

[2014] NZARLA PH 484 - 486

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of an application pursuant to s.285 of the Act for suspension or cancellation of General Manager's Certificate number GM/057/1091/2012 issued to **BARRY JOHN O'REGAN**

AND

IN THE MATTER

of an application pursuant to s.280 of the Act for suspension of on-licence number 057/ON/115/2012 issued to **SHARK & TATIES LIMITED**, in respect of premises situated at 40 Douglas Road, Amberley, known as "The Railway Tavern"

BETWEEN

GINA LOUISE KYNE
(Police Officer of Christchurch)

Applicant

AND

BARRY JOHN O'REGAN

First respondent

AND

SHARK & TATIES LIMITED

Second respondent

AND

IN THE MATTER

of an application by **SHARK & TATIES LIMITED**, pursuant to s.18 of the Sale of Liquor Act 1989 for renewal of an on-licence in respect of premises situated at 40, Douglas Road, Amberley known as "The Railway Tavern"

BEFORE THE ALCOHOL REGULATORY AND LICENSING AUTHORITY

Chairman: District Court Judge J D Hole
Member: Mr D E Major

HEARING at CHRISTCHURCH on 18 July 2014

APPEARANCES

Constable S J Joy – NZ Police – applicant
Mr D M Jackson – for both respondents and applicant for renewal of on-licence
Mr P M Shaw – Medical Officer of Health – to assist
Ms D C Morrison – Hurunui District Licensing Inspector – to assist

Objectors: Ms V J McIntosh
Mr J W Mackey

DECISION OF THE AUTHORITY

[1] This decision relates to two enforcement applications and one application for the renewal of an on-licence.

[2] The enforcement applications seek the suspension of the General Manager's Certificate issued to Mr O'Regan and the on-licence issued to Shark & Taties Limited in respect of "The Railway Tavern" at Amberley. It was accepted that on 15 February 2014 a controlled purchase operation took place at the licensed premises. Two underage volunteers entered the premises and one of them purchased two bottles of beer. At no stage were they asked for identification, age or date of birth. Thus, in respect of the application brought under s.285 of the Act it was accepted that on 15 February 2014 the manager failed to conduct the licensed premises in a proper manner and that his conduct on that occasion was such as to show that he was not suitable to hold a General Manager's Certificate. In respect of the application brought under s.280 of the Act it was accepted that the licensee had committed breaches of ss.239(1) and 245(1) of the Act.

[3] In each case an appropriate suspension was agreed to.

[4] Accordingly, in respect of the application for the suspension of the General Manager's Certificate, Mr O'Regan's certificate is suspended for 30 days commencing 7.00 am on 1 August 2014.

[5] In respect of the application to suspend the on-licence, the on-licence issued to Shark & Taties Limited is suspended for 24 hours commencing 7.00 am Saturday 16 August 2014.

[6] These orders are deemed to be negative holdings in terms of ss.289 and 290 of the Act. If the licence has not already been cancelled, three negative holdings incurred within a three year period will result in an application to the Authority for cancellation of the licence. If the certificate has not already been cancelled, three negative holdings incurred within a three year period will result in cancellation of the certificate.

[7] After negotiations, the application for the renewal of the on-licence was settled. The Medical Officer of Health consented to a renewal of the application upon the basis that the renewed term expired on 30 August 2015. He agreed to this as the applicant acknowledged to him the concerns which he had raised concerning intoxication on the premises.

[8] The Inspector also consented to a renewal of the on-licence provided the renewed term expired on 30 August 2015. She did this because she had received certain specific undertakings from the applicant which she was prepared to accept.

[9] The Police did not oppose the proposed renewal.

[10] The objectors also agreed to the renewal application because of a written undertaking given by the applicant to the Authority. This reads:

“Shark & Taties Limited being a duly incorporated company and licensee hereby undertakes to the Authority that:-

1. *It will remove any and all ‘loud speakers’ from the beer garden;*
2. *It will not engage any live music performers to play in the beer garden unless it has obtained the prior written approval of John Wayne Mackey and/or Vivienne Judith McIntosh.”*

[11] All parties acknowledged that with the foregoing matters having been resolved, the application meets the statutory criteria and accordingly the application can be granted.

[12] Accordingly, the application for the renewal of the on-licence is granted for a term expiring on 30 August 2015.

DATED at WELLINGTON this 25th day of July 2014

A E Cannell
Deputy Secretary