

**IN THE HIGH COURT OF NEW ZEALAND
TIMARU REGISTRY**

CIV-2008-478-000558

UNDER the Sale of Liquor Act 1989

IN THE MATTER OF of a determination of the Liquor Licensing
Authority number 1458-1460/2008 dated
24 October 2008

BETWEEN ROBERT JOHN CONDON
Appellant

AND TIMARU DISTRICT LICENSING
AGENCY INSPECTOR
First Respondent

AND POLICE
Second Respondent

Hearing: 30 March 2009
22 April 2009 (by conference call)

Appearances: P B McMenamin for Appellant
C A O'Connor for Respondents

Judgment: 22 May 2009

RESERVED JUDGMENT OF HON. JUSTICE FRENCH

[1] This is an appeal under s138 of the Sale of Liquor Act 1989. The appellant seeks to quash a decision of the Liquor Licensing Appeal Authority (the Authority) declining to renew his general manager's certificate.

[2] The main issues are whether the Authority's procedure was unfair and whether it was entitled to take into account the fact the appellant was no longer working in the hospitality industry.

Factual background

[3] In mid 2007, the appellant Mr Condon applied for and obtained a general manager's certificate. At that time, he was the sole director and shareholder of a company which operated a night club known as Vertigo Venue and Bar ("Vertigo").

[4] Mr Condon had applied unsuccessfully for a general manager's certificate on two previous occasions in 2001 and 2003. Those applications had been opposed by the police and the local licensing agency. They were concerned amongst other things about Mr Condon's criminal convictions. However when Mr Condon applied for a third time in 2007, the application was unopposed primarily because it was considered sufficient time had lapsed since the offending.

[5] Vertigo's on-licence had licensing hours to 5am based on the provision of regular live entertainment.

[6] A few months after Mr Condon had obtained his certificate, the police sought a variation of the licensing hours on the grounds the premises were effectively being operated as a tavern without regular live entertainment. Following a public hearing, the Authority issued a decision on 11 October 2007 changing the closing hours from 5am to 3am.

[7] Mr Condon's company appealed the decision to the High Court and also applied for a stay pending the hearing of the appeal. The stay application was declined on 5 December 2007 and the substantive appeal dismissed on 17 March 2008.

[8] Meantime, on 18 October 2007, a telephone conversation had taken place between the first respondent (the Timaru District Licensing Agency inspector Mr Dunne) and Mr Condon. Mr Condon stated he had just received the Authority's decision advancing the closing hours and was concerned because over the weekend he had traded until 5am instead of closing at 3am. He wanted to know what would happen. Mr Dunne replied that although an email about the decision had been sent on 12 October, no action would be taken. There was then a discussion about the merits of the decision and Mr Condon became abusive. He stated the whole case was

based on lies and did not know “how the fuck you sleep at night”. When asked if he wanted to come in and discuss the issue, Mr Condon stated he “didn’t want to talk to any of you fuckers.” Mr Dunne then terminated the conversation.

[9] On 21 October 2007, the police visited Vertigo to discover it was still trading after 3.00am despite the Authority’s decision. Mr Condon justified this on the grounds that the amended licence which had been issued with the decision wrongly showed the opening time as being 7am instead of the correct time of 7pm. The closing hour was correctly shown as 3am.

[10] On 25 October 2007, the police served Mr Condon with a corrected version of the licence.

[11] However, when a police sergeant visited the premises again at 3.47am on 4 November 2007, the bar was still open and trading.

[12] According to the police sergeant’s evidence in chief, Mr Condon was uncooperative. When police asked Mr Condon what time he was trading to, he replied “I’ve got nothing else to say to you at the moment, we are closing at 5.am.” He initially refused to hand over the till receipts and while the sergeant was speaking to a staff member, Mr Condon approached and instructed the staff member not to speak to the sergeant. Behind the bar was a sign referring to a 5am closing time, while the venue licence displayed on the main door was the old licence.

[13] Following the police visit, the District Licensing Agency and the police both filed applications for the cancellation of Mr Condon’s general manager’s certificate, on the grounds that he had failed to conduct the licensed premises in a proper manner and was not a suitable person to hold a certificate.

