

✓

Decision No: 1902/93 - 1903/93

IN THE MATTER of the Sale of Liquor Act
1989

AND

IN THE MATTER of an application by
PETER MURRAY for an
on-licence pursuant to s.7
of the Act in respect of
premises situated at 137
Gloucester Street,
Christchurch, to be known
as "Kasbah"

AND

IN THE MATTER of an application by
PETER MURRAY
pursuant to s.125 of the Act
for the renewal of a general
manager's certificate

BEFORE THE LIQUOR LICENSING AUTHORITY

Chairman: Judge J P Gatley
Members: Mrs P M Thompson
Mr J W Thompson

HEARING at CHRISTCHURCH on 31 August 1993

APPEARANCES

P Murray - applicant in person
Sergeant A H Milne - New Zealand Police
A C R Sullivan - Christchurch District Licensing Agency Inspector
I A Shaw - Health Link South

DECISION

We have before us applications by Peter Murray for an on-licence in respect of premises situated at 137 Gloucester Street, Christchurch, to be known as "Kasbah" and for renewal of a general manager's certificate.



Police reports oppose the granting of both applications, and on that basis the matters were set down for public hearing.

The application for an on-licence was dated 3 November 1992, and for renewal 1 September 1992.

Applicant's Evidence

Mr Murray acknowledged criminal convictions that will be covered later in this decision. He also acknowledged past drug and alcohol addiction problems. Against that he stressed that he did not have any convictions under the Sale of Liquor legislation and maintained that his drug and alcohol problems were behind him. In the past 10 years Mr Murray has managed three licensed premises in the Christchurch area - the Lion Tavern, British Hotel in Lyttelton and Warners. The applicant said he was presently managing Alley Cats bar and cafe for the licensee, Mr D S M McGinn.

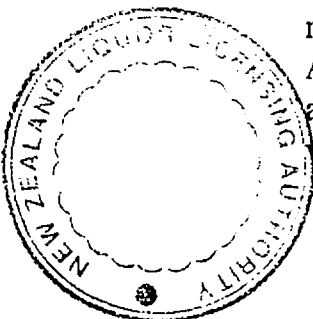
Mr Murray expressed the view that his application for an on-licence was being opposed because the Police "do not like my landlord", and that "my landlord will be pulling the strings."

Mr Murray's landlord in the event of the application for an on-licence being granted, Mr Peter Machirus, gave evidence in support of Mr Murray's application for an on-licence. Mr Machirus leases premises at 133-137 Gloucester Street from where he operates the Penny Arcade amusement centre, including video, poker and amusement machines. The witness said that he did not need the total floor space of over 5,000 square feet and he was going to sublet part of the building to Mr Murray as a cafe bar. Mr Machirus said that he would pay for all renovations to the premises to comply with any Health Department or Council requisition necessary to obtain a licence, but that he would not "in any way whatsoever have any interest or control over the cafe bar".

He hoped the cafe bar would attract a better class of customer to the area and help increase customers in the Penny Arcade.

Mr Murray produced:-

- 1 A certificate from Dr Tim Wilson, MB CHB, General Practitioner, dated 30 August 1993, confirming that Mr Murray was on a methadone maintenance programme under the auspices of the Alcohol and Drug Centre, Christchurch, from 1988 to 1990. "It appeared that he remained stable whilst on this programme, and he withdrew from this programme in 1990."



2. Testimonials from:

- (a) Mr S G O'Keefe, licensee of Warners new hotel, that during the times Mr Murray had been employed as a manager, most recently at Warners and British Hotel, "we found him to be a very experienced and knowledgeable individual in all aspects of the licensed trade. He finds no difficulty in handling a manager's role in a very professional manner."
- (b) Mr Ronald Cameron, a hotel broker and valuer.

Mr Murray called five witnesses in support of both applications:

1. Mr Peter Machirus, his proposed landlord.
2. Mr R Cameron, hotel broker and valuer.
3. Mr P R Cooper, proprietor of the Excelsior Hotel in Christchurch.
4. Mr J Wheelan, licensee of the Empire Tavern, Lyttelton.
5. Mr D McDonald, a former owner of a hotel in Hokitika who had come to know the applicant when Mr Murray was serving behind the bar at Warners.

