

Decision Number: 4302/2024

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012 ("Act").

AND

IN THE MATTER

of an application by **Guleria Private Limited** for renewal of an On-Licence pursuant to s.127 of the Sale and Supply of Alcohol Act 2012 ("Act"), in relation to the premises situated at 25 Hakiaha Street, Taumarunui, trading name of '*Monsoon*'.

BEFORE THE RUAPEHU DISTRICT LICENSING COMMITTEE

Chairman: Stuart Hylton
Member: Robyn Gram
Member: Brenda Ralph

HEARING at Ruapehu District Council Chambers, Huia Street, Taumarunui, on Monday 15th April, 2024.

APPEARANCES

Udey Singh	Applicant - sole Director/Shareholder of Guleria Private Limited
Flora Tavish	Ruapehu District Council Licensing Inspector
Peter Marks	Senior Constable, NZ Police

DECISION OF THE COMMITTEE

Application

[1] On the 24 October 2023, **Guleria Private Limited**, made application to renew their On-licence (Restaurant Style On-licence) in relation to the premises situated at 25 Hakiaha Street, Taumarunui, trading name of '*Monsoon*'.

[2] The applicant has held an On-licence at this premise since 2019. This is the second renewal application.

[3] The application sought to vary the licence through an increased licensed area to accommodate consumption of alcohol in the Alfresco dining area out front of the restaurant. This area is a public footpath requiring a Licence to Occupy from Council for its use. The applicant wished to renew with existing days and hours i.e. **Monday to Sunday 11.00am 10.00pm.**

[4] The premises is located in the commercial area of Taumarunui on the corner of Hakiaha and Katarina Streets.

[5] The application was published in the prescribed form in the Taumarunui Bulletin on the 2nd of November 2023. No public objections or notice of desire to be heard were received within the statutory timeframe.

Statutory Reports

[6] The application was sent to the Inspector, Medical Officer of Health and NZ Police for their statutory reports. All three reporting agencies filed reports with **no opposition**.

[7] Whilst all three agencies reported no opposition, the Inspector in her report noted concerns with the applicant/owner of the premises living away from the premises in the South Island. The premises had failed an inspection on the 4 December 2023 primarily due to there being no duty manager working on the premises. The Inspectors report also noted difficulty in engaging with Mr Singh and issues with training, payment of fees and the proposed variation for outside alfresco dining.

[8] The Inspector recommended the Committee may wish to call a hearing to determine the renewal application. The Committee issued a Direction Notice dated 13 March 2024, setting the matter down for determination by way of hearing.

Hearing General

[9] The Committee noted at the start of the hearing that the application was not formally objected to or opposed by the statutory reporting agencies however the Inspectors reports contained enough information and concern around matters of staff training, adequate number of managers, incomplete applications, unpaid invoices and a failed last inspection; that the hearing was necessary.

[10] The Committee further noted that apart from s.105 (1)(j)(whether the applicant has appropriate systems, staff, and training to comply with the law), s.105(1)(k)(matters dealt with in any agency report) and potentially by association s.105(1)(b) – suitability of the applicant, there were no other s.105 matters raised that were prohibiting renewal of the On-licence.

[11] The Committee also heard early on at the hearing that the Applicant wished to withdraw the variation in relation to the alfresco dining area out front of the restaurant.

Hearing Evidence

Inspectors Evidence

[12] The Inspector noted that Udey Singh is the sole director and shareholder but has recently moved to the South Island and is no longer working on the premises. Mr Singh had become increasingly difficult to make contact with, receive information from and tardy in paying his invoices, despite frequent reminders.

[13] The Inspectors report showed clear gaps in the licensees proposed four monthly training regime for the renewal period, with training records unable to be located. Consequently, the Inspector requested the applicant write up a training proposal that

was to be completed every three months. The proposal was completed however there were gaps in training records at the time of inspection.

[14] The Inspector noted during her inspection that there was no duty manager's name displayed, the staff member present was not able to find the managers register and did not seem to know what the register was.

[15] The Inspector told the hearing the applicant's training plan was adequate on paper, but her concerns were around how it could be delivered now that Mr Singh was no longer present daily. The concerns extended to adequate manager numbers with *"two seen as sufficient although three would be better"*. She advised Saksham Rajput had applied for a new manager's certificate on 4 February 2024 but this had yet to be issued due to non-payment. Mr Rajput was emailed as Acting Manager in Mr Singh's absence but there had been no completion of the Management Change Form as requested.