[14] In support of its application for cancellation, the District Licensing Agency cited the following specific allegations: Mr Condon’s company failing to meet the conditions of the on-licence, the breach of the amended licence on 21 October 2007 and 4 November 2007, Mr Condon’s refusal to hand over the till receipts and

provide information or assistance to the police sergeant, the alleged employment of a minor and Mr Condon's abusive comments to Mr Dunne over the telephone.

[15] In its application for cancellation, the police stated:

Since Mr CONDON established Vertigo Venue and Bar, there have been increasing instances of conduct that seriously brings into question the issue of his suitability to hold a Managers Certificate. There was some trepidation in the issue of a Managers Certificate, but it was an opportunity for Mr CONDON to prove himself. Police believe he has failed to meet the required high standard. The basis for this includes unsubstantiated allegations about the conduct of other licensed premises, civil debts, his forced re-entry to the premises, refusal to give evidence at a District Court fixture, allegations of Police corruption, verbal abuse of DLA staff, allegations that evidence at a recent hearing was lies, and a continued failure to meet the conditions of his licence.

All of the above brings the hospitality industry into disrepute. His attitude to the regulatory bodies and the decisions of the Licensing Authority is extremely poor. Police believe that to maintain the credibility of both Managers Certificates and On-Licences and conditions, then a very firm stance needs to be taken with Mr CONDON. Police believe his Managers Certificate should be cancelled.

[16] Before the applications for cancellation could be heard, Mr Condon's general manager's certificate fell due for renewal. He accordingly applied for renewal on 11 April 2008. By that time, Vertigo had closed down. The business had not been functioning since January 2008.

[17] On receipt of the application for renewal, the police wrote to the Authority referring to the fact their application for cancellation had still to be heard and confirming their opposition to the application for renewal. The District Licensing Agency also wrote supporting the police opposition "as Mr Condon is not currently employed in the liquor industry."

[18] All three applications (the two applications for cancellation and the application for renewal) were set down for hearing on the one day.

[19] The hearing was duly held on 24 September 2008. Mr Condon represented himself.

[20] At the commencement of the hearing, Mr Condon presented a letter to the Authority. The letter was written by a solicitor to Mr Condon. It stated:

- 1 I refer to your email of today's date and your request for confirmation that you have applied for legal aid in respect of the above matter.
- 2 I confirm that Mr Condon of Flat 3, 14 Wai-it [sic] Road, Timaru approached Quentin Hix Legal on the 4th of September 2008 to assist him with an application to legal services agency for civil legal aid in respect of a liquor licensing authority matter, in particular a hearing of an application for cancellation of Mr Condon's general manager's certificate.
- 3 It was Mr Condon's intention to be represented by Mr Quentin Hix at the hearing, taking place tomorrow, being 24th of September 2008.
- 4 I confirm that together we made an application to the Wellington grants office of legal services agency on the 8th of September 2008. The application was made on an urgent basis.
- 5 I confirm that we contacted Mr Bob Renshaw of legal services on the 8th and 9th of September 2008 about the application and its urgent nature.
- 6 Unfortunately the latest advice received today from Mr Renshaw was that the application was still in the process of being considered.
- 7 If you have any queries please contact me on (03) 687 9010.

[21] It was common ground that although Mr Condon gave this letter to the Authority, he did not at any time seek an adjournment.

[22] The notes of evidence record that the first witnesses to be called were two police officers, followed by Mr Dunne. All three were cross-examined by Mr Condon. Mr Condon then called a witness. The witness, a Mr Lasi, had been employed at Vertigo as a doorman. Mr Condon then gave evidence himself. With the assistance of a lawyer, he had prepared a 16 page written brief of evidence.

