



te kaunihera ā-rohe o
matamata-piako
district council

Matamata-Piako District Licensing Committee

APPLICATION 163.2021.230.2

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

AND

IN THE MATTER of an application by **Ajay Kumar** for the renewal of a manager's certificate pursuant to section 224 of the Sale and Supply of Alcohol Act 2012

HEARING at the Matamata-Piako District Council Chambers in Te Aroha on 15 April 2024.

MATAMATA-PIAKO DISTRICT LICENSING COMMITTEE

Chairperson: Ms Sue Whiting
Members: Mr Ross Murphy
Mr Alan Sciascia



APPEARANCES

Mr Ajay Kumar – The applicant
Sergeant Ryan Johnston - NZ Police - in opposition
Mr Kenneth Ranger - Licensing Inspector, Matamata-Piako District Council – in opposition

DECISION OF THE MATAMATA-PIAKO DISTRICT LICENSING COMMITTEE

1. The Manager's Certificate is renewed for a truncated period of *fifteen months* to 27 April 2025.

THE APPLICATION

1. This is an application by Ajay Kumar pursuant to s.224 of the Act for the renewal of a Manager's Certificate. Mr Kumar is a duty manager at Black Bull Morrinsville.
2. The criteria to be considered under section 227 is as follows:
 - a. Suitability.
 - b. Relevant convictions.
 - c. The manner in which the manager has managed the sale and supply of alcohol pursuant to the licence with the aim of contributing to the reduction of alcohol-related harm.
 - d. Matters in the Inspector and Police reports.
3. Reports by the Inspector and the Police were received. The application was opposed by the Police and the Inspector on the grounds of suitability.

4. The grounds for the opposition relate to a recent conviction imposed on 26 July 2023. On 21 May 2023 Mr Kumar drove his vehicle with a breath alcohol level over 400 micrograms per litre of breath. The level was 881, over twice the legal limit. This directly affects the suitability of the applicant.

THE HEARING – THE APPLICANT

1. Mr Kumar gave his evidence first. He explained that he came to New Zealand in 2017 for studies then started working in a liquor store in 2015. He has extensive liquor industry experience and has held his manager's certificate since 2017. Due to his hard work and experience he was offered a job at the Black Bull Liquor Morrinsville in 2018. In all the years since, he has managed the business responsibly with no compliance issues.
2. In May 2023, he was convicted of driving excess breath/alcohol and he said this was the worst day of his life. His manager's certificate was subsequently suspended for a month. He said this was the first mistake he has made and it has affected him emotionally.
3. He was so remorseful he started to make donations to charities like the Red Cross and he attended events for charity fundraising. He submitted references as evidence of character and he also presented some relative case law regarding manager's certificate renewals heard in similar circumstances to this. He has made contact with a Hamilton organisation regarding an alcohol assessment and was just waiting to see them since he recently came back from India after getting married.
4. In cross-examination Sergeant Johnston asked the applicant how he ended up behind the wheel. Mr Kumar explained he went to the birthday party of a friend at about 5.00pm and he had no lunch. He left with a friend that was sober and then vomited in his vehicle. The friend got angry as he still had to collect his wife from work and they had an argument. He had planned to stay overnight, but due to the heated argument with his friend he did not. Mr Kumar did not clearly remember what happened and how he ended up behind the wheel. He said that he and his friend are still not talking to each other. Sergeant Johnston asked the applicant where the damage to his vehicle came from and Mr Kumar said he had no memory of how his vehicle got damaged.
5. Mr Kumar said that a Policewoman came to the shop at a later date. She obviously advised him she had filed a section 285 suspension application with the Alcohol Regulatory Licensing Authority (ARLA) and said that once he has completed the ARLA suspension, his renewal would not be opposed to be renewed. The Police later provided proof to the Committee of this suspension.
6. The Licensing Inspector, Kenneth Ranger asked the applicant further questions regarding his charity work and the incident which reiterated what had already been given in evidence. He asked the applicant if he had read a copy of the ARLA suspension decision and Mr Kumar said he had and he agreed with it. Mr. Ranger referred everyone to paragraph 3 and pointed out that it shows that the applicant agreed he is not a suitable person. He then asked the applicant if he agreed that he is not a suitable person and is he disagreeing now. Mr Kumar responded that at that time he had to agree, thinking it will only be for the month.



7. Mr Ranger asked the applicant what the main purpose of the Sale and Supply of Alcohol Act 2012 is. Mr Kumar responded that it is to reduce alcohol harm to the community and prevent intoxicated persons from coming onto the premises and buying alcohol. Mr Ranger then asked the applicant if he was adhering to this when he went drinking that night. Mr Kumar agreed he was not being responsible, that he was a risk and that it was an unintentional mistake.
8. There was further questioning and discussions relative to the alcohol interlock device and the general penalties for drink driving. The Committee members asked more of Mr Kumar regarding his role with Black Bull Morrinsville. Mr Kumar confirmed he has been the main store manager since 2018 and that he does the controlling budgets and manages the store daily and is responsible for the staffing.

