

**IN THE ALCOHOL REGULATORY AND LICENSING AUTHORITY
TE MANA WAETURE TAKE WAIPIRO**

[2023] NZARLA 217

UNDER	the Sale and Supply of Alcohol Act 2012
AND	
IN THE MATTER	of an application pursuant to s 280 of the Act for suspension of an on-licence in respect of premises situated at 9 Bow Street, Raglan, known as “The Yot Club”.
BETWEEN	DAVID JOHN HALL (Police Officer of Te Awamutu)
	Applicant
AND	ROCKAWAY BEACH LIMITED
	Respondent

Hearing: 1 December 2023 in Hamilton

Authority: Judge P R Connell
Mr R S Miller

Appearances: Senior Sergeant D Hall – applicant
Mr A Meek – respondent

Judgment: 12 December 2023

DECISION OF THE AUTHORITY

Preliminary Matters

[1] We had before us three allegations. They related to matters that were alleged to have occurred on 1 January 2023, 22 January 2023, and 8 April 2023. During the hearing the Police withdrew the allegation concerning 8 April 2023. We say no more about that.

The 1 January 2023 Allegation

[2] The Police allege the respondent traded in contravention of the conditions of the

venue's licence. Clause (b) of On-Licence 14/ON/16/2023N issued to Rockaway Beach Limited (aka The Yot Club) limits the sale of alcohol to ***"Monday to Sunday 8.00am to 1.00am the following day"*** while clause (i)(iii) states ***"That there shall be no music anywhere on the premises after 1.00am on any day"***. The Police say that in doing so the respondent breached s 46(1) of the Act.

[3] The Police called two witnesses. Constable Haimona Tamati-Te Paki gave evidence that on or about 01.30am on Sunday 1 January 2023 he entered the Yot Club where he observed three workers operating the bar and serving patrons. He witnessed alcohol being purchased by patrons being served in large white plastic cups. He took a video of this on his Police issued device and exited the premises to advise Sergeant Martin.

[4] The second Police witness was Sergeant Hayden Martin who was the officer in charge of policing in Raglan for New Year's Eve. He testified that on or about 11.30pm he spoke with a Mr Bevan Lockwood who was a security guard at the entrance to the premises. He (Lockwood) said the venue had an exemption to stay open to 2.00am. Sergeant Martin said he took that to mean that the licensee had applied for and been granted a special licence. He said he did not sight a copy of the licence. Sergeant Martin testified that he had two further interactions with Lockwood that night; the first at 12.15am where they discussed changes to the one-way door policy and second time at 1.00am when he told Lockwood that the premises needed to stop serving drinks at about 1.30am to enable everyone to get out (by 2.00am). He said the music stopped playing at about 1.45am and that by 2.00am all patrons were out of the premises.

The Licensee (Mr Meek) in Response

[5] Mr Meek gave evidence that he relied on the provisions of clause 4.6.1(ii) of the Waikato District Council Local Alcohol Policy (LAP) 2017 to trade until 2.00am. The clause is headed ***"Maximum trading hours"*** and reads ***"New Years Eve 7.00am to 2.00am the following day"***.

[6] He went on to say that with this in mind he had been opening until 2.00am every New Year's Eve since 2018. In 2018 and prior to him advertising his intention to do so He contacted Constable Stevenson who was based in Raglan and told her that his interpretation of the LAP led him to believe that he could operate until 2.00am. He said Constable Stevenson never got back to him to say he was wrong. Mr Meek said that in

subsequent years he continued to operate through until 2.00am with the full knowledge and connivance of the Police.

[7] Mr Meek maintained that he had an arguable case to remain open until 2.00am on New Year's Day but that in future he would observe the trading hours set down in the Licence. He said it was pointless applying for a special licence as the LAP made it clear that they would only be granted in exceptional circumstances.

[8] Mr Meek called as a witness Mr Bevin Lockwood who he had employed to manage security at the venue for a number of years. Lockwood denied saying to Sergeant Martin that they had permission to stay open until 2.00am.

Discussion

[9] The prime document governing the operation of the business is of course the licence and not the LAP. The licence makes it clear that the premises must not operate (including the playing of music) past 1.00am. Mr Meek is an experienced operator and should have known that.

[10] In mitigation and we are in no doubt that the licensee operated through until 2.00am on New Year's Day over the past six years in the mistaken belief that he was entitled to do so in accordance with clause 4(6)(ii) of the LAP currently in force. We note that the Police were aware of Mr Meek's interpretation of the LAP and did nothing to disabuse him of it.

[11] We further note the conflicting evidence of Sergeant Martin and Mr Lockwood regarding permissions but in the end it matters little. Clearly Sergeant Martin formed the opinion that a special licence was in place. It wasn't.

[12] We find the allegation proved but note the extenuating circumstances. That is reflected in our decision.

The 22 January 2023 Allegation

[13] The Police allege the respondent traded in contravention of the conditions of the venue's licence. Clause (c) of On-Licence 14/ON/16/2023N issued to Rockaway Beach Limited requires a one-way door policy to be in operation ***Monday to Sunday from 12 Midnight***. The Police say that in deciding to suspend the one-way door policy the

licensee breached s 259(1)(a) of the Act.