[23] According to Mr Condon, he was unsure whether all three applications were being heard together or one after the other but came prepared to argue all three. He thought from the way the Authority conducted the hearing that they were dealing with the cancellation applications first. Accordingly, when he had concluded his evidence against the charges and allegations, he returned to the table. His affidavit goes on to say:

[7] At this point I was ready to lead evidence as to my application for renewal. For this I had brought with me substantial evidence to disprove all allegations of unsuitability. This evidence included:

- i. Security Documentation;
- ii. Entertainment provided;
- iii. Staff Registers;
- iv. Promotions held to discourage intoxication;
- v. Extensive food menu;
- vi. Financial Information;
- vii. Communication with local authorities; and
- viii. Witness testimony

[8] However the Authority at this time abruptly ended the hearing and I did not have an opportunity to effectively prove my suitability by reference to the evidence available....

[24] After the hearing, Mr Condon sought and was granted an opportunity to provide written submissions.

The Authority's decision

[25] After traversing some of the history and summarising the evidence that had been given at the hearing, the Authority discussed the responsibilities placed on duty managers and stated:

[26] Inherent in our expectations, is mutual respect and co-operation between those who manage and those who monitor. In our view it is fundamental to the integrity of the licensing system that even although there will be different objectives, each player must be prepared and willing to work with the other. The ultimate aim is to achieve the act's objective of reducing the incidence of liquor abuse. We accept that in relation to the way that Mr Condon has operated licensed premises, no issues of intoxication have been brought to our attention.

[26] The Authority went on to note that with respect to the renewal application it was governed by s126 of the Sale of Liquor Act (the Act) and that the onus was on Mr Condon to establish he is suitable to continue to hold the certificate.

[27] The Authority continued by saying that a combination of circumstances had led it to the conclusion that the application for renewal should be refused.

[31] In this case there is a combination of circumstances which have led us to the conclusion that the application for renewal should be refused. The

evidence has led us to the view that Mr Condon's suitability to manage licensed premises is seriously flawed. His behaviour since the manager's certificate was issued has persuaded us that his character and reputation are such that we would have no confidence in his ability to provide the sort of leadership and integrity we expect from managers. The history leading up to the application supports the present view.

[28] The combination of circumstances were as follows:

- (i) Mr Condon's actions in deliberately allowing the business to trade after 3am on 4 November 2007 (the Authority said it was not prepared to criticise him for initially ignoring the new trading hours)
- (ii) Mr Condon's abuse of the inspector over the telephone.
- (iii) his use of the forum of the public hearing to continue with verbal attacks on the police
- (iv) the incident at the bar where Mr Condon tried to prevent the bar staff from speaking with the sergeant.
- (v) the lack of current employment in the hospitality industry

[29] Having come to a decision on the renewal application, the Authority said it was not necessary to deal with the applications for cancellation as they were now rendered nugatory.

Grounds of appeal

[30] In appealing this decision, counsel for Mr Condon advanced several grounds of appeal. They can be summarised as follows:

- (i) there was a breach of natural justice in that the Authority should have granted Mr Condon an adjournment to enable him to pursue his legal aid application and obtain legal representation or at least turned its mind to an adjournment.

The lack of legal representation prejudiced Mr Condon in terms of the material he presented, his lack of understanding of the procedure and the manner in which he conducted his case.

(ii) Mr Condon was misled into believing that only the applications for cancellation were under consideration. He was thus denied the opportunity of being able to present material relating to the application for renewal which he (mistakenly) assumed would be heard later.

(iii) as a result, the Authority failed to take into account relevant matters when considering the renewal application, and unfairly held Mr Condon had failed to discharge the onus of proof.

(iv) the Authority took irrelevant factors into account namely:

- a. Mr Condon's current lack of employment in the industry.
- b. the past history leading up to the obtaining of the certificate.
- c. Mr Condon's verbal attacks on the police at the hearing

(v) the Authority's analysis of the evidence was flawed in that it:

- a. placed excessive weight on the evidence relating to the abusive phone call.
- b. mis-stated the evidence relating to Mr Condon's alleged lack of co-operation with police.

c. wrongly placed no weight on Mr Lasi's evidence and the appellant's evidence as to his own character.

(vi) the decision was not consistent with previous penalties imposed in other cases for breaches of a licence.

