

Decision No. PH 473/2006

IN THE MATTER

of the Sale of Liquor Act 1989

AND

IN THE MATTER

of an application by **TUPUIARIKI DANIEL-MALIETOA** pursuant to s.123 of the Act for renewal of a General Manager's Certificate

BEFORE THE LIQUOR LICENSING AUTHORITY

Chairman: District Court Judge E W Unwin

Member: Ms P A Ballard

HEARING at TAUPO on 15 June 2006

APPEARANCES

Mr T Daniel-Malietoa – applicant

Mr D Fabrie – South Waikato District Licensing Agency Inspector – in opposition

Sergeant A W J Clarke – NZ Police – in opposition

ORAL DECISION OF THE AUTHORITY

[1] This is an application by Tupuiariki Daniel-Malietoa for the renewal of his General Manager's Certificate. Mr Daniel-Malietoa was granted his General Manager's Certificate on 11 November 2004. He was required to apply to renew that certificate one year later and did so. In the application form he was asked whether he had any convictions and he said that he did not.

[2] There was opposition to the renewal based on:

- [a] The ground that he had not disclosed a relevant conviction since the certificate was issued; and
- [b] The nature of the conviction itself which involved driving after drinking to excess.

[3] The relevant criteria which we are required to take into account are set out in s.126 of the Act. These criteria relate to Mr Daniel-Malietoa's character and reputation, convictions recorded against him since the certificate was issued, and the manner in which he has managed the sale and supply of liquor pursuant to the licence with the aim of contributing to the reduction of liquor abuse.

[4] There are no concerns about the way the applicant has used his certificate over the last 18 months or so. The issue is the conviction. The offence occurred in March 2005, and the conviction followed some three weeks later. The level of alcohol in

Mr Daniel-Malietoa's breath was 628 micrograms of alcohol per litre of breath which, as the Police have pointed out, is a reasonably high limit. Mr Daniel-Malietoa was duly convicted, fined and disqualified.

[5] The Police and the Inspector have submitted that the failure to disclose the conviction may have been with the intention of misleading the Agency and the Authority. They argued that the omission therefore affects the applicant's character and suitability. Furthermore, it was contended that the conviction relates to liquor abuse and therefore Mr Daniel-Malietoa has certainly failed to set an example while being employed in the hospitality industry. Accordingly, his suitability has been brought into question.

[6] Both arguments are valid. On the other hand, Mr Daniel-Malietoa has given evidence and has explained that from June of last year he ceased employment at an off-licence where he had been working part time, to concentrate fully on a job in the timber business. There were questions of redundancy and he was subsequently made redundant.

[7] It was while the stress and uncertainty of his future employment was taking place that he was asked by the manager of the off-licence whether he still wished to renew his certificate. He said he drove down and filled in the form without looking at it adequately, or thinking about the consequences. He said he was distracted by what was happening with his full time job, and failed to make the disclosure. It was not a particularly convincing argument, but he has stressed that the omission was not deliberate on his part. We are inclined to give him the benefit of the doubt.

[8] Nevertheless the position is that there has been a conviction. Mr Daniel-Malietoa has explained how it happened, and he is clearly knowledgeable about the fact that he has let himself down and in particular detracted from the privilege of the holding of a General Manager's Certificate. As he acknowledged, his behaviour was the type of conduct that he has a responsibility to ensure, does not happen.

[9] We only have two options. On determining a renewal application, we may grant the application, or we may refuse it. To refuse the application in our view would be an unreasonable response to what can be seen as an isolated matter. Mr Daniel-Malietoa has given an undertaking that if granted a renewal he will use it only in his present employment. Of course he cannot be tied to such an undertaking without some possibility of having an exception which may be the subject of a written approval by the Inspector or by this Authority.

[10] However, s.117A of the Act, which came into force on 1 April 2006, provides that no General Manager's Certificate may issue, or be renewed, unless the applicant holds the Licence Controller Qualification prescribed in that section. Accordingly, provided that the applicant is able to produce or achieve that qualification, we are prepared to consider renewal of the certificate for a period of 18 months. This means that it will fall due for renewal again on 11 May 2007, in just under 12 months time. This can be regarded as a further probationary period for the applicant and will, we hope, serve as a reminder to him and to the other holders of General Managers' Certificates, that liquor abuse by any holder will place a certificate at risk.

[11] In the circumstances we propose to adjourn our final determination for two months to allow Mr Daniel-Malietoa to obtain the qualification. Should he subsequently fail to do so, we will have no option but to refuse the application to renew the certificate.

DATED at WELLINGTON this 23rd day of June 2006

Judge E W Unwin
Chairman

Ms P A Ballard
Member