

Decision No. 60C [2017] 1717

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012.

AND

IN THE MATTER

of an application for an Off-licence
under s. 99 and s. 40 (remote sales)
of the Sale and Supply of Alcohol Act
2012 by **Liquorpoint.NZ Limited** in
respect of premises at **136 Hoon
Hay Road, Christchurch**, known as
Liquorpoint.NZ.

ORAL DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson: P R Rogers

Members: Mr P Buttell and Mr D Blackwell QSM

HEARING at Christchurch on the 4 July 2017

PRESENT: **Brendan Hyndman** – Director of Liquorpoint.NZ Limited
Peter Dawber – Witness for the applicant
Anneke Lavery – Licensing Inspector – in opposition
Constable Briget McLaren – NZ Police – in opposition
Peter Shaw – On behalf of the Medical Officer of Health – in opposition
Janet Anderson – Committee Adviser

INTRODUCTION

[1] This matter concerns an application by Liquorpoint.NZ Limited for a new Off-licence at 136 Hoon Hay Road, Christchurch to be known as Liquorpoint NZ. This is to be an internet operation under s. 40 of the Act allowing for remote sales of alcohol.

[2] The Alcohol Inspector, NZ Police and Medical Officer of Health (MOH) were in opposition to the application. In this Decision these organisations will be referred to as the Agencies.

[3] There were no objections from the public or other parties.

[4] The parties to the proceedings were identified. An explanation was given as to how the Hearing would proceed. Mr Hyndman as sole director of Liquorpoint. NZ would give evidence on behalf of the company and is referred to as the applicant throughout the Decision. The Agencies would then have the opportunity to cross examine him. Members of the Committee could ask questions at any time and each of the witnesses could be cross-examined by the other parties.

[5] The opposition related to his suitability subject to s. 105(1)(b) of the Sale and Supply of Alcohol Act 2012.

THE HEARING

[6] The applicant was not represented by counsel and gave a brief summary of his reasons for applying for the licence and was then cross examined by the Agencies. He was questioned over his Business Plan and Host Responsibility Policy and repeatedly gave confusing evidence of how he intended to run his business.

[7] The applicant gave evidence of his previous experience and of holding a managers certificate for a number of years. It has to be said that given his experience the Committee was surprised at his basic lack of understanding of parts of the Act. The applicant said he had obtained the qualifications required under the new Act for a Manager's Certificate.

[8] The applicant had been employed at Super Liquor Elmwood until the owners of the business found out that without their permission he had put Super Liquor Elmwood's name on a webpage for Liquorpoint.NZ, giving the impression that Super Liquor was the supplier. His employers were unaware of this until they saw it on the website. They complained, the matter became an employment issue, and Mr Hyndman left their employment.

[9] The applicant called a Mr Dawber as a character witness. Mr Dawber said the applicant had run a good operation as manager of a Harrington's Bottle Store and that he had been employing the applicant part-time. He then said that after listening to the evidence this morning he could understand the Agencies frustrations.

[10] Constable McLaren gave evidence of having concerns over the application in relation to peculiarities in its content and requested a meeting with Mr Hyndman. A meeting took place with the other Agencies present in an attempt to clarify points concerning his Business Plan and Host Responsibility Policy. At the meeting the applicant agreed to update both documents. They were then re-submitted but after reading them the Constable said she still had the same concerns as to his suitability to hold a licence.

[11] Mr Shaw the representative of the MOH gave evidence of his dealings with the applicant. He said he was still disappointed after the Hearing given the assistance that had been given the applicant as the applicant did not seem to have a clear picture as to how he was going to run his business. Mr Shaw gave an example of an email he received from the applicant dated 9 June 2017 and referred the Committee to the last paragraph:

"Apologies if this has set up further time but again the idea at the start was just a hobby and something I could play around with in years to come instead of operating in a grey area".

Mr Shaw saw this statement as high-lighting the unsuitability of the applicant and the Committee agrees.

[12] In submissions the Agencies were all of the opinion that the evidence from the applicant during the Hearing had not changed their opinion and the applicant's evidence had failed to convince them that he was suitable to hold a licence.

The applicant then made his submission which is reproduced verbatim below:

"Members of the Committee, at this stage I'll explain the reason why I came into this room was to basically apply for a licence. From what I have heard today I feel all the information and it looks like that has been failed.

When I retrieved all this information, I went through all the steps and procedures that everyone had given me ranging from links to other web sites and also how to do a business plan. I thought I'd made everything crystal clear with all my submissions and also information that I have provided here today. It looked better on paper than what it did orally I accept that. And in all honesty I can clearly see that it is better to go away and probably learn from this here and may be look at it a little way the future".

That ended the Hearing.

ORAL DECISION OF THE COMMITTEE.

[13] This Hearing turns on the question of suitability of the applicant and the legislation concerning this can be found at s. 105(1)(b) of the Act which reads:

Criteria for issue of licences

In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:-

(b) the suitability of the applicant:

[14] The Committee today has heard an application by Liquorpoint.NZ Limited for an off-licence endorsed under s. 40 of the Act, allowing for remote sales.

[15] We are taking the step today of making an oral decision and I just want to cover off some of the details. We have heard evidence from the applicant and he has agreed himself that the application process had been confusing; today had also been confusing and that over a period of time there has been a number of changes in his application.

[16] The applicant has not satisfied the Committee that he fully understands the importance of being a licence holder and in a previous case it has been said: "to be the holder of a licence, it is a privilege not a right" and I am afraid to say you haven't convinced the Committee that you should have that privilege.

[17] A lot of what we have heard today has been around suitability and that suitability is not considered in a vacuum. From an outsider, a person looking in at the process may think that someone that has criminal convictions, or alcohol related convictions, is clearly not suitable. However suitability covers a wide spectrum and it's the role of the Committee to consider all matters and there is a well-known case, **Page**, which states that those considerations should not be considered in a vacuum.

[18] So we have heard the evidence today and as I said at the beginning, we have to balance these issues on either side and I think it would be fair to say that the applicant's submission at the end of the Hearing has merely guided us as to our decision.

[19] There was the matter of you falling foul, if you like, of the business rights of one of your employers and that is an issue which goes directly to suitability. You may have to consider in the future taking advice and possible legal advice.

[20] When making the ruling, we are not ruling out that you cannot apply in the future; you can still apply in the future. However you need to have "all your ducks in a row" and as we've said I think you need professional advice in relation to your application. You have got a lot of ideas, I think you need to narrow down your ideas and talk to someone that has experience in this business.

[21] Your application is therefore declined.

DATED this 19th day of July 2017

A handwritten signature in blue ink, appearing to read 'P R Rogers', is centered on the page. The signature is written in a cursive style with a large initial 'P'.

P R Rogers
Chairperson
CHRISTCHURCH DISTRICT LICENSING COMMITTEE