Discussion

[31] I turn now to deal with each of the grounds of appeal in turn

Unfair procedure and failure to take relevant matters into account

[32] As mentioned above, it was common ground Mr Condon never asked the Authority for an adjournment. However, Mr McMenammin argues it must or should have been obvious to the Authority that was Mr Condon's purpose in presenting the letter. In evidence given at the appeal hearing before me, Mr Condon said he gave the Authority the letter because he believed the nature of the enforcement applications against him warranted legal advice and he was not confident in dealing with the matter himself.

[33] Mr McMenammin argues that the lack of legal representation proved critical . The way in which Mr Condon conducted his case was something that was one of the five matters which persuaded the Authority not to grant the renewal application, while legal representation would have also resolved the confusion over the nature of the hearing and ensured all the material relating to renewal was put before the Authority.

[34] Those arguments would have more force were it not for the following facts:

- (i) not only did Mr Condon never ask for an adjournment, neither did the solicitor's letter ask for one
- (ii) the Authority recorded that Mr Condon was well prepared, something which is confirmed by the detailed written brief

- (iii) Mr Condon has represented himself before the Authority on previous occasions and indeed for that matter before this Court. He is not without some knowledge of court procedures and importantly has applied to the Authority for an adjournment on a previous occasion, something that would obviously have been known to the Authority

- (iv) when Mr Condon represented his company in this Court, the Judge hearing the case noted he had “an obvious knowledge of the Sale of Liquor Act and of the liquor industry generally.” (*DJM Enterprises Timaru Limited v McCrostie* HC Timaru CIV-2007-476-000581, 17 March 2008, Panckhurst J at [8])

- (v) even if Mr Condon had obtained an adjournment, it is highly unlikely he would have obtained legal aid because of the provisions of the Legal Services Act 2000. Mr Condon testified that without legal aid, he would not have employed a lawyer. It is thus almost inevitable he would have ended up representing himself anyway

- (vi) there was an opportunity for Mr Condon to progress his application for legal aid after the hearing but before his submissions were filed and the Authority issued its decision. The file held by the Legal Services Agency however shows that the lawyers assisting Mr Condon specifically asked the agency to defer consideration of the grant until *after* Mr Condon had made his final submissions and the Authority had issued its decision.

[35] At the hearing before me, there was a suggestion Mr Condon may have been misled by the layout of the Authority’s notice of hearing in that the applications were separated by the word “OR”. However, it is clear from the notice read as a whole that the “OR” is actually an alphabetical identifier used for all renewal applications.

In any event, it is clear from Mr Condon's own evidence and the content of his written brief that he came prepared to argue the renewal application.

[36] I accept that the order in which the witnesses were called would have created an impression the focus was on the cancellation applications.

[37] However, I am not persuaded this has prejudiced Mr Condon.

[38] First, the issues raised by both applications were inextricably intertwined. They were not discrete or unrelated. As Mr O'Connor submitted, the matters required to be considered by the Authority (namely the operation of the premises in contravention of the terms of the on-licence, the deteriorating relationship between Mr Condon and the authorities) were material and pertinent to all of the applications.

[39] Secondly, I consider claims of there being volumes of additional material which were never presented are exaggerated. Mr Condon's written brief of evidence which he produced to the Authority was undoubtedly prepared for the purpose of all three applications. Further, when asked by me for the names of the further witnesses he had intended to call for the renewal application, Mr Condon acknowledged that it was only the one witness Mr Lasi. Mr Condon did in fact call Mr Lasi and ask him questions about Mr Condon's general suitability. Further, as noted in the Authority's decision, Mr Condon had stressed in his closing submissions that he had not only successfully managed the bar, but assisted the industry and the community by helping to reduce alcohol related concerns in the area.

[40] Thirdly, and most importantly of all, I consider it is implicit in the Authority's decision that no matter how appropriately Mr Condon may have managed other aspects of his business, they were outweighed by the specific concerns it identified. In other words, it assumed in Mr Condon's favour the existence of these various matters which he now says he would have wanted to raise or raise in more detail.

