

IN THE MATTER

Decision Number: N/59/1606/2023
of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of an application by **SHELLEY MAY WATSON** pursuant to s.224 of the Sale and Supply of Alcohol Act 2012 for a Manager's Certificate.

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson: Mr. G Clapp (Chair)
Members: Mrs. S Griffin (Member)
Ms. T McIlraith (Member)

HEARING at West Melton Community Centre 16 March 2023

APPEARANCES

- Ms. P Kaur - Counsel for the Applicant
- Senior Constable G Craddock- NZ Police in opposition
- Licensing Inspector Mr. M Johnston to assist the Police

RESERVED DECISION OF THE COMMITTEE

INTRODUCTION

1. Before the Committee is an application by Shelley May Watson (the applicant) for a Manager's Certificate. The application was received by the Committee's administration on 18th May 2021 and was lodged in accordance with s.219 of the Act.

THE APPLICANT

2. The Applicant has previously held a Manager's Certificate, but it lapsed on 5 May 2021, when the Applicant was overseas during Covid. She has been employed as Operations Manager at the Springfield Hotel since August 2019. Ms. Watson provided a reference from Australia outlining her experience there from 2010. Her work experience included working as a bartender in a small

local hotel, as a waitress at a large restaurant in Canada, and as restaurant manager to food and beverages manager with Rydges Hotels.

3. During her time with Rydges, she completed a two-year food and beverage cadetship, a program that grooms young professionals for managerial positions. Following her training she was appointed as a food and beverage manager at Rydges's flagship hotel in Sydney.
4. In 2019, the applicant moved to the Springfield Hotel with her partner Blair Nathan Wallace who had purchased the Hotel. She told the committee she proceeded to take over the administration side of the business and worked full-time as front-of-house operations manager.
5. The committee was told that at this time her partner was having issues with theft and needed to establish stock and monetary losses and establish protocols to minimise theft. She thought her partner Blair Wallace was overburdened with the demands of the business and was unwell.
6. In a short time, they had more than doubled the revenue of the previous owner. This was due to longer operating hours and a strong focus on food and the community.
7. The Applicant said that they moved from living at the hotel to a house about 400 metres away. At that time, the start of the Covid lockdown in March 2020, she became pregnant and believed her partner Blair's health had improved. She had a challenging last trimester and reduced her hours to half days. She went on maternity leave from November 2020 until December 2021.
8. Her Manager's Certificate was due for renewal during her maternity leave in May 2021 and she was two weeks late in submitting her renewal. The applicant also said her daughter's birth, 10 December 2020, did not go to plan and the baby spent six days in Intensive Care Unit.
9. The Applicant said that the first three months with her daughter were challenging and that she and her partner were exhausted. They had no family support close by at the time.
10. The Applicant said that while she had knowledge of the liquor licence laws and operational requirements in Australia, there were some key differences within the Act in New Zealand, which led to some errors on her part. She praised the assistance from the Inspector, Mr. Johnston.
11. The committee was told of the various community groups that they have sponsored and of the purchase of a community defibrillator.
12. The applicant said the impact of Covid on the business and families had been far-reaching. Operating a hospitality business during that time was extremely challenging.
13. She then gave a summary of staff issues that the business had endured. The Applicant said that she helped introduce protocols to help ascertain stock and monetary losses.

14. The Applicant said Tracy Tahuu came to the hotel looking for work. Tracy had said that she was on ACC and was worried about losing it. She said that they agreed to pay Tracy cash for the four hours she worked.
15. The Applicant said that she did the payroll and entered times for staff. A computerised payroll system was installed some months later.

CROSS-EXAMINATION

POLICE

16. The Applicant told Senior Constable Craddock that she completed the payroll. She said that Blair and herself shared the responsibilities of hiring staff. Blair and herself wrote the management plan.
17. When asked if she helped Blair with the On and Off licences renewals she said “no,” she was on maternity leave. She said she was aware of most of the content.
18. In relation to a question regarding Serve Wise, the Applicant acknowledged the comment in the application that all staff would complete Serve Wise was incorrect. The Applicant admitted that she had completed Serve Wise. Two staff members and Mr. Wallace had completed Serve Wise. When challenged by the Police regarding the 231-notifications she said they were signed by Blair but admitted to some clerical errors on her behalf.
19. The Applicant was asked why her brief had not been submitted prior to the hearing. She stated that it was given to Chris (Mr. Lange) their former lawyer. When asked further about delays the Applicant said that everything went through their lawyer.
20. Ms. Watson knew that her partner Mr. Wallace smoked Cannabis for medicinal reasons. However, when she was asked about a significant grow three to seven weeks prior, she said that she had no idea about it, as she was in Australia at the time. She said she knew that Blair smoked cannabis but did not know he was growing plants.
21. The Applicant produced some documents for the committee on the liquor licensing laws in Australia. This was intended to give the committee an insight into what she was referring to in Australia.
22. The Applicant was asked various questions in relation to staff at the premises. Some of the employment issues occurred prior to her arrival. When she arrived at the hotel the payroll system was manual. An electronic one was eventually installed.
23. In relation to an allegation from a staff member Tracy Tahuu in evidence that alleged Shelley had told her that she was not young enough and did not have big enough boobs, the Applicant

