

Decision for Renewal of Manager's Certificate

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

AND

IN THE MATTER of an application by **Katrina Alice Fox** for the renewal of a manager's certificate pursuant to section 224 of the Act.

BEFORE THE CENTRAL OTAGO DISTRICT LICENSING COMMITTEE

Robert B McNeil (Chairman)
Dr Michael MacAvoy
Brett Pay

HEARING at Alexandra 3 May 2021

APPEARANCES

Katrina Fox – Applicant
Garry Moore - Grand Tavern in support
Piki Kawana – Grand Tavern in support
Linda Ferrier – Licensing Inspector – in opposition
Sergeant Chris Brooks – Queenstown Police – in opposition
Sergeant Derek Ealson – Alexandra Police – in opposition

The members of the Committee declared they do not have a conflict of interest in this matter.

DECISION OF THE COMMITTEE

Introduction

[1] Before the Committee is an application by Katrina Alice Fox for the renewal of a Manager's Certificate. Ms Fox is 30 years of age and was originally granted a Manager's Certificate in 2013. She passed the Licence Controller Qualification on 30 November 2012 and LCQ Bridging Test on 19 May 2014.

[2] Ms Fox is currently employed as a duty manager at the premises trading as the Grand Tavern, located at Scotland Street, Roxburgh where she has worked since 2019.

Application

[3] The renewal application was received on 17 February 2021, before the Certificate's expiry date of 25 March 2021 and Ms Fox disclosed a conviction for driving with excess blood alcohol. The application was opposed by Police and the Licensing Inspector based on Ms Fox's suitability to hold a Manager's Certificate being called into question due to the conviction.

Offence date: 15 February 2020
Conviction: 25 June 2020
Charge: Driving with excess blood alcohol
Penalty: Disqualification from driving and community work

The Hearing

[4] The Committee heard submissions from the applicant where she admitted driving under the influence of alcohol. The Committee was impressed with her candour, admitting she was "drunker than she thought." She had consumed three large bottles of beer and a gin and is a lady of small stature. The Committee noted that her blood alcohol reading was 244mg per 100ml of blood. This is a high reading.

[5] She also stated she had been drinking in the tavern where she was employed as a Duty Manager but was not on duty on the occasion the offence was committed. Nonetheless her excessive drinking took place in the presence of her usual patrons. She claims her drinking was out of character as was her subsequent decision to drive and she put this down to family matters and a relationship breakdown.

[6] Ms Fox was accompanied by her employer, Mr Garry Moore and his partner Ms Piki Kawana, who own and operate the Grand Tavern in Roxburgh. Mr Moore told the Committee he had operated the Grand Tavern for fourteen years and Ms Fox had been employed by him for approximately two and a half years as a Duty Manager. He had trained her in the role and had nothing but praise for the way in which she ran the tavern, including when he and his partner were away on holiday. Mr Moore requested the Committee consider a short period of renewal, of say 12 months would be reasonable.

[7] Ms Fox tabled three references at the hearing, one of which attested to her skills as a Duty Manager at the Roxburgh Supervalu where she was previously employed for four years. The other two were character references in support of her renewal application.

Police Opposition

[8] The Police report prepared by Sgt Ealson of the Alexandra Police was tabled at the hearing along with a closing submission which was prepared and presented by Sgt Chris Brooks of the Queenstown Police. Sgt Ealson was present during the entire hearing.

In the closing submission, the Police report contained the following comments:

“Police believe that the actions of Katrina Fox, in choosing to drive a motor vehicle while intoxicated, with a breath level of 1083 micrograms, and further blood reading of 224, brings into question her suitability to hold a Manager’s Certificate, and her ability to make wise decisions around others under her management, in order to prevent harm around alcohol consumption, under the Sale and Supply of Alcohol Act 2012.

It is noted however that an application for suspension of her Manager’s Certificate was not sent to the Alcohol and Regulatory Licensing Authority immediately following her conviction in June 2020, while she was still the holder of her Manager’s Certificate.

It may be appropriate that the applicant agrees to a 28 day suspension of her Manager’s Certificate consistent with the Authority’s guidelines for a first offence.

The Committee might also like to consider a truncated renewal period for any Manager’s Certificate granted.”

[9] Police confirmed that in the 13 months which has ensued since the offence and during which time Ms Fox has been employed as a Duty Manager at the Grand Tavern, Roxburgh no incidents have been reported. The Committee also noted that the Police summary of facts for the offence stated that she was remorseful and co-operative throughout the processing period.

Licensing Inspector Opposition

[10] The Inspector, Ms Ferrier briefly outlined her report and confirmed her opposition to the applicant’s Manager’s Certificate being renewed at this point in time. She submitted that suitability is one of the criteria required to be considered when granting or renewing a Manager’s Certificate as are convictions. A conviction for an offence and more specifically one involving alcohol as is the case here calls into question the applicant’s suitability.