[41] In coming to this view, I have not overlooked Mr McMenemy's further argument that by focusing on the cancellation applications and then determining the

renewal application, the Authority effectively reversed the onus of proof. It should have been for the police and the licensing agency to prove its allegations, not for Mr Condon to refute them. However, as noted in *Waitakere Licensing Trust v 3MI Choices Limited* HC Auckland AP 109-PL01, 10 July 2002, Fisher J, the correct legal position regarding the burden of proof is that the objectors only have an evidential burden to satisfy the Authority that an issue of suitability or compliance exists. It then falls on the applicant to satisfy the Authority the objections were groundless or of insufficient weight.

Taking irrelevant matters into account

Lack of current employment

[42] Section 126 of the Act provides:

126 Criteria for renewal

In considering any application for the renewal of a manager's certificate, the Licensing Authority shall have regard to the following matters:

- (a) The character and reputation of the applicant:
- (b) Any convictions recorded against the applicant since the certificate was issued or last renewed:
- (c) The manner in which the manager has managed the sale and supply of liquor pursuant to the licence with the aim of contributing to the reduction of liquor abuse:
- (d) Any matters dealt with in any report made under section 124 of this Act.

[43] As mentioned above, the report from the District Licensing Agency raised the issue of the fact Mr Condon was no longer currently employed in the hospitality industry.

[44] It follows under s126(d) that this was a matter to which the Authority was required to have regard.

[45] Mr McMenamín's submission however was more far reaching than that.

[46] In a series of cases, the Authority has consistently held that lack of current employment in the industry is a ground for declining an application for renewal:

In this case the Inspector has pointed out that Ms Liddy (the applicant) is not involved in the industry, and has therefore raised matters in opposition. She has followed previous decisions of the Authority in which we have suggested that we do not issue General Manager's Certificates or allow them to be renewed in a vacuum. This policy is partly because there are a large number of holders of General Manager's Certificates throughout the country. We feel it is important that all holders are working in the industry and thereby continually upskilling themselves. Focusing on current laws and practices is one of the ways of achieving the objectives of the Act.

(LLA Decision No. PH21/2006, Liddy, paragraph 4)

The Authority has indicated in the past in a number of cases it is not in the business of granting certificates so they are used as part of the person's CV or indeed as a bankable resource. There are over 35,000 certified general managers in this country. It is the current wisdom that many of those are simply holding certificates without using them.

(LLA Decision No. PH24/2006, Lazzari, paragraph 4)

Sergeant Law referred to the Authority's decision in KH Douglas LLA PH 554/2001 in which the Authority declined an application for renewal of a manager's certificate where the applicant had no current involvement in the hospitality industry. In that decision the Authority said:

We are not in the business of adding qualifications for persons simply to add to their curriculum vitae so that they may use them from time to time. We are in the business of providing certificates to managers who are committed to the industry and have employment within it.

(LLA Decision No. PH1713/2008, Nikoro, paragraph 6)

[47] Mr McMenemy's contention is that the policy adopted in these decisions by the Authority is ultra vires. The need to have current employment is not a factor listed in s126 and, in his submission, is devoid of statutory authority. Mr McMenemy also submitted that the policy creates something of an unfair catch-22 for a person in Mr Condon's position – without a certificate, he is unable to gain the necessary employment and without employment he is unable to secure the certificate.

[48] In my view, the list of factors to which the Authority is required to have regard under s126 is not exhaustive. I am reinforced in that conclusion by the decision of *Walker v New Zealand Police* HC Wellington AP87/01, 31 May 2001, Fisher J, where the same approach was taken to the criteria listed in s22 dealing with

applications for renewals of on-licences. Thus, the absence of any express statutory reference to current employment is not in itself fatal.

[49] There is also nothing inherently wrong in the Authority relying on considerations of broad general policy or developing general policies. Basic justice in fact requires it take a consistent approach, so long as it does not fetter its discretion by treating the policy in question as a mandatory requirement or closing its mind to individual applications in an overly rigid application of its policy (*Ole Forge Ltd v Papakura District Licensing Agency* [1996] NZAR 305).

[50] The Authority can of course only have regard to relevant factors which in this context means relevant to the function of certificates, the role and responsibilities of duty managers and promotion of the objects of the Act. As appears from the decisions quoted above, the reasons articulated for the policy are tied to the objectives of the Act and the function of duty managers. I am satisfied there is a sufficient statutory foundation and that the Authority has not fettered its discretion.