denied having said that. She also denied that Tracy was paid in Nutella and a ride-on lawn mower. The applicant said that the allegations by Abi, Joel, and Kath to the Employment Relations Authority were all false.

24. When asked why the Applicant had no witnesses, Ms. Watson told the committee she did not realise she needed to have them, and she was instructed by the lawyer.

INSPECTOR

25. The Inspector asked about training for the staff particularly Tracy Tahuu and Joel Innes who allege they received no training. The committee was told neither had bar experience and needed to be trained. The Applicant said the till had the SCAB tool beside it and age ID verification. She said they had received training but not Serve Wise. The Applicant said that all staff had completed Serve Wise at the end of last year (2022).
26. The Applicant was asked questions by the Inspector in relation to allegations from staff members that she denied. Tracy Tahuu's brief #7 *'There was no training given. I was winging it.'* She also mentioned that Joel Innes said that he had received no training. The Applicant responded that they needed bar experience first because they had none.
27. The Applicant was asked if it was her responsibility as Operations Manager to pay the rates for the hotel. She replied no, not initially. She had only started taking things over since Covid. Blair also paid the insurance, lease, and electricity. She said that she did order alcohol.
28. She stated that she was away for seven weeks with Covid and MIQ when she went to Australia. She was supposed to be away for three weeks but with the borders closing and MIQ that time was extended.
29. The Inspector asked the Applicant about Mr. Wallace having drugs in the house. She said he uses cannabis after work to medicate himself and she does not use cannabis.

THE COMMITTEE

30. The Applicant was asked about allegations of intimidation against staff by her threatening to tell ACC about their work at the premises. She did not believe it was intimidation and she said that was not what was meant. Ms. Watson was asked about no sick leave being recorded for Tracy. She added that sick leave does not kick in until the first twelve or six months of employment and that Tracy had not been in the system long enough for it to kick in. The Committee notes that this and leave starts to accrue as soon as the payroll system is activated for an individual.
31. The Applicant explained how she carried out her role as Bar Manager and Operations Manager. She said she had done a lot of the office work from home. She added that Tuesdays she ordered beverages.

32. The Committee asked who prepared the employment agreement, and she replied Blair did. She added that she and Blair should ensure an employment agreement was signed.
33. The Applicant agreed with the committee that some of her strengths, ability to meet deadlines, and attention to detail had slipped. She had fixed her errors and was now compliant.
34. Ms. Watson told the committee that she had learned huge amounts from the hearing, including learnings about payroll, training, and training. They had now enlisted Corcoran French (lawyers) to help with their paperwork. The Applicant said the business was going well and that she had financially invested in the business. She also said that her in-laws now lived four houses along from them. They help with the baby who also goes to daycare which frees her up.
35. The Applicant then produced several documents required by the Agencies. This included staff contracts, Serve Wise certificates, staff training, and LCQ. Photocopies were made and distributed to the Agencies.

POLICE EVIDENCE

36. Senior Constable Craddock was sworn in. She gave details about her role as part of the Alcohol Harm team for eight years, The Senior Constable gave examples of the Applicant not completing the Section 231 notifications on several occasions. Details of incorrectly completed notifications were also provided.
37. The Committee was told of a point in the ERA decision between Alpine 182 Degrees Limited and Anton Pearce that read *'they do not comply with Statutory obligations to keep compliant wages and time records'*.

CROSS-EXAMINATION INSPECTOR

38. The Inspector asked if having Cannabis at the home address impacts the Applicant's suitability. The Senior Constable answered 'Yes.'
39. Senior Constable further explained that she said yes, because Ms. Watson lives and works with Mr. Wallace, it does affect her suitability. She has knowledge that Mr. Wallace uses cannabis. The Senior Constable explained that when Police look at suitability, they not only look at the person applying but whom they are linked to because that can affect suitability. It may be gang associates or if their partner had criminal convictions.

