

[2014] NZARLA PH 405

IN THE MATTER

of the Sale of Liquor Act 1989

AND

IN THE MATTER

of an application by **SUKHDEV SINGH** pursuant to s.123 of the Act 1989 for renewal of a General Manager's Certificate

BEFORE THE ALCOHOL REGULATORY AND LICENSING AUTHORITY

Deputy Chairman: District Court Judge J J Weir
Member: Ms J D Moorhead

HEARING at TAURANGA on 3 June 2014

APPEARANCES

Mr J H Wiles – for applicant
Sergeant N P McGlone – NZ Police – in opposition
Mr R Burgess – Western Bay of Plenty District Licensing Inspector – in opposition

RESERVED DECISION OF THE AUTHORITY

Introduction

[1] This is an application for the renewal of a manager's certificate which was granted on 18 April 2012 by the Auckland District Licensing Agency.

[2] The application is opposed by the Police on the basis that the applicant is not a suitable person to hold a manager's certificate.

Background

[3] The applicant Mr Sukhdev Singh read a prepared brief of evidence to the Authority. In that brief of evidence he acknowledged that he had been guilty of "misdeed" in the past but that the last time he failed a controlled purchase operation (CPO) was on 17 May 2007 in circumstances where he suggested at least part of the fault lay with Sergeant McGlone because he instructed a volunteer to lie about his age.

[4] He confirmed that he had obtained a General Manager's Certificate from the Auckland District Licensing Agency in April 2012 because at that time he was assisting a friend Harpreet Singh in running his business in Kumeu and he was spending most of his time in Kumeu.

[5] The reason for his application to renew the licence was that he is now needed to help out at an off-licence known as "Te Puna Liquor" owned by Samra Holdings Limited. He said that he was not a director of any of the Samra group of companies which own at least four off-licensed premises.

The Opposition

[6] Sergeant McGlone gave evidence on behalf of the Police opposing the application and also called Constable Blinkhorn to give evidence in support of the opposition.

The Evidence of Sergeant McGlone

[7] Sergeant McGlone produced a two page document outlining the relationship between the Samra group of companies, businesses which they owned, and the relationship of the defendant with the directors of those companies. Those documents (which were not contested by the applicant) confirm that while he might not be a director of any of the companies, his wife, Paramjit Kaur is a director of those companies.

[8] He attached to his brief of evidence a series of decisions involving the Samra group of companies and the applicant Sukhdev Singh. These are:

- [a] Decisions numbered NZLLA PH 355 360/2008. Those decisions resulted in Mr Singh's manager's certificate renewal being refused and him being removed from the directorship of Samra Enterprises Limited.
- [b] Decision number NZLLA PH 204/2010. This was an application by a company known as NZ Samra Limited for a licence to operate as "Paeroa Liquor" in October 2009. The application was opposed by Police and the Hauraki District Licensing Agency Inspector and was subsequently refused by the Authority following a hearing in February 2010. In that written decision, reference is made either directly or indirectly to the applicant at paragraphs [9], [20] to [26], [30], [44], [52] to [59], [64] and [66]. The conclusion by the Authority at paragraph [66] is as follows:

"We cannot escape the inevitable conclusion that it is Mr Sukhdev Singh that is in fact the driving force behind the application."

[9] Sergeant McGlone further testified that in his application for the General Manager's Certificate, he did not disclose any details of his previous history involving the sale of liquor. In particular there was no reference to any of the matters that he personally faced before the Authority in 2008 which expressly found at paragraph [43] that he was *"quite unsuitable to be the holder of a General Manager's Certificate"*.

[10] Sergeant McGlone further testified that the applicant had given his residential address of 6 Deacon Road, Kumeu which was the address of the owner of the business. He said this was not the truth of the matter because in fact Mr Singh was still residing in the Bay of Plenty at his residential address at Waterside Drive. Mr Singh in his evidence confirmed that Waterside Drive was his permanent residential address.

[11] Sergeant McGlone produced a letter from a director of the company Norwest Liquor Limited operating at 63 Main Road, Kumeu which confirmed that the applicant was a family friend and that he had given assistance to the business during 2012 but he was not in paid employment and no details could be provided of the periods of time that he spent up in Kumeu. His assistance was described as *"simply a favour for our family in return for past assistance which was also unpaid."*

[12] The letter signed by Mr Singh as director of Norwest Investments Limited (and produced as exhibit 10 to Sergeant McGlone's brief of evidence) concluded by saying "*had we been aware of the full extent of Sukhdev Singh's history regarding the sale of liquor to minors we would not have given support to his application.*"

The Evidence of Constable Blinkhorn

[13] Constable Blinkhorn gave evidence with regard to a complaint made by the applicant to Constable Blinkhorn on 27 April 2013. This complaint was to the effect that his Nissan Torano motor vehicle registered number DWQ991 had been stolen from an address in Greerton, Tauranga.

[14] Subsequent enquiries led to Constable Blinkhorn locating the motor vehicle in a shed at the back of a shop at Te Puna, known as "Super Clearance Store". That store is owned by the applicant, Sukhdev Singh and Constable Blinkhorn spoke to him in the store known as "Te Puna Liquor Centre" next door to the "Super Clearance Store". Mr Singh's explanation was that his brother must have borrowed the vehicle without his knowledge and that he had not been in the back of his store in the 14 days since the vehicle had been stolen. Subsequent enquiries by Constable Blinkhorn confirmed that Mr Singh had rung up the insurance company the same morning and had cancelled a claim which he had made with the insurance company with regard to the stolen vehicle. He offered no explanation for the cancellation.

Decision

[15] The Police and the District Licensing Inspector oppose the application for renewal on the basis of the applicant's character and reputation in terms of the criteria set out in s.126(a) and (d) of the Act. The onus of proof lies with the applicant to prove that he is suitable and that his certificate should be renewed. See *Page v Police* unreported High Court, Christchurch AP 84/98, 24 July 1998. Pankhurst J stated in regard to suitability:

"... the applicant for an on-licence must demonstrate his or her suitability. In other words what is required is a positive finding. That implies an onus upon the applicant that demonstrates suitability. Such suitability is not established in a vacuum but in the context of the particular case: for example, the place, the intended business itself, the hours of operation and the intended activities, provide the basis for the assessment of the individual."

[16] What has clearly been demonstrated by the decisions referred to, is that the applicant has been the subject of very adverse findings by this Authority.

[17] The applicant did not disclose this history when he made his application for a General Manager's Certificate to the Auckland District Licensing Agency. If he had, the Authority has little doubt that his application would have been refused.

[18] The applicant was dishonest in describing himself as residing in Kumeu in that application when his permanent address has always been, for present purposes, in Waterside Drive, Tauranga.

[19] It is ingenuous for the applicant to say that he has nothing to do with the running of any of the Samra Group of companies. In the past the Authority has found to the

contrary (see decision number NZLLA PH 204/2010 paragraph [66]. In our view that position still pertains.

[20] Mr Singh's most recent complaint to the Police with regard to his allegedly stolen motor vehicle casts further aspersions upon his character.

[21] The application for renewal is therefore accordingly refused.

DATED at WELLINGTON this 25th day of June 2014

A E Cannell
Deputy Secretary