The past history leading up to the application

[51] In my view, this ground of appeal is misconceived.

[52] While the Authority certainly summarised the past history, it is clear it only did so by way of background in order to be able to explain the argument over the reduced trading hours. It did not purport to rely on the past history as a ground for declining the application for renewal. The decision expressly refers at [31] to Mr Condon's "behaviour *since* the manager's certificate was issued"(emphasis added).

[53] When this was put to Mr McMenamin at the hearing, he conceded that was the case but also submitted there was a suggestion of bias because of the chequered history.

[54] Bias had not however been advanced as an independent ground of appeal and in my view is unsustainable.

The verbal attacks on the police at the hearing

[55] This ground of appeal overlaps with the first ground about legal representation.

[56] However, it also has another dimension in that Mr McMenamain contends it was wrong in principle for the Authority to take this into account. Mr McMenamain submits it is a fundamental principle of our justice system that if a litigant's case involves allegations of wrongdoing on the part of the authorities, the litigant must be entitled to advance those allegations fearlessly. No one could disagree with that statement as a general proposition. However, the context of the Authority's remarks is a litigant who made serious allegations without any foundation, who was seeking to re-litigate an issue that had already been determined, and who persisted in making the allegations even although the Authority had specifically advised him he was not able to re-litigate the matter.

[57] In my view, the Authority was clearly entitled to regard the need for mutual respect and co-operation in the industry as important and to regard Mr Condon's verbal attacks on the police in the circumstances outlined above as problematic.

[58] Mr McMenamain also submitted it was unfair of the Authority not to warn Mr Condon a layman representing himself that his verbal attacks on the police could constitute a ground for declining his renewal application. However, it is clear that the Authority did warn him the allegations were irrelevant. I do not consider in the circumstances the Authority was required to go any further.

Flawed analysis of the evidence

The abusive phone call

[59] Mr McMenamain submitted that the witness Mr Dunne had misled the Authority because he had suggested the phone call was initiated by Mr Condon in order to abuse him whereas it was Mr Dunne who had called Mr Condon.

[60] I disagree. Mr Dunne was responding to a message Mr Condon had left and his evidence makes that clear. He did not mislead the Authority and the Authority was not misled.

[61] Mr McMenamain also submitted the Authority was wrong to attach the importance it did to this incident which he described as only minor and isolated. Mr Condon was emotional at the time. The evidence established he had never been abusive towards Mr Dunne before and he later apologised.

[62] I do not accept that argument. As Mr O'Connor pointed out, the Act places significant obligations on duty managers and their ability to operate calmly under stress is an important aspect of their function. Mr Condon's loss of self control was something the Authority was entitled to take into account in combination with the other factors.

Mis-stated the evidence about instructing staff not to speak to the police

[63] At [14] of its decision, the Authority noted:

At 3.58 am, the Sergeant noted a bar person selling liquor to a member of the public. He went to speak to that person but Mr Condon approached her and told her not to speak with the Sergeant, and carry on with her work. Mr Condon challenged the Sergeant's evidence on that issue. He suggested that he was simply advising his employee of her rights under s.176 of the Act. At the hearing, the Sergeant consulted his notes but maintained his recollection of what had happened. Mr Condon was then warned for obstruction, and the Sergeant obtained the necessary details. Both bar persons were advised that they were breaking the law. From that time they declined to make any more sales, although no request was actually made to close the bar.

[64] Later at [30] the Authority referred to "the incident at the bar where Mr Condon tried to prevent the bar staff from speaking with the Sergeant."

[65] Mr McMenamain's complaint is that the Authority proceeded to that finding without analysing the conflict in the evidence or giving reasons why it preferred the sergeant's version. He also pointed to the fact that in cross examination the sergeant only talked about suspecting Mr Condon was telling his staff not to talk to him.

[66] However, the context in which the sergeant talked about “suspecting” was in response to a question about why he considered he was acting in the course of his duties. The way I read the transcript having regard to the context, the sergeant’s written brief of evidence and the Authority’s reference to the sergeant consulting his notes (not recorded in the transcript) is that the sergeant’s use of the word “suspected” must have been in connection with the commission of an offence, as opposed to an admission that he did not actually hear Mr Condon’s instruction. In other words, it is a case of missing punctuation in the transcript.