CROSS-EXAMINATION COUNSEL

40. Senior Constable Craddock was asked why the Applicant's ability to be a duty manager would be affected by Mr. Wallace's criminal convictions. She replied that they do not just look at what

happens at work. There is case law to say a person's suitability is not just about what happens at work but also outside work. If her partner is undertaking criminal activity, that does affect her suitability because she lives and works with him.

41. Clarity was given around the receiving applications by Food and Health. The committee was told that a received stamp is not put onto the applications until they are correct.
42. Senior Constable Craddock said that the old town hall is not part of the licensed footprint but is part of the address of the premises that Mr. Wallace leased to buy and now owns.
43. The Senior Constable accepted that there had been no CPO failures at the premises.

CROSS-EXAMINATION COMMITTEE

44. The Committee asked about the 231 notifications dated from 2019 -2021 and the seeming lack of learning around temporary and acting managers.
45. The Senior Constable said that it was concerning for the Police. She said that she does not always see these but when renewal time comes, she picks them up then. The number of errors shocked her when she saw them. Especially from people who were supposed to be experienced managers.
46. The Senior Constable was asked how much importance the Police place on character and reputation in terms of suitability for a manager. She said that it was important. She relies on checks with the Police database and puts a lot of weight on the Inspector's interview of the Applicant.
47. The Senior Constable told the committee that the ERA findings play an important part. The lack of compliance paints an unsuitable picture when you read the determinations. She believed that the findings were an important part of the decision in these proceedings.
48. The Senior Constable was asked, after having heard all the evidence today from the Applicant, did she still have the same concerns regarding Ms. Watson's suitability.
49. The reply was yes, and even more so. There was no evidence to support their rebuttal of all the witnesses' evidence. They have no one in support of them. She felt the Applicant had put the blame on her lawyer for not providing the information to them.

EVIDENCE-INSPECTOR

50. The Inspector's original report was not in opposition to this application. He said that his view now mirrored the Senior Constable's views. The Inspector's report was tabled and taken as read by all parties. This included his brief of evidence and a supplementary report.

51. After prompting by the Commissioner, the Inspector confirmed that having heard the evidence today, he was now opposed to the issue of a Manager's Certificate to the Applicant.

CROSS-EXAMINATION – POLICE

52. The Inspector was asked about section 222 - that the applicant meets the criteria in relation to having no convictions. He was asked if there was anything else to consider.
53. The Inspector said that there were five criteria listed under section 222 and one was previous convictions. They also address laws that have been broken and usually, evidence or concerns by way of reports. This would include matters like the ERA.

CROSS-EXAMINATION COUNSEL

54. The Inspector agreed the ERA findings were against Alpine 182 Degrees Limited and not the Applicant. The Inspector agreed that some other licensees have been lax with notifications. He also agreed that the premises had had two CPOs in June 2021 and June 2022, and the premises passed on both occasions. Tracy Tahuu was the Duty Manager in June 2021 and Shelley Watson in June 2022.
55. The Inspector agreed that the Applicant had plenty of experience. Things had changed dramatically since Ms. Watson's arrival at the premises.

CROSS-EXAMINATION COMMITTEE

56. The Inspector was asked what he had heard during the hearing that made him rethink and change his mind. He said that he had concerns that the applicant was residing in the same house as someone with drug convictions. The Police take note of who people associate with. From what we have heard in the past few days Ms. Watson was going to be in a situation where cannabis would be present and the Police could arrive at any time. He said that she was in a legal minefield there and that was a suitability matter.
57. He also spoke of the lack of training in the evidence from Tracy, Joel, and the statement from Abigail about drinking on duty and that Tracy did not have big enough boobs. Additionally, there were no fire evacuations and no training in the Sale and Supply of Alcohol. A lot of evidence was heard from the Applicant refuting those allegations but there have been no witnesses to support the Applicant.
58. The Inspector said he spoke to Mr. Collins whose comments appeared forthright and natural when he said *'I do not have a clue about fire evacuation. I have not had any training on it.'* The Senior Constable asked him about training on the sale and supply of alcohol Act, but there was no training. There was a real concern for him around training.

59. The Inspector added that with the ERA determination, breaches of the Employment Relations Act, a breach of the Wages Act., and two unacceptable findings from the Food Act verifiers, there was a lot of non-compliance. Also, in section 105 (1)(j), staff training and systems are required to comply with the law.
60. The Inspector added that experience is a major factor under section 222. He was happy with the training and the LCQ, especially with the experience she had had overseas and at the hotel. He attended the hotel when she had been the duty manager. She had a great rapport with the patrons and he found her very good at running the bar. She was very firm with patrons but very fair so that aside he had no problems.
61. He added that the applicant had the ability to do things correctly but from the evidence heard, she drinks on duty and does not train staff. He thinks she has a legal problem with Mr. Wallace. The Inspector told the committee that he was opposed to the application.