[16] The Inspector advised that although the premise risk rating was 'low', there were recent difficulties with payments, licensee engagement and inspection non-compliance; leaving her unsure whether compliance could be achieved. She hoped the hearing was a reminder that things need to improve.

[17] In response to questions, the Inspector advised the failed inspection involved Vivek being on duty and noted his English not being great and his lack of knowledge around what a manager's register was or where it might be located.

[18] In response to a further question, the Inspector stated Mr Singh had now completed the training plan satisfactorily and now needed to implement it within the timeframes stated.

[19] The inspector was questioned on the FENZ comments to the application which stated *"No exemptions in Taumarunui. No scheme, so numbers must be under 100. Procedure not required."* The Inspector stated while a *Fire Evacuation Scheme* was not required for the premises a *Fire Evacuation Procedure* was. This had yet to be completed to her knowledge.

[20] At the hearing, Mr Singh confirmed this had not been completed but gave his undertaking that he would attend to this over the next couple of days whilst he was in town. The Committee expects Mr Singh has followed through on this undertaking.

Applicant's Evidence

[21] Mr Singh began his submission by stating he *"was embarrassed to be here"*. He then detailed his businesses background stating the business had started really well providing good service for the community and having a good relationship with Council. However, when Covid hit in 2019 it became really difficult to survive. Business was up and down, staff were difficult to keep and it was financially daunting. This culminated in the premises closing in May 2022 before reopening in November 2022.

[22] Mr Singh then outlined difficulties he had with obtaining staff post Covid including hiring locals and immigrants, Government grants, associated immigration paperwork and accommodation requirements for staff. He spoke about difficulties early on with

training/bringing up to speed his immigrant staff with cultural and business compliance issues.

[23] Mr Singh talked further about his personal difficulties with having his wife living overseas, a family death and then his need to move to the South Island for employment to financially survive. He noted his wife had now joined him in New Zealand and was assisting in the background with the “*Monsoon*” business. Post Covid he was travelling every day for a year from Hamilton to keep the business afloat. He outlined the financial and physical cost this had been on him.

[24] Mr Singh went on to say he agrees with the Inspector’s assessment of his shortcomings in the past including training gaps saying “*if he was in her shoes he would have done the same thing*”. He apologised for the lack of response to emails and requests for payment.

[25] Mr Singh advised that the failed inspection was a wakeup call for him and his staff which gave him the opportunity to talk to his staff about the Sale and Supply of Alcohol requirements including the ramifications for everyone if matters were not addressed satisfactorily.

[26] Mr Singh had undertaken training of staff in January 2024 with a “*refresher last night*”.

[27] Mr Singh then went on to outline the steps he was making to ensure his premises would be compliant moving forward, including –

- Work towards getting three certified managers for the premises with ‘Vivek’ paid and certified,
- Complete the training plan which would include a training component every three months,
- Responsibility for training would be his and he will travel up every three months to make it happen,
- He would add ‘Saksham’ to all correspondence with Council so matters were not missed,
- Payments will be more prompt going forward,
- Licensing of alfresco dining is withdrawn at this stage and he will look into it again next summer when the Inspector may have more confidence,
- He would attend to the Fire Evacuation Procedure over the next two days whilst in town.

[28] Under cross examination, Mr Singh advised that as of today Saksham was the only certified manager at the premises although Vivek was also an acting duty manager from today.

[29] When asked if Vivek’s English was suitable to be a manager, Mr Singh said he would leave it to the Inspector to determine. He accepted there was room for improvement although stated it was getting better over time.

[30] When asked if his staff could run the premises in his absence, Mr Singh advised they could and that Saksham was doing a really good job. He said having his wife here now allowed her to control certain parts of the business such as accounts, orders and staff issues.

Police Evidence

[31] Police stated the lack of duty managers were their biggest concern.

[32] Police advised they had not been called to the premise during the renewal period.

Closing Submissions

[33] The Inspector accepted that the hearing was a good wake up call for the applicant to refocus on his statutory requirements and training responsibilities.