[67] Having heard and seen from both Mr Condon and the sergeant, the Authority was in my view entitled to reach the finding it did. Ideally, it should have articulated its reasons. However, I note that in his own written evidence, Mr Condon himself had conceded he had “requested” his staff “to say nothing more” than what they were obliged to say, which is going a step further than simply advising them of their rights. I also note Mr Condon did not call the staff member in question and that when he asked another employee, Mr Lasi, whether he had instructed him not to speak to the police, Mr Lasi said he could not remember.

[68] I should add that Mr Condon did not challenge the other evidence about his conduct that night as detailed above at [12]. His conduct was obstructive and in my view reflects badly on him. It was not the conduct of a responsible duty manager.

[69] Nor in my view was his conduct the night of the first police visit, especially having regard to the earlier phone conversation with Mr Dunne when Mr Condon had professed concern about breaching the decision. Mr Condon knew very well that his establishment was supposed to close at 3am and was simply seeking to take advantage of an unmeritorious technicality. I agree with Mr O’Connor that the Authority was generous to Mr Condon in its treatment of that matter.

wrongly placed no weight on Mr Condon’s evidence about his character

[70] What the Authority said was:

[28] The onus is on Mr Condon to establish that he is suitable to continue to hold the certificate. A person’s character and reputation have always been

accepted as crucial components of a person's suitability to manage licensed premises. In this case the only person speaking on Mr Condon's behalf was himself.

[71] Contrary to Mr McMenemy's submission, I do not regard this as the Authority refusing point blank to consider Mr Condon's evidence about his character and reputation on the grounds that he was the person providing the evidence. However, the fact it came from him must be something the Authority was entitled to take into account in assessing its weight.

wrongly rejected Mr Lasi's evidence as having no probative value

[72] In considering Mr Lasi's testimony, the Authority stated

[19] Nevertheless Mr Condon called Mr Risati Lasi as a witness to confirm that cover charges had been imposed in July and August 2007. Mr Lasi had been a doorman at the "Vertigo Venue and Bar". It was not clear to us whether Mr Lasi understood the questions he was being asked. Because of his overall lack of understanding of the process, and his inability to communicate, Mr Lasi lacked credibility and his evidence had no probative value.

[73] In my view, even taking into account the comments made by the Supreme Court in *Austin Nichols & Co Ltd v Stichting Lodestar* [2008] 2 NZLR 141, that is not a finding an appellate court could properly disturb without the benefit of seeing and hearing Mr Lasi. Certainly the transcript tends to support the assessment, revealing as it does a series of leading questions with one word replies "correct" and "yes."

[74] Mr McMenemy contended it was unfair to make the assessment without alerting the appellant to the possibility during the hearing. However, he cited no authority for this proposition. I do not consider the Authority was required to go that far and even if it were that would not be a ground for appellate intervention in the circumstances of this case.

Inconsistency with previous Authority decisions

[75] Mr McMenemy referred me to a number of other Authority decisions where breaches of licences have been visited with a short term suspension. He submitted

that in light of these tariff precedents, the proper decision would have been to grant the certificate but suspend it for an appropriate period.

[76] However, this submission overlooks the fact the Authority did not base its decision solely on the deliberate breach of the trading hours but a combination of factors.

Conclusion

[77] As will be readily apparent from the above, Mr McMenemy has said all that could possibly be said on behalf of Mr Condon.

[78] However, I am satisfied the decision was one which the Authority could properly reach on the evidence and that its procedure was fair.

[79] I am also satisfied having re-assessed all the material and considered what else might have been said by Mr Condon as indicated in his evidence, that I would have reached the same conclusion as the Authority.

[80] The appeal is accordingly dismissed and the decision of the Authority confirmed.

[81] Mr Condon is legally aided and there will therefore be no order as to costs.

*Solicitors:
P B McMenemy, Christchurch
Crown Solicitor, Timaru*