

IN THE MATTER

of the Sale and Supply of Alcohol
Act 2012

AND

IN THE MATTER

of an application Josias Alberton for
a Manager's Certificate pursuant to
s.212 and 221 of the Act.

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE:

Chairman : Mr G B Buchanan

Members: Mr P Rogers

Mr R J Wilson

Hearing at the Christchurch City Council Chambers, CHRISTCHURCH on the 9th of December 2014.

APPEARANCES

Mr P Spang; Christchurch City Council Licensing Inspector

Sergeant Giddens NZ Police

APPLICANT

Mr Josias Alberton

Introduction

1. Mr Alberton works at the Spice Paragon Restaurant, a licensed premise in Christchurch. His hours of work are usually during the evening and over the weekends. He has been employed here for two years. In the last 4 months he at times supervises the other bar staff, completes stocktake and organises the bar area. His employers have encouraged him to obtain his Manager's Certificate to enable him to undertake responsibilities under the Sale and Supply of Alcohol Act.
2. He was appointed as a Temporary Manager for the premises on 13 November 2014. This appointment was opposed by the Police in a report dated 19 November 2014, which pointed out that Mr Alberton had two previous convictions, in the Christchurch District Court on 6th October 2014.
3. In a decision on the 19th of November 2014, the Christchurch District Licensing Committee did not approve Mr Alberton as a Temporary Manager.

4. In this current application for a Manager's Certificate the Police and the Licensing Inspector oppose the application. They sought a hearing by the Committee to determine the matter.

The Applicant

5. Mr Alberton is a 22 year old, who emigrated from Brazil. He is currently working at Spice Paragon while attending University.
6. Mr Alberton gave candid evidence that he had been apprehended by the police growing and possessing a quantity of cannabis when they searched his home in 2013. He said that he used the drug to relieve his stress while studying at university. He told the committee that he now did not use drugs and understood it was wrong and that it would place his employment in jeopardy.
7. To questions from the licensing Inspector, Mr Alberton said that he understood the harm that cannabis and the excess use of alcohol could cause. He assured the committee that he was able to show how responsible he was by the way he worked at Spice Paragon.
8. Sergeant Giddens produced as Exhibit 1, a summary of facts from Mr Alberton's court appearance and a copy of his criminal convictions, as well as photographs taken at the time of the Police search of his premises. Sergeant Giddens pointed out from the summary of facts that 605 grams of cannabis, together with 71 ziplock bags were found at his address. Sergeant Giddens put it to Mr Alberton that he was in fact a dealer, and that the drugs were not for his use, but for sale. Mr Alberton denied this and said that he used about one bag a week. This would equate to 71 weeks supply, together with the additional cannabis that was growing.
9. To questions put to him by Sergeant Giddens, it was clear that Mr Alberton has a more than cursory knowledge of growing cannabis and its market value.
10. Mr Alberton agreed with Sergeant Giddens that he had been warned for breaching his bail conditions at the time he had been remanded on bail.
11. The committee noted the two letters of support from Mr Alberton's current and former employers. They were not present at the hearing.

Decision

12. As a guide for this committee and in order to ensure only suitable applicants are approved a Manager's Certificate, Judge Gatley has given guidance in matters where the applicant has previous convictions. (*G L Osbourne LLA 2388/95*)

.... 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, or arising in the course of an applicant's duty on licensed premises."

13. This case has set the standard in relation to applicants for a Manager's Certificate. It remains important to some consistency in our approach in this regard.

Deejay Enterprises Limited LLA 531-532/97 it was stated:

"The guiding hand or hands-on operator of any company or the potential holder of a General Manager's Certificate now receive greater scrutiny from both the Police and other reporting agencies. Character and reputation are closely examined. The law and human desires of patrons frequently tug in different directions. The Police cannot be everywhere. Little but a licensee's or manager's character and suitability may stand between upholding the law and turning a blind eye. Self-imposed standards in accordance with the law must be set by licensees and holders of General Manager's Certificates who control and manage licensed premises."

14. Despite Mr Alberton's convictions being at the lower end of the scale, the committee believes that the circumstances of the offending leads us to believe that the possession and manufacture of the cannabis in his possession was likely to be for something other than his personal use, as he claims. His overall knowledge of cultivating , packaging and pricing of the cannabis raises considerable suspicion about his actual motives. When we also factor in the financial investment that he has made in the equipment that he used, we face the conclusion that not all the cannabis was grown for his own use. Mr Alberton said as much when he said that it was for others in the flat.
15. For that reason, it is not a case of individual possession of a small amount of cannabis. It is much more serious and as such it is the view of the committee that these convictions fall into the category of a "serious offence". We therefore use the time frame suggested by Judge Gately in G L Osbourne LLA 2388/95 and set a period of five years stand down before the committee will rehear an application by Mr Alberton.

16. Conclusion

17. For the reasons I have outlined, the committee therefore declines this application for a Manager's Certificate.

DATED at CHRISTCHURCH this 9th day of December 2014



Mr G Buchanan
Chairman