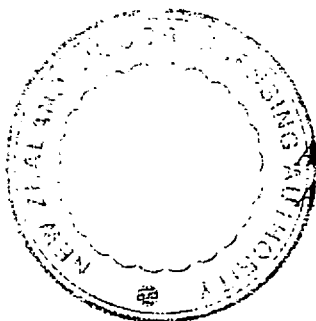
Mr Murray explained that he had been unable to call his former employer at Warners, Mr S G O'Keefe, as Mr O'Keefe had left for Australia at short notice on 26 August last.

Police Evidence

Sergeant Milne said that following receipt of the applications by Mr Murray, concerns had been expressed by members of the Police regarding his suitability to be a licensee or a manager of licensed premises. Sergeant Milne produced Mr Murray's criminal conviction record:-

"Criminal:

<u>Court</u>	<u>Conviction Date</u>	<u>Offence</u>
Australia	23/10/67	Deposit litter in public place.
Australia	09/12/68	Illegal use m/car chg 1. Illegal use m/car chgs 2-6. Shopbreak and steal chg 1. Shopbreak and steal chgs 2-3. Attempt shopbreak + steal.
Australia	01/07/69	2 charges canal knowledge.
Australia	22/08/78	2 charges theft by deception.



<i>Australia</i>	<i>12/04/79</i>	<i>Poss drug of addiction.</i>
<i>DC Christchurch</i>	<i>05/10/82</i>	<i>Common assault (manually).</i>
<i>DC Christchurch</i>	<i>19/02/91</i>	<i>Breach Community Service."</i>

Traffic:

<i>"Court</i>	<i>Conviction Date</i>	<i>Offence</i>
<i>Christchurch</i>	<i>25/02/87</i>	<i>Driving with excess breath alcohol level (0600).</i>
<i>Christchurch</i>	<i>05/06/87</i>	<i>Driving while disqualified.</i>
<i>Christchurch</i>	<i>28/07/92</i>	<i>Breath alcohol level >400 mgms/litre breath (0509)."</i>

Three Christchurch Police Detectives gave evidence.
Detective S A Moore:-

"In 1992, I was involved in another enquiry in which Peter Murray's name was mentioned in conjunction with that of Peter Lloyd Machirus. I know Machirus to have been involved in criminal activities especially bookmaking in Christchurch for a very long time. He is one of Christchurch's more infamous criminals.

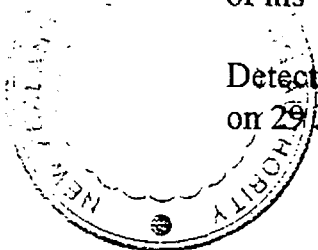
During this enquiry, I became aware that Machirus was the owner/operator of the "Penny Arcade" in Gloucester Street and I have seen him on these premises and have received information that he is the owner/manager of Penny Arcade.

I became aware through an informant that Machirus intended to set up a bar in the Penny Arcade premises and that as he would never get a liquor licence, he was going to have Murray apply for the licence to run the bar, but that, in fact, Machirus would be running it. There is no doubt that Machirus and Murray are not suitable persons to hold liquor licences.

When seeing the application for a licence in the Public Notices of the Press newspaper, I informed Sergeant Milne and expressed my concerns."

Detective H van Keulen said that Mr Murray was a known intravenous drug user and that he had been dismissed from employment at "Warners" because of his "drug habit".

Detective N B Jenkins gave evidence that as the result of a complaint that on 29 June last Mr Murray had hit a 65 year old patron on the head with a



baton that had a chain wrapped around it, (the event took place while Mr Murray was serving at the Alley Cats cafe), the applicant has been charged with assault with a blunt instrument pursuant to s.202C of the Crimes Act. The matter has yet to be finalised.

