visa application rather than specifically in relation to his suitability to hold a Manager's Certificate. We have accepted them as corroborating the evidence of Mr Kumbaroff that Mr Kingsnorth is of good character.

¹ *GL Osborne NZLLA 2388/95*

- [9] Both Constable Jolliffe and Mr Little relied on the Osborne case. The Osborne case is a Liquor Licensing Authority decision which has become known as the ‘Osborne Guidelines’, which provides that:²

“Without fettering ourselves in this or other applications, it may be helpful if we indicate that we commonly look for a five year period free of any serious conviction or any conviction relating to or involving the abuse of alcohol, or arising in the course of an applicant’s duty on licensed premises...Less serious convictions are also weighed. By way of example is an isolated excess breath/blood alcohol conviction, or a single driving offence disclosing no pattern of offending... .In these and similar cases we frequently indicate that a minimum of two years from the date of conviction may result in subsequent favourable consideration — providing suitable reports from both the Police and the Licensing Inspector are received...”

- [10] On the basis of the evidence we heard we now determine the application in accordance with the criteria in s222 of the Act.

Decision and Reasons

Is the applicant suitable to be a manager?

- [11] On the evidence currently before us we have not been able to conclude that the applicant is suitable at this time.

- [12] The significance of the role of a duty manager is well known. In *Deejay Enterprises Limited* NZLLA 531-532/97 the Liquor Licensing Authority held:

The ‘guiding hand’ or ‘hands-on operator of any company’ or the potential holder of a General Manager’s Certificate now receive greater scrutiny from both the Police and other reporting agencies. Character and reputation are closely examined. The law and human desires of patrons frequently tug in 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 holders of General Manager’s Certificates who control and Manage licensed premises.

- [13] We accept that Mr Kingsnorth has been a hardworking and diligent employee and he is highly regarded by many, however, he demonstrated poor judgment when he drove with excess blood alcohol. He acknowledged the risk that placed others in. We accept that he is genuinely remorseful for that event. But for the driving offence we would have no hesitation in granting this application.

² *Osborne* at 5.

Convictions

[14] Mr Kingsnorth committed an alcohol related driving offence just over 12 months ago. We are obliged to consider the Osborne Guidelines when considering the effect of previous convictions. Those guidelines as applied in a number of Alcohol Regulatory Licensing Authority decisions provide that where offending is not serious, or alcohol related, a two year stand down would be appropriate. Although it is a guide, we are mindful that the Osborne Guidelines have been applied consistently since 1995, with some modification, for example it is now accepted the time should run from the date of the offence.³ It is important that our decision continues to maintain a very high standard for persons holding a Manager's Certificate because of their front-line responsibility for ensuring the Object of the Act is met.⁴

[15] We are required to act cautiously and should only depart from the guidelines in exceptional circumstances so as to maintain consistency and high standards.⁵

[16] Although Mr Kingsnorth clearly regrets the offence and is otherwise of good character, we do not find those circumstances to be exceptional. The fact that holding a Manager's Certificate may assist with his visa application is not a matter relevant to our considerations under s222 of the Act.

Recent industry experience

[17] The applicant has worked at licensed premises and there is no dispute as to his knowledge of the legislative requirements. Mr Kingsnorth has provided references that satisfies us that he has appropriate industry experience.

Training and qualifications

[18] Mr Kingsnorth has completed his LCQ certificate.

Any other matters dealt with in a report made under s220.

[19] There are no additional matters.

Conclusion

[20] We find on the evidence before us and having taken into consideration the criteria set out in s222 of the Act that we are not currently satisfied of Mr Kingsnorth's

³ SA Judd [2014] NZARLA 94, 95 and 96.

⁴ Police v Manson [2015] NZARLA 590 at [23] and see Dawson [2017] NZARLA PH 46.

⁵ Manson at [25].

suitability to hold a Manager's Certificate. That is because the conviction is alcohol related and a Manager has an important role in ensuring the safe and responsible sale of alcohol. It is only just over 1 year since the offence and his conviction. We think that further time is required for Mr Kingsnorth to prove that he is suitable to hold a Manager's Certificate. Although the Osborne Guidelines are 'guidelines' they provide a reasonable test to ensure that the standard for persons holding a Manager's Certificate remains high and our decisions are consistent.

[21] We have reflected on the applicant's otherwise good character and feel confident that if Mr Kingsnorth was to reapply on the second anniversary of his offence, and there were no new issues of concern, then the Committee would likely view the application favourably.

[22] Accordingly, for those reasons the application for a Manager's Certificate is declined.

DATED at CHRISTCHURCH this 5th day of September 2019.



Cindy E. Robinson
Chairperson of the Christchurch District Licensing Committee