

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

AND

IN THE MATTER of an application by **Guffle Limited** pursuant to Section 100 of the Act for an On- Licence in respect of premises situated at 29a Hastings Street, Napier known as Guffle

AND

IN THE MATTER of an application by **Ian Thomson** pursuant to Section 219 of the Act for a Manager's Certificate

BEFORE THE DISTRICT LICENSING COMMITTEE AT NAPIER

Chairman: Mr DE Fellows
Members: Mr J Cocking
Mr RH Pinkham

HEARING at Napier on Thursday 9th April 2015

APPEARANCES

Mr I Thomson Applicant
Mr J Sheehan Liquor Licensing Inspector - to assist

RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE

INTRODUCTION

1. Before the committee are two applications. The first, pursuant to s.100, for the issue of an On-Licence, to Guffle Limited, in respect of premises situated at 29a Hastings Street Napier known as Guffle.
2. The second is an application pursuant to s.219, for a Managers Certificate for Ian Thomson.
3. Mr. Thomson is also the sole shareholder and director of Guffle Limited.
4. No objections had been received from the reporting agencies, but, that the applications had resulted from the failure by Mr Thomson to apply for the renewal of both the On-Licence and his Manager's Certificate, and that the premises, had, albeit without intention, sold and supplied alcohol without a licence and other than under the control of a certificated duty manager, brought into serious consideration the suitability of the applicant.

THE HEARING

5. Mr Thomson had provided no written brief of evidence but stated that he would answer any questions from the committee. From a request that some details of his background in the industry would be of value, he said he has been in the hospitality industry since 1998 as an employee until 2007 when he formed his own company, Guffle Limited and opened his own licensed premises in its present location in early 2008.
6. He stated he was not a member of H.A.N.Z. and had not attended any training sessions in respect of the new requirements of the Sale and Supply of Alcohol Act.
7. He confirmed he was the only qualified bar manager in his establishment, and employed only one other person for bar duties. Food was pre-prepared and brought in regularly requiring no chef. Whilst he had applied for extensive trading hours, he stated that as with his previous licence he intended to operate the bar from 4-00pm till 12-00midnight Tuesday to Saturday.
8. He said that on the 9th or 10th March when completing documents requiring information about his licence he became aware of its expiry on 30th January 2015. This prompted him to check his Manager's Certificate and found it too had expired on 17th December 2012.
9. Upon realisation he immediately e-mailed the Licensing Inspector Mr Jason Sheehan, advising of these lapses, advising of the immediate closure of the premise and requesting an interview.
10. When questioned as to how these lapses occurred he said it was through his own forgetfulness in respect of his Manager's Certificate, and not realising the passage of time with regard to the On-Licence. He admitted full responsibility for the failure and the fault lie solely with him.
11. Asked about the receiving of the District Licensing Committee reminder notices, he revealed the he had spoken to the Council Administrator who through pressure of work had not sent out his reminder. However, he was adamant that this was no excuse for failing to renew his licence and again reiterated he took sole responsibility for his present situation.
12. When questioned about licensing inspections he recalled a few Police visits and earlier calls from the Licensing Inspector, however he did not expect them to remind him of his expiry dates.

The Hearing took a short adjournment at 9.50 am and re-convened at 10.05 am.

DECISION AND REASONS

13. We are required in respect of an application for an On- Licence to consider the criteria set out in section 105 of the Act. As all parties offered no objection to the issue of the license as submitted under the application, we shall direct our consideration only to

s 105 (1)(b) suitability of the applicant

14. We were impressed with the genuine acceptance by Mr Thomson of his managerial failure in this matter and his refusal to consider any other mitigating circumstances.
15. The sale of alcohol by Guffle Limited from the unlicensed premises at 29a Hastings Street are serious offences carrying penalties of either 3 months imprisonment or a fine of up to \$40,000 in the case of selling alcohol and a fine of up to \$20,000 for the use of the premises being kept as a place of resort for the consumption of alcohol.
16. We are nevertheless satisfied that there was no deliberate intention to carry out the sale and supply of alcohol in contravention of the requirements of the Act, and Mr. Thomson's prompt action in closing the premises upon discovering his misdemeanor and notifying the Licensing Authority bears this out.
17. We also considered the Authorities statement In *Budo Promotions Limited LLA PH 453/2004*

“Allowing his certificate to expire on two occasions was a matter of carelessness by Mr Littlewood. At page 121 of its report on the Sale of Liquor in New Zealand, the Working Party (otherwise known as the Laking Committee) said: *“It is the Working Party’s view that if a licence has mistakenly been allowed to expire, that lapse raises doubts as the suitability of the licensee”.* We accept that view.”

We feel it would be harsh to refuse an application for a licence on these grounds when the licensee has received favourable endorsements from all the reporting agencies.

18. These endorsements were given as Mr Thomson had conducted the sale and supply of alcohol over the past 8 years in a satisfactory manner and no conviction or enforcement action had been recorded, which leads us to a favourable decision.
19. We turn to the application by Mr Thomson for a Manager's Certificate, where again following favourable reports from the reporting agencies we direct our attention only to

s222 (b) the applicant's suitability to be a Manager
20. The issues and the character and reputation of the applicant are precisely the same as for the On-Licence application, with the same conclusion.
21. In coming to a final decision we feel that the applicant has already been severely financially punished, as he chose to immediately close his business at a time when the city was experiencing high tourist attraction from the Cricket World Cup and that the busy Easter holiday was imminent, and would be included during his closure period prior to the outcome of any application.
22. For these reasons we find –
 - (a) The application from Guffle Limited for an On-Licence is granted.
A copy of the licence setting out the conditions to which it is subject is attached to this decision.
 - (b) The application from Mr Ian Thomson for a Manager's Certificate is granted.

The documents may issue immediately.

23. The attention of the applicant is drawn to S232 of the Act:
- 1) *Every licensee required by this Act to appoint a manager or managers for any premises must, in respect of each manager, acting manager or temporary manager appointed for the premises, record (in a form that is readable or retrievable) the information prescribed by regulations made under this Act for the purpose of this section.*
 - 2) *The licensee must keep the information recorded for at least two years after it is recorded.*
24. Furthermore the company should consider the requirements of the Act pursuant to s.214, which requires a **manager to be on duty** at all times when alcohol is being sold or supplied to the public on any licensed premise.

A handwritten signature in blue ink, appearing to read 'D Fellows', with a horizontal line underneath the name.

DE Fellows
Chairman
Napier District Licensing Committee