

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

AND

IN THE MATTER of an application by BRENT
BANGOY BUENAVISTA for a
Manager's Certificate pursuant
to s219 of the Act.

DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

PRESENT

Chairperson Mr R.J.Wilson JP
Members Mr D.Blackwell OSM
Ms C.Robinson

Mr H.Little, Alcohol Licensing Inspector,CCC to assist
Mr P.Spang, Alcohol Licensing Inspector,CCC to assist
Senior Constable L.Steele, NZ Police in opposition
Mrs J. Anderson, Hearings Adviser, CCC

HEARING at Christchurch on 13th February 2019

INTRODUCTION

[1] This is an application by Brent Bangoy Buenavista for a Manager's Certificate pursuant to s219 of the Act. The matter has come to a public hearing because the NZ Police have reported in opposition to the application based on Mr Buenavista having been convicted and sentenced on a traffic offence and also of having admitted to another traffic offence for which he was discharged without conviction. The District Licensing Inspector does not oppose the granting of the Certificate.

EVIDENCE OF SENIOR CONSTABLE STEELE

[2] Senior Constable Steele read from his brief of evidence and submitted as exhibits the Summary of Facts in respect of both matters. Mr Buenavista had appeared in the Christchurch District Court on 22nd March 2018 charged with exceeding 50km/H in a suburban street. On 13th February 2018 he had been recording doing 108km/H. He was convicted and fined \$800 plus court costs and disqualified from driving for three months.

[3] On 19th April 2018 Mr Buenavista was stopped by the Police in Queenstown having run a red light. He was found to be a disqualified driver. At a subsequent court hearing Mr Buenavista was discharged without conviction but ordered to attend a Driving Improvement Course and given a further 28 days disqualification. Mr Buenavista had no questions relating to Senior Constable Steele's evidence.

EVIDENCE OF APPLICANT

[4] Mr Buenavista told the Committee that he regretted the offending which had occurred a year earlier. On the first occasion he had been late for a class and was trying to obtain some medication needed by his girl friend before going about his business. He now had a full appreciation of the possible negative consequences of his actions. With respect to the second offence he said that he had agreed to a request from his girl friend to take the wheel when travelling through Queenstown at a busy time. He said his girl friend was not a confident driver. He said this was the only occasion on which he had breached his driving ban.

[5] Since the offending Mr Buenavista said he had obtained a new position at The Coffee Club which was a step up from the lower level work in hospitality he had done previously. His new employer had an expectation that he would obtain his Duty Manager's Certificate. He had earlier completed a National Diploma in Hospitality Management and intended to make a career in the hospitality industry. He was concerned that he might lose his present employment if he were unable to get a Duty Manager's Certificate. He was already conscious that his court appearances could make it difficult for him to obtain some other positions.

[6] Mr Buenavista believed that he had learnt much from having to go to court. He recognised that he had behaved in an immature manner and needed to grow up and start taking responsibility. He was very aware of where he had gone wrong and was determined not to repeat mistakes. He submitted a reference from his employer.

CROSS EXAMINATION

[7] Senior Constable Steele took Mr Buenavista back through the events that had led to the two court appearances. The failure to take regard of the traffic laws on those two occasions did not give confidence that he would be able to carry out his responsibilities under the Sale & Supply of Alcohol Act. Mr Buenavista responded that he believed every case was different and in his case he had demonstrated significant change in the last year. He was very aware how important good performance in his present position was to his future in the industry. Senior Constable Steele pointed out that the stand down guidelines in the Osborne decision which he was arguing should be imposed on Mr Buenavista were intended to allow him time to prove that he had made changes. Mr Buenavista responded that he believed every case was different and in his case he had demonstrated significant change in the last year. He did not think more time was needed.

[8] Mr Little took Mr Buenavista through his work experience and asked him about the volume of alcohol sales at his present employment. It appears that it only amounts to 1 to 2% of turnover and thus constitutes low risk. Mr Buenavista said it was mainly overseas tourists wanting to sample New Zealand beer. Mr Little wanted to know whether Mr Buenavista's job would be in jeopardy if he did not gain the Certificate. He responded that he had obtained the position in part because he held the Licence Controller Qualification and it was an expectation that he proceeds to getting a Duty Manager Certificate. Mr Little asked whether he would be prepared to give an undertaking that, if granted, he would only utilise the Certificate at his present employment. Mr Buenavista agreed that he would and stated that he wanted to stay in his present position for perhaps two years to gain experience at this level before hopefully progressing further in the hospitality industry.

CLOSING SUBMISSIONS

[9] Senior Constable Steele referred to his pre-circulated written submissions which addressed the Osborne guidelines and case law regarding the relevance of previous convictions to an applicant's suitability. Mr Little pointed out that at interview Mr Buenavista had impressed showing an above average knowledge of the requirements for a Duty Manager's Certificate. He considered the present place of employment very low risk and would have no concerns about Mr Buenavista utilising his Certificate there. Mr Buenavista in his final comments reiterated that he had learnt from his mistakes, he had grown up as he put it and was committed to making progress in his career.

DISCUSSION

[10] The Committee agrees that this is an entirely appropriate matter for the Police to bring to a hearing. The breaches of the traffic laws were not minor matters which can be ignored in any assessment of Mr Buenavista's suitability to hold a Manager's Certificate. They displayed a blatant disregard of the law and public safety and must lead to questions as to whether Mr Buenavista would apply similar disregard of the legislation when it comes to compliance with the alcohol legislation.

[11] However we heard from Mr Buenavista that the offending was a year ago and he had matured considerably in that time. We were impressed with his knowledge of the requirements of the legislation and the way in which he presented himself. The Inspector reported positively. We are mindful of the words of Pankhurst J in Page v Police HC Christchurch AP84/98 when he said

" 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 to demonstrate suitability. Such suitability is not determined in a vacuum but in the context of the particular case..."

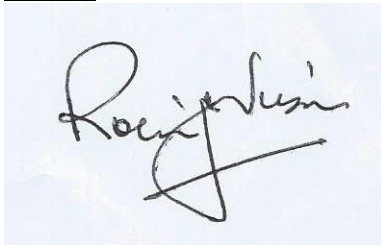
These comments although made in respect of an application for an On Licence apply equally to that for a Manager's Certificate. We were urged by Mr Buenavista to accept that as an individual he had made considerable progress in the year since his offending. He had grown up

as he put it. We are prepared to accept what he says. We believe he has demonstrated his suitability to be granted a Manager's Certificate notwithstanding his disregard of the law just a year ago. We have considered the Osborne decision and the guidelines therein but believe Mr Buenavista can be considered on an individual basis as a person who does not require a further period of stand down. We are also mindful of his commitment to his present employment in a very low risk premise and to his undertaking that if granted a Certificate he would only utilise it there. On balance we believe we can safely grant Mr Buenavista a Manager's Certificate. We think it appropriate however that at least a year should have elapsed since the last offending so the Certificate may not be issued until 1st April 2019 and it will be granted on the condition that it only be utilised at The Coffee Club, Spitfire Square for the first twelve months.

DECISION

[12] Brent Buenavista is granted a Manager's Certificate for a period of one year from 1st April 2019. It shall be a condition that the Certificate be utilised only at The Coffee Club, Spitfire Square for the first year.

DATED at Christchurch this 13th day of February 2019.

A handwritten signature in black ink, appearing to read 'R.J. Wilson', is written over a light blue rectangular background.

R.J. Wilson
Chairperson, Christchurch District Licensing Committee