[34] It appeared the premises lacked leadership since Mr Singh's departure down south with inexperienced staff left to take on the responsibilities.

[35] The Inspector advised she was available at all times to assist and she thought the issues noted could be resolved moving forward.

[36] Mr Singh believed he was in a better place now and confident he could deliver on what was requested of him.

Committee's Decision and Reasons

[37] In considering this renewal application the Committee had regard to the criteria under s.131/105 of the Act i.e.

Section 131

(1) In deciding whether to renew a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:

(a) the matters set out in paragraphs (a) to (g), (j), and (k) of section 105(1):

(b) whether (in its opinion) the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence:

(c) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129:

(d) the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.

Section 105

(a) the object of this Act:

(b) the suitability of the applicant:

(c) any relevant local alcohol policy:

(d) the days on which and the hours during which the applicant proposes to sell alcohol:

(e) the design and layout of any proposed premises:

(f) whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:

(g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:

(j) whether the applicant has appropriate systems, staff, and training to comply with the law;

(k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under [section 103](#).

[38] After considering all the evidence before it, the Committee assessed the renewal application against key criteria matters. The only real s.105/131 matters 'at play' were systems, staff and training (s.105 (j)) which in turn raises the issue of the applicants suitability (s105(b)).

[39] There are no excuses for Sale and Supply of Alcohol non-compliance, despite what Covid and life throws at us. That is why suitable staff, training and systems are so critical for licensees to get right. For this reason, the Inspector was prudent to raise these matters before us.

Suitability

[40] The Committee found Mr Singh a genuine licensee and witness who fronted at the hearing with some honest reflection and candour endeavour. Mr Singh did not question the Inspectors evidence and accepted his conduct of the licence during the last renewal period, was less than satisfactory. Mr Singh apologised for this.

[41] We felt Mr Singh genuinely was embarrassed to be before us and to have let his standards slip over the past renewal period. The Committee was heartened to hear Mr Singh's list of actions and promises to ensure statutory compliance would be achieved moving forward.

[42] The Committee, as does the Inspector, have concerns that Mr Singh is endeavouring to run his licensed premises from down south. However, we heard enough at the hearing about his proposed visits every three months, his wife's presence now in the business and his ongoing endeavours to get his staffs knowledge and experience to the point they need to be, that he should be given the chance and have his renewal application approved. In his favour, is the fact his premises has a 'low' risk rating.

[43] The Committee also took comfort from the fact the Inspector advised the hearing that she believed the applicant could resolve the issues raised and that the hearing would be a good wakeup call for him.

Systems, staff and training

[44] The Authority in *Cotton Club [2013] NZARLA 1192* said – “[79] *There is an expectation on the applicant to outline systems, staff and training and bring evidence of it*”, and in *Lyger Investments Ltd [2018] NZARLA 299* in paragraph [112], the authority indicated that it expected evidence of systems, staff and training to be provided at renewal, and further in “*L & H Graces Place Ltd v Robert Abbott et al [2018] NZARLA 273*” – paragraph [93] the authority said - “*An applicant must outline what systems, staff and training it intends to provide if it can satisfy the DLC that it can comply with the law...*”.

[45] We accept the evidence of Inspector around the applicant’s failings to attract suitable staff and have suitable training systems and records in place. This was not disputed by the applicant and is well documented in this decision.

[46] To Mr Singh’s credit, he fronted at the hearing addressing the concerns with proposed actions that, on the face of it, should ensure compliance. The Inspector was comfortable with what was being proposed and believed the applicant could turn things around.

[47] Similarly, the Committee accepts these matters are now being rectified satisfactorily and trusts the applicant will use the systems he’s helped develop to ensure staff training and licence record keeping, etc are continually updated, recorded and available for inspection at any time.

Conclusion

[48] For the reasons stated above, the application by **Guleria Private Limited** for renewal of an On-Licence, **is approved** for three years from the current renewal end date.

[49] The licence, with existing conditions, can be issued immediately.

[50] We refer any party who wishes to appeal this decision or part of this decision to section 154 through to 158 of the Act.

DATED at Taumarunui this the 5th day of May 2024.



.....
Chairman – Stuart Hylton
Ruapehu District Licensing (Alcohol) Committee