CLOSING SUBMISSIONS

62. Closing submissions from The Applicant's counsel and the agencies were received and considered in our decision.
63. Counsel for the Applicant told the committee that the Applicant had no convictions and relevant Industry experience. She added that there had been no concerns raised by the agencies about the way she had managed the premises.
64. The Police submitted that the applicant cannot divorce herself from the actions of Mr. Wallace. They live and work in the same place. Jointly the two limbs of the operation of the Springfield Hotel are of significant concern to the Police.

THE COMMITTEE'S DECISION AND REASONS

65. S.227 of the Act provides the matters that must be considered for an application for a Manager's Certificate. The applicant achieves the criteria at s. 222 but as raised by the Police and the Inspector there are concerns with the Applicant's partner having been convicted on several drug charges and his continuing to use cannabis that was not obtained legally, under medical prescription, at the family home. This must lead us to look at her suitability.

The Authority stated in ReJays LLA 9994/94, 15 July 1994, that:

'Differing aspects of suitability will be given different weight by decision-makers under the Act. Among them are experience in the hospitality industry, management ability, and personal integrity.'

In DeeJay Enterprises (Re Millward LLA PH531/97, PH532/97) the Authority said at page 6;

'The "guiding hand" or "hands-on operator" of any company, or the potential holder of a General Managers Certificate, now receives greater scrutiny from the Police and other 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 by holders of General Managers; Certificates who control and manage licensed premises.'

66. We note that the Inspector said that there have been several premises not completing paperwork correctly particularly 231-notifications but that those had been resolved. The number of ongoing and different issues with notifications was concerning. He stated that there was no trouble at the premises regarding intoxication or minors, no failed CPOs, but no confirmation of Ms. Watson being the duty manager at the time. The Applicant was the Duty Manager during the CPO in June 2022. We were told that when the Applicant was on duty there was no trouble, and she had a good rapport with customers and was firm with them.
67. Ms. Watson told the committee she was away some of the time in Australia and on maternity leave. There was also closure for Covid. She was the Operations Manager but was not the licensee, that was Mr. Wallace, therefore we must be mindful not to apportion some issues that were ultimately Mr. Wallace's responsibility.
68. The Committee listened to all parties and believed that Ms. Watson cannot be held accountable for the Licensee's actions. The Applicant is not responsible for him. We have heard that she passed a CPO and has run a good operation. There has been no intoxication and no reported disorder at the premises. Ms. Watson has told the committee she struggled to adapt to how things were in New Zealand. Ms Watson was familiar with Australian requirements and knew there were rules for licensed premises, thus there could be no assumption New Zealand had the same rules. The Inspector, for example, spent time with her explaining paperwork requirements. The Inspector told the committee that things had improved dramatically since the Applicant arrived.
69. The Committee has concerns over the Applicant's close relationship with Mr. Wallace who has drug and ammunition convictions. These include: Cultivate Cannabis, possess use utensils – Methamphetamine and Amphetamine, unlawfully possess Ammunition, procure/possess Ecstasy procure/possess Methamphetamine Amphetamine, procure/possess cannabis plant. Mr. Wallace still uses cannabis not obtained via prescription. However, we note that she was not influenced in a negative way by Mr. Wallace when she is the Duty Manager. She has told the committee that she does not use drugs and knew nothing about Blair growing Cannabis or any of the other criminal issues he faced. She was in Australia at the time of his arrest. She did tell us that she knew that he used Cannabis.
70. We stand back and assess the criteria in section 222 of the Act and the evidence before us and find that the Applicant is suitable to be a Duty Manager.

71. In relation to Section 231-notifications; it is the licensee's responsibility to make sure that these are correct.
72. The responsibility to train staff sits with the licensee and not with the Applicant.
73. The required fire evacuation scheme and trial fire evacuations training at the premises is the responsibility of the Licensee.
74. The experience the Applicant has gained during this period by her admission has been significant. We consider that Ms. Watson's learning experience is not complete and that it is ongoing, particularly in respect of New Zealand legislative requirements for alcohol licensing.
75. The Applicant Shelley May Watson is granted a Manager's Certificate for the period of one year. We consider this to be the equivalent of a probation year.

DATED at Christchurch this 18th day of September 2023.



Gregory J Clapp
Chairman
Selwyn District Licensing Committee