District Licensing Agency

Mr Sullivan, District Licensing Agency Inspector, confirmed reports he had submitted to the effect that Mr Murray was not a suitable person to hold either an on-licence or a general manager's certificate. Mr Sullivan submitted that the character witnesses called by Mr Murray had given favourable comment on Mr Murray's work as a barman, not as an employer. Mr Sullivan said that when Mr Murray had called at the District Licensing Agency to discuss his application, the applicant's breath had smelt of liquor and that was unusual with applicants for liquor licences.

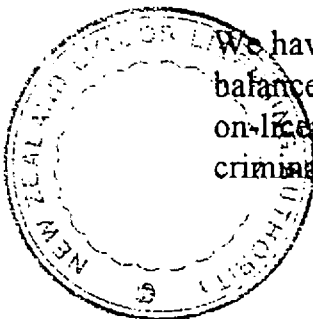
In response to a question from the Authority, Mr Sullivan acknowledged that Mr Murray had not come to the attention of the Agency during the time that he had been managing licensed premises since the current legislation came into force on 1 April 1990.

In the course of the hearing we learnt that whilst the on-licence for the Alley Cats bar and cafe was held by Mr B S M McGinn - described as lessee of the premises when the licence was granted - the premises were currently leased and operated by Mr Murray. If the present application for an on-licence was granted, Mr Murray would have overall responsibility for the operation of two premises.

Mr I A Shaw, Health Link South Health Inspection Officer, presented a report dated 30 August 1993 from Dr M A Brieseman, Medical Officer of Health, opposing the granting of the on-licence sought. Mr Shaw said that whilst a certificate had been produced that Mr Murray had attended a "methadone maintenance programme", there was no evidence before the Authority that Mr Murray did not have alcohol related problems. A high risk of "cross addiction" must be considered. Excess breath alcohol convictions in 1987 and 1992 gave rise to doubts as to Mr Murray's suitability to hold an on-licence.

Decision

We have given careful consideration to all evidence adduced, but on balance we are not satisfied that the applicant is a suitable person to hold an on-licence. We note that Mr Murray has endeavoured to put his past criminal record in Australia behind him, but even so since his arrival in



Christchurch he has had convictions for assault and breach of community service, two excess breath alcohol convictions, and a conviction for driving whilst disqualified. In arriving at a decision on the present applications, we disregard the evidence leading to a charge against Mr Murray of assault with a blunt instrument which has yet to be heard.

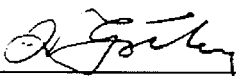
We have also had regard to the fact that Mr Murray has undertaken a methadone maintenance programme and attended Alcoholics Anonymous. Nevertheless we share the concerns of Mr Shaw as to whether Mr Murray's alcohol related problems are behind him. Accordingly, we do not consider it appropriate for Mr Murray to be in sole charge of licensed premises.

Turning to the application for renewal of Mr Murray's manager's certificate we are very conscious of the consequences for the applicant and his family if he is denied employment prospects as a bar manager. In addition to the other question-mark concerning his suitability to hold an on-licence, which also impact on his suitability to hold a manager's certificate, we are concerned to note that Mr Murray has utilised a general manager's certificate to take charge of Alley Cats bar and cafe in circumstances where the licensee does not have tenure of the premises. We would expect the District Licensing Agency to enquire further into that situation.

The criteria that the Authority is directed to have regard to in considering an application for renewal of a manager's certificate are set out in s.126 of the Act. Apart from evidence of the pending assault charge which we put to one side for the purposes of the present application, no evidence was adduced addressing the manner in which Mr Murray has managed the sale and supply of liquor, s.126(c).

Against that Mr Murray has had a repeat excess breath alcohol conviction and a breach of community service conviction since his manager's certificate was last issued renewed on 11 October 1989 (s.126(b)), and reports of both the Police and the District Licensing Agency oppose renewal of his manager's certificate (s.126(d)). On balance we can only repeat that we are not satisfied that Mr Murray is a suitable person to be in sole charge of licensed premises. It follows that both applications are refused.

DATED at WELLINGTON this 5th day of October 1993


Judge J P Gatley
Chairman

