

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

AND

IN THE MATTER of an application pursuant to
S219 of the Act by
RUTH AMY MAIR for a
Manager's Certificate.

DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson: Mr R.J.Wilson

Members: Mr A.J.Lawn
Mr P.R.Rogers

HEARING at Christchurch on the 25th June 2015

APPEARANCES

Ms R A Mair, applicant
Mr C.Crofts, applicant's partner
Ms J. Davison, Alcohol Licensing Inspector
Sgt J. Harris, NZ Police
Mrs J. Anderson, Hearings Adviser, CCC

Introduction

We are dealing with an application by Ruth Amy Mair for a Manager's Certificate pursuant to s219 of the Act. Ms Mair has the required qualifications and experience and produced suitable references. She also ticked the box on her application indicating she had no criminal convictions. Unfortunately this was not correct and the Inspector and NZ Police therefore opposed her application thus requiring a public hearing.

Evidence of Applicant

Ms Mair told us in response to an initial question from the Chair, that she had not disclosed a conviction on her application because she was confused as to when it was and thought it might have been wiped by the Clean Slate legislation. She also said that after an unsettled early life

she was now well established in the community, had a good job, a partner of two years and was looking forward to a career in the hospitality industry. She believed she was highly regarded in her work and even hoped that she might advance to owning a hospitality business at some time in the future. She had not appeared before the Court for four years.

Questions by NZ Police

Sgt Harris obtained leave of the Committee to refer to Ms Mair's Criminal and Traffic History which he would later produce in evidence. Ms Mair was given a copy. Sgt Harris asked Ms Mair to explain a number of other matters listed within the last five years including an Obtaining by Deception and a Breach of Periodic Detention. Ms Mair was vague in her replies saying that the offences were some time ago and she scarcely remembered the details.

Questions by Alcohol Licensing Inspector

Ms Davison referred Ms Mair to the course she took to obtain her qualification and asked whether she could recall talking about her convictions at that time. Ms Mair was unsure. She was also not sure whether her employer knew about the hearing today although she confirmed he did know about her previous convictions. She also believed that her employment would continue even if she was not granted her Manager's Certificate. Ms Davison asked what Ms Mair understood to be the object of the Act to which she gave only a partial answer. She was more forthcoming when asked about the signs of intoxication. Ms Davison then referred to a telephone message she had left for Ms Mair asking her to return the call to which she had not had a response. She questioned whether Ms Mair thought the application was important. Ms Mair responded that the application was important. Her life had changed after the sentence of Community Detention when she had time to think about her goals in life and what she wanted to achieve.

Questions by the Committee

To the Committee Ms Mair said that she was nearly 29 years of age and had 18 months in her present employment. She had a years previous experience behind a bar. She explained that her present role is much more than serving drinks behind the bar. She actively looks after customers, sees that the trading hours are strictly adhered to and co-operates with Police and Licensing Inspectors when they visit. She also trains and monitors other staff. She agreed that she really wanted the Certificate but was prepared to wait another year for it if necessary. She was committed to the industry. She accepted that she had turned a blind eye to the matter of convictions and should have researched the matter if she was in doubt.

Evidence of Carl Crofts

Mr Crofts stated that he had known Ms Mair for the last six years and they had been in a relationship for the past two years. In that time he had seen her change as a person. They have shared goals with respect to getting a house and having a family in due course. He does not

want to see her held back in her career and thought she deserved the Certificate. Mr Lawn explained the case law behind the usual gap of five years between past offending and the granting of a Manager's Certificate and asked why Mr Crofts thought the Committee should make an exception. He responded it was because of how much she had changed and how far she had come since. There were no other questions for Mr Crofts.

Evidence of NZ Police

Sgt Harris submitted Ms Mair's criminal and traffic history which recorded nine criminal matters dating back to 2008 and nine traffic matters. He noted that none of these matters was related to misuse of alcohol. To Mr Lawn Sgt Harris said he was unaware that the Police had not opposed an application by Ms Mair's employer to appoint her as a Temporary Manager.

Closing Statements

Sgt Harris stated that he considered the applicant was relatively impressive and that it was unfortunate for her that she had two convictions within the last five years. He queried whether the failure to disclose was an honest mistake or a deliberate omission. He referred the Committee to relevant case law particularly the Osborne decision.

Ms Davison agreed that the applicant presented well and could be an asset to the industry. However there were standards to be upheld and consistency was necessary in upholding these. She believed she would be able to support Ms Mair's application in the future. She noted it was a pity Ms Mair's employer had not attended the hearing.

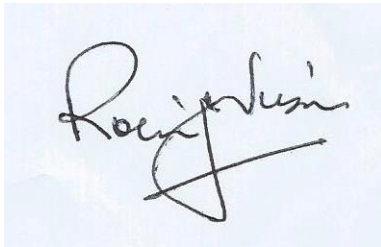
The Committee retired to discuss its decision and returned to explain its reasons for declining the application. The Chairperson complimented Ms Mair's presentation and her enthusiasm for the industry. He also commended Mr Crofts for his support. He explained to Ms Mair that high standards had been set for Managers and this was part of the process of improving the management of the industry. He quoted part of the decision in Stewart LLA PH 880-881/2005 where it was said *"We believe that raising the bar for the holders of General Managers' Certificates and keeping it at a certain height has the potential to bring about a reduction in the abuse of alcohol nationwide. If certain otherwise meritorious applicants suffer in the process, that may not be too high a price to pay in order to achieve this long-term goal."* The Chairperson hoped that Ms Mair had learnt from her experience today and would continue in the industry.

Decision

The application of Ruth Amy Mair for a Manager's Certificate pursuant to s219 of the Act is declined. s222 of the Act sets out the criteria for Managers Certificates. Among other things the Committee must consider *"(b) Any convictions against the applicant"*. We have taken into account Ms Mair's otherwise good presentation but we cannot fail to take cognisance of the fact that her application was deceptive in the matter of the disclosure of convictions. Whether

this came about through confusion and genuine forgetfulness as Ms Mair would have us believe or was a deliberate attempt to conceal is largely irrelevant. The fact remains that she does have convictions and two at least are within the five year period suggested by the former Liquor Licensing Authority in Osborne LLA PH 2388/95 where it said *"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..."*. We accept that abuse of alcohol is not part of Ms Mair's history but dishonesty is and we consider that a serious matter with respect to the standards expected of Managers. We are not convinced that the submissions made by Ms Mair and her partner, though encouraging, are sufficient for us to depart from our usual practice which is to follow the guidance given in the Osborne decision. For that reason the application is declined. We look forward to receiving another application from Ms Mair when she has fulfilled the five year period free of convictions.

DATED at Christchurch this 29th day of June 2015.

A handwritten signature in black ink on a light blue background. The signature is cursive and appears to read 'R.J. Wilson'.

R.J. Wilson
Chairperson
Christchurch District Licensing Committee