[11] She pointed the Committee to the guidance outlined in the decisions of *G L Osborne* NZLLA 2388/95 and in *Manson* NZARLA 590/2015 and not renew the applicant’s Manager’s Certificate until a two-year conviction-free period had elapsed.

Committee’s Decision and Reasons

[12] In the first instance the Committee was concerned that Police had not made application to the Alcohol and Regulatory Licensing Authority (ARLA) seeking a suspension of her Manager’s Certificate in July 2020 when she was convicted. Consequently, a notice of opposition was not lodged by Police until the renewal application was made in February 2021, some 12 months after the offence had occurred. No explanation was given as to the failure to make application to ARLA to suspend her certificate.

[13] Consequently, during the period from the time of the offence in February 2020 until the hearing on 3 May 2021, Ms Fox has been able to utilize her Manager's Certificate and be a Duty Manager at Grand Tavern in Roxburgh.

[14] In coming to its decision the Committee was mindful of the decisions *Deejay Entreprises Limited* LLA 531-532/97 which was also referenced by QLDLC 0474/18 in a similar hearing involving the renewal of a Manager's Certificate (MC3707) as follows:

“There are two main principles in this case. The first is that Parliament has placed the management of licensed premises on the shoulders of the managers. Pursuant to s.214 of the Act, a manager must be on duty at all times when alcohol is being sold or supplied to the public. Furthermore, a manager on duty is responsible for the compliance with and enforcement of the provisions of the Act and the conditions of the licence, as well as the conduct of the premises with the aim of contributing to the reduction of alcohol related harm. This places the manager as having greater responsibility for the operation of the premises than the licensee. Nowhere is this principle better described than in the old decision of Deejay Enterprises Limited LLA 531-532/97 in which the Authority 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.

The second principle is that in the majority of cases the majority of applicants will reach a stage where they can show that they have learnt the lesson from the past and can be relied upon in the future. The Committee has a balancing exercise to perform. It must set a time during which an applicant can show that he or she is now suitable to manage the premises. Factors to be taken into account include the age, maturity and character of an applicant, details of the offending and the penalties imposed, the type of premises to be managed, and the applicant's commitment to the objects of the Act. It is our view that a Managers Certificate is a symbol of responsibility and competence. As long as standards are kept high, then the value of the certificate will not be diminished.”

[16] There were a number of reasons which the Committee considered to be in the applicant's favour in coming to the decision to grant the renewal of Ms Fox's Manager's Certificate as follows:

- a) She was well supported by her employers, who attended the hearing;
- b) She has no other convictions, other than the excess breath alcohol conviction in 2020;
- c) She has at least six years' experience in the alcohol industry managing licensed premises, one of these in an off-licence position in a Supermarket and at least 2 years as a Duty Manager of the Grand Tavern, in Roxburgh;

- d) Ms Fox has demonstrated her capability to manage the Grand Tavern including in the absence of the owners, when they were away on holiday;
- e) Police confirmed they were not aware of any problems with the way the Grand Tavern had been operated;
- f) Ms Fox is a mature person who presented references to the Committee to support her capability to undertake her responsibilities as a Duty Manager; and finally:
- g) She was and continues to be very remorseful of her actions in 2020 and explained to the Committee that the offending was out of character and at the time of the offending she was under a great deal of stress due to personal family matters and a relationship breakdown.

[17] Taking into account the evidence we have been provided with and considering the options available in terms of the renewal process, the Committee was cognisant of the fact that Ms Fox has been allowed to retain her Manager's Certificate for the past 13 months, albeit unintentionally, without any stand down period. The Committee was of the view that refusing to renew her application at this point or adjourning her application until February 2022 to afford Ms Fox an opportunity to have a 2-year conviction free period was problematic and made little sense in this context.

[18] In coming to a decision on this application, the Committee is guided by the decision *White* NZLLA 1021/1021 which states:

"[33] In terms of the renewal process we considered refusing to renew the General Manager's Certificate. However, having heard from Mr White and taking into account his long standing employment in the industry, we are prepared to renew the certificate. In the circumstances we believe that the period of the renewal should be truncated. We hope that the reduced period of renewal will be a reminder to Mr White of his obligations under the Act."

[19] Accordingly the Committee considered that the period of the renewal should be reduced to provide a 'probation' period whereby Ms Fox can have an opportunity to prove that her consumption of alcohol is not problematic; her actions of 15 February 2020 leading to her conviction was an anomaly and that she can maintain the high standard expected of a Duty Manager. Consequently, Ms Fox's Manager's Certificate 67/CERT/18/2020 is renewed for 18 months until **25 September 2022**.

Dated at Alexandra this 11th day of May 2021



Robert B McNeil
Chairman
Central Otago District Licensing Committee