

Decision No. 60B [2015] 2271

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012.

AND

IN THE MATTER

of an application by **Cassandra Naomi Theresa Doherty** for a Manager's Certificate pursuant to s. 221 of the Act.

DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson: **Mr P R Rogers**

Members: **Messrs A Lawn and D Blackwell** QSM

Hearing: Christchurch City Council building on the 30 September 2015.

This is a Hearing concerning an application for a new Manager's Certificate by **Cassandra Naomi Theresa Doherty**. The application was received on 10 August 2015 with the required documentation.

The Police have opposed the application on the grounds of suitability, pursuant to s. 222(a) of the Act as a result of her pleading guilty to a charge of Common Assault under the Crimes Act 1961 in the Christchurch District Court on the 28 July 2015. She was subsequently discharged without conviction.

The Constable who arrested the applicant gave evidence that there had been an altercation at a local tavern and the applicant had head butted a security guard. The applicant and two other persons were arrested for assault concerning the incident. The Constable stated the applicant's demeanour was very angry but she considered the applicant not to be intoxicated to a level where she should not have been on licensed premises.

The applicant gave evidence of her attempting to seek help for an unknown person who was lying on the ground and getting into an altercation with the security guard when he refused to get help for the person. As a result she became angry and head butted the guard. She described herself as not normally being like that and that it was a huge mistake.

The applicant stated she was currently employed as a Temporary Manager at the Elmwood Tavern for two days a week, on the other days she was employed as bar staff at the tavern.

In evidence the applicant's status in New Zealand was traversed as she is on a Working Holiday Scheme Visa which was due to expire about December 2015 and she needed the position as a Manager to help her extend her visa and stay in the country.

The Police made the following submissions and pointed to the guiding case in this matter:

Re Osbourne LLA PH2388/95 at page 5.

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

The case law talks of convictions however it is clear in *Smart v Brown* [2009] NZLLA 323 (2 April 2009) that:

[5] In explanation, Miss Brown said she was angry at comments made by the victim. In her evidence she stated that there was a degree of provocation. Whether this factor influenced the sentencing Judge is unclear. Miss Brown was given the benefit of a discharge without conviction in respect of the charge of assault with a blunt instrument...[6] It is clear that the ground for the application has been established. There was conduct that, in our view, is well below the standards that we would expect from the holders of certificates...

While the Osbourne case concerned an applicant applying for a new Manager's Certificate and had convictions the Judge commented that they would normally look for a 5 year period free of convictions, the *Smart v Brown* case the subject was the holder of a Manager's Certificate who was discharged without conviction on a charge of assault and received a 5 weeks suspension from the Licensing Authority.

The case below is an important case as it set out the rationale for taking the stance that this Committee has taken:

Horse and Trap Tavern Limited and Stewart [2005] NZLLA 880 (12 December 2005)

[25] We believe that raising the bar for the holders of General Manager's Certificates and keeping it at a certain height, has the potential to bring about a reduction in the abuse of liquor nation-wide. 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.

This Committee in considering this matter has to look at all the factors; this was an assault charge that she pleaded guilty to prior to being discharged without conviction. Another factor was that the offence took place on licensed premises and the applicant had been consuming alcohol. She had commenced the process to obtain her Manager's Certificate obtaining the Licence Controller Qualification on the

7 April 2015 and should have been well aware of the implications of her actions at the time.

For the above reasons we do not believe the applicant is suitable to hold a Manager's Certificate and the application is declined.

DATED this 8 October 2015.

A handwritten signature in blue ink, appearing to read "M Rogers". The signature is written in a cursive style with a large initial "M" and the name "Rogers" written below it.

Chairperson
Christchurch District Licensing Committee