THE POLICE EVIDENCE

1. During Mr Kumar's evidence Sergeant Johnston advised that the Committee has a copy of the Police Summary of the incident in May 2023 and he has submitted the ARLA decision as evidence. He also explained that the Sale and Supply of Alcohol Act requires any convictions against an applicant to be investigated and there is usually a stand down period of two years.
2. The Sergeant confirmed that the applicant's breath reading was 881 micrograms per litre of breath. He said usually the upper level is 400 and lower legal limit is 250. The level shows either a major error of judgement or repetitive behaviour. He then called Constable Cadwell. Constable Cadwell has been a member of the Police for two years. Prior to this he was a duty manager for over a decade at licensed premises in Auckland and in the South Island.
3. Regarding the incident, Constable Cadwell explained that while travelling to an unrelated call out with another officer, he saw a vehicle swerving on the state highway, while also increasing and decreasing speed, so he locked it on the radar system. Realising the severity of the situation he made a decision that they needed to deal with this immediately and not go to the other job.
4. As they were approaching the Police saw that the vehicle was moving into oncoming traffic so they flashed the lights. The vehicle continued decreasing speed, pulling off almost in the embankment. They approached the vehicle and spoke to the applicant Ajay Kumar. They noticed a significant amount of vomit and glass shards and that the windscreen was significantly damaged. There was also damage to the front of the vehicle and the underside.
5. After speaking to Mr Kumar, they took him to Morrinsville Police Station to be processed as it was not safe at the side of the highway. There they completed the breath alcohol test. The Police were unable to establish what happened to the vehicle regarding the damage and where he had been drinking.
6. Sergeant Johnston asked Constable Cadwell if he can remember what Mr Kumar said regarding where he was and what he drank. He advised that Mr Kumar said he had been drinking whiskey and it was difficult to establish where he came from, but he mentioned Tauranga. Mr Kumar also mentioned that he had work that morning. He was heading in the direction of Morrinsville. In his summary Constable Cadwell said, that in his experience this was one of the more severe examples of drink driving he had seen.



THE LICENSING INSPECTOR

1. Licensing Inspector Kenneth Ranger gave his evidence. He opposed the application for the renewal of the manager's certificate. He referenced the well-known decision, GL Osbourne 2388/95 which recommends a five-year stand-down period, with a minimum stand-down period of two years being appropriate for isolated offences. In his opinion the offence calls into question the manager's suitability.
2. The Committee confirmed to the Inspector that this guidance is for new managers. We asked what did the Inspector feel a suitable time-line for the renewal. The Mr Ranger said that personally he would not be renewing the certificate. He has strong views on drink driving and had seen a lot of carnage caused by drunk drivers. The applicant was grossly intoxicated with no regard for others therefore he feels he is not suitable. He felt that the applicant's slowness in doing alcohol rehabilitation, his good works and rehabilitation actions are driven by his residency application and not by any remorse or concern by his behaviour.
3. The Committee asked Mr Kumar to give a closing submission. He responded that it was his biggest mistake that night. He is trying to make it right and taking more precautions. He asked to please renew his manager's certificate and to give him another chance to show it was a mistake. It was not done with intent.

COMMITTEE'S DECISION AND REASONS - SHOULD THE MANAGER'S CERTIFICATE BE RENEWED?

1. In this instance the Police have proceeded with a section 285 suspension application to ARLA and that was completed on the papers and a suspension was imposed, being 28 days from 30 September 2023. When this process happens suitability as a whole is not examined, so it is appropriate for the agencies to oppose the next renewal so that suitability can be examined by the District Licensing Committee.
2. In making our decision we have considered all the criteria set out in section 227 of the Act. The concerns relate solely to Mr Kumar's suitability to hold a manager's certificate based on his recent driving with excess breath alcohol conviction.
3. A duty manager is responsible for ensuring compliance with the Act and with the specific conditions of the licence for the premises they are managing. The manager must take steps to operate the premises in a manner that minimises harm caused by the excessive or inappropriate consumption of alcohol. Of importance in Mr Kumar's situation is that a duty manager must be able to demonstrate high standards of behaviour both on and off-duty (Henry v Strange LLA 1632/96). Mr Kumar is experienced and apart from this one incident we were not presented with any evidence suggesting he does not properly carry out the responsibilities of a duty manager.
4. Along with well-known case-law relating to off-duty behaviour and convictions such as re Osbourne LLA PH2388/95, the Committee also considers other precedents. In relation to suitability to being a manager in re Sheard [1996] 1 NZLR, which states "*the real test 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 holding a licence*".



5. Mr Kumar has assured us that he will not do this again and that this has been a big lesson learnt. Mr Kumar now has firsthand experience of alcohol related harm and the potential consequences of excess consumption. Mr Kumar was genuinely remorseful for the offending. He has taken steps to address the underlying issues that have led him to drinking that night resulting in a lapse of judgment.
6. We are satisfied that this offending was a one-off, and it was out of character. We also take into account that the Police and the Inspector have confirmed there have never been any issues from the premises Mr Kumar manages. He is very experienced and he showed considerable remorse for his actions. We are satisfied that a renewal can be granted to Mr Kumar for a truncated period,
7. In considering the length of the truncation we take in to account that if the renewal period was for twelve months then that only allows eight months from now for the agencies to monitor behaviour and performance. Secondly the guidelines for a new manager's certificate being even granted initially gives a stand-down period of two years if the applicant has an isolated offence. We see that two-year period as a guide from the Authority to monitor suitability. Therefore this certificate is renewed for fifteen months until 27 April 2025.

Dated 13 May, 2024



Sue Whiting
Chairperson
Matamata-Piako District Licensing Committee