[14] The Police called two witnesses. Constable Benjamin Reed gave evidence that he was working in the Raglan area and towards the end of his shift he was tasked to complete a Licensed Premises check at the Yot Club. He arrived there at approximately 1.00am by which time the Yot Club was the only licensed venue open for business and parked opposite the Raglan Library approximately 60 metres from the Yot Club only to observe a male urinating onto the side of the library building. Constable Reed said he walked towards the Yot Club where he met Clare Sturzaker, the District Council's Senior Alcohol Licensing Inspector. She informed him that she had recently observed a female urinating on the centre island not far from the Yot Club.

[15] Constable Reed said that he and Sturzaker entered the premises where he noticed that a security staff member appeared to be blocking the entrance to the bar area while talking to Sturzaker. They entered the bar area where he engaged the security staff member who asked him "Everything alright?". He said "Yes" and moved past him. Later and outside the immediate bar area he observed a patron holding four bottles of beer in his hand talking to Constable O'Brien. They together assessed the patron as 'influenced' based on the Intoxication Assessment tool. Later when he got back to the patrol car he observed three people urinating against the library building.

[16] In response to questioning from Mr Meek, Constable Reed said his statement of evidence was based on his recollection of events. He did not make any notes in his Police notebook.

[17] The second Police witness was Inspector Clare Sturzaker. She said in evidence that she arrived at the Yot Club at approximately 12.33am where she parked her car directly opposite the Bow Street entrance to the premises. While waiting for the Police to arrive so she could conduct her compliance check she observed a male urinating on a Pohutukawa tree after which he was allowed entry to the premises. She also observed two females exiting the Yot Club and make their way to the vicinity of the same Pohutukawa tree where they proceeded to urinate. On completion of their business they walked back over the road and were allowed to re-enter the Yot Club.

[18] Later and along with Constables Reed and O'Brien she entered the premises where they were stopped by another staff member she now knows to go by the name of

‘Paulie’. A brief exchange took place after which she proceeded to conduct her compliance check. While she was recording her findings ‘Paulie’ directed a torch at her shining the light directly in her face making it hard to read the signage.

[19] Shortly after she was approached by Mr Meek who was the named Duty Manager. He asked her if she needed anything. She replied “No, not at this time”. Shortly after she made her way outside where she was informed that the toilets were not working.

[20] At approximately 1.03am Inspector Sturzaker re-entered the interior of the premises where the staff were cleaning up with no patrons present. At that time there were still 20 patrons in the outside area.

[21] Responding to a question from Mr Miller, Inspector Sturzaker said that once the Duty Manager became aware that the toilets were non-functioning he should have closed the premises. At that point the premises failed to meet building code requirements.

The Licensee (Mr Meek) in Response

[22] Mr Meek said in evidence that he first became aware of the toilet blockage at about 10.45pm on the night in question. All three toilets were blocked. Following a failed attempt to unblock them he informed the patrons he could either close the premises or remain open with patrons having to use the public toilets approximately 100 metres distant from the venue. The patrons urged him to remain open. In order to facilitate this he suspended the one-way door policy and allowed patrons wearing wrist bands to exit the premises, go to the toilet and then re-enter the Yot Club after midnight provided they weren’t intoxicated. Mr Meek said he took full responsibility for that decision made in unusual circumstances.

[23] Mr Meek evidenced that he did not re-open the premises on the Saturday. He waited until the next day by which time his plumber had unblocked the toilets.

[24] He further said that neither the Licensing Inspector nor the Police who were aware of the toilet blockage had advised him to close the premises. He took that to be an endorsement of his decision to remain open.

[25] In response to questioning from Senior Sergeant Hall Mr Meek he said he did not, in anyway, condone the actions of ‘Paulie’. They were wrong. He had spoken to ‘Paulie’

and advised him his conduct was unacceptable.

[26] Senior Sergeant Hall in further questioning put it to Mr Meek that the public toilets were approximately 300 metres from the Yot Club, not 100 metres. They agreed to disagree.

Discussion

[27] Neither the evidence of Constable Reed nor that of Licensing Inspector Sturzaker was particularly helpful in determining the matter at hand. We note the time-line difference between the two. Constable Reed said he arrived at the venue at around 1.00am. Licensing Inspector Sturzaker said she entered the premises twice; the first time with Constable Reed for the compliance check and the second time by herself at 1.03am by which time the staff were cleaning up. The discrepancy is probably reflective of the fact that Constable Reed failed to record the details in his Police notebook relying instead on his memory.

[28] Mr Meek admitted he took it upon himself to suspend the venue's one-way door policy once he became aware the toilets were blocked. In doing so he breached the conditions of his licence.

[29] We note further that the decision to remain open meant that the licensee was operating in breach of the building code.

[30] We are however mindful of the unusual circumstances surrounding these breaches and particularly the fact that neither the Licensing Inspector nor the Police counselled the licensee to close the premises even though they were aware of the circumstances that caused Mr Meek to suspend the one-way door policy and continue trading.

Decision

[31] In respect of the 1 January 2023 allegation we make the following order:

On-Licence 14/0N/16/2023 issued to Rockaway Beach Limited is suspended for 24 hours from 9.00am on Sunday 24 December 2023 until 9.00am on Monday 25 December 2023.

[32] In respect of the 22 January 2023 allegation and while we are satisfied that the grounds specified in the application have been established we are not persuaded that it is desirable for us to make an order. We therefore decline to do so.

[33] One final word. Mr Meek clearly pushes boundaries. It would be wise for him to exercise a degree of caution in doing so.

District Court Judge P R Connell
Chairperson
Alcohol Regulatory and Licensing Authority