

Decision No. 45/2020/MC 503/1

**IN THE MATTER**

of the Sale and Supply of Alcohol Act 2012

**AND**

**IN THE MATTER**

of an application by **Paul E Pretty** pursuant to section 224 of the Act for the application for a Manager's Certificate in respect of the premises situated at 41 School Road, Te Horo known as 'Ruth Pretty Catering' and 'World Wines Limited'.

**BEFORE THE KAPITI COAST DISTRICT LICENSING COMMITTEE**

Chair: Fiona Vining  
Members: Trevor Knowles  
Fraser McInnes

**HEARING** at Kapiti Coast District Council offices, Paraparaumu, on 24 February 2020.

**APPEARANCES**

Paul Pretty – the applicant  
Antoinette Bliss – Licensing Inspector  
Sgt Shane Bengel – NZ Police

**RESERVED DECISION OF THE COMMITTEE**

**Introduction**

1. This is an application by Paul Pretty for renewal of a Manager's Certificate to manage the sale and supply of alcohol at functions catered by Ruth Pretty Catering which has premises situated at 41 School Road, Te Horo and the sale and supply of alcohol by World Wines Limited which also has premises situated at 41 School Road, Te Horo.

**The Application**

2. A copy of the application was forwarded to the reporting agencies and the Licensing Inspector, as is required by section 225. The Licensing Inspector recommended that given the lack of honesty in his application, that the applicant be given the opportunity to demonstrate his suitability to be a manager by way of a public hearing.

3. All those appearing were sworn in.

### **Applicant's Evidence**

4. The applicant Mr Pretty spoke in support of his application and provided a brief of evidence.
5. In Mr Pretty's application for renewal he ticked the box "no" in response to the question of whether he had any previous convictions.
6. In his brief of evidence, Mr Pretty acknowledged that the section in relation to criminal convictions was not filled in correctly. He stated that he has a conviction for assault in the Levin Court. He stated that he was not sure of the date but it was in the last 4 years or more.
7. His evidence was that he had completely forgotten about "this incident" when he filled in the forms for the renewal of his manager's certificate. He stated that "in reflection of the incident I had removed any thoughts of what I went thru [sic] when this was happening and never thought about it again as it was quite upsetting at the time".
8. He noted that neither he nor Ruth Pretty Catering Limited has ever had a conviction for serving excess alcohol to clients or guests at functions over a period exceeding 32 years. He observed that the number of guests at functions had been between 10 and 5000 or more.
9. At the hearing Mr Pretty confirmed that the reason that he had not acknowledged his conviction in his application is that it just did not occur to him as he had removed it from his thoughts. When asked why he did not declare it in his 2016 application for renewal which was shortly after his conviction, he stated that he could not recall.
10. In response to questions Mr Pretty stated that the conviction was for common assault and that it occurred at the Te Horo premises where he works.
11. He said that a person working in the shop came to ask him a question about sending a parcel. He said that from memory it may have been "October, November December during our busy time". He said that he told her to go see the office lady and "I reached out and just basically touched her and said that's something you need to learn about". He stated "that person saw it as an assault and laid a charge against me".

### **The Police**

12. The police report into the application was prepared by Sgt Grimstone of the Otaki Police. Police did not oppose the renewal but noted that Mr Pretty "should be advised that KCDC are aware of his non-disclosure (of his 2016 conviction) and that any further applications omitting such information may result in opposition to his application".



13. We note that as the boundary of this Committee covers two different police districts. This has made it clear that different police districts appear to have a different approach to objections to matters under the Sale and Supply of Alcohol Act 2012. Despite different approaches from the police, it is important to this Committee to maintain consistency in its decisions.
14. As this matter was heard on the same day as two other matters, Sgt Bengé who is based in the Wellington region attended on behalf of the police on this matter as well. As such, he acknowledged that having not prepared the initial report he was not able to advise why police did not object to renewal of Mr Pretty's manager's certificate in 2016.
15. Sgt Bengé stated that Mr Pretty's previous convictions' prior to 2016 were 15 years previous. He stated that taking that into account he would have assumed that in 2016 police would have objected on the basis that a two year stand-down period would have been appropriate. Then in 2019, 3 years later, one offence would not of itself have been considered by police for opposition.

### **The Inspector**

16. Antoinette Bliss attended as Licensing inspector but noted that the Licensing Inspector's report was completed by Katherine McLellan.
17. Ms McLellan's report includes an attached email in which she has asked whether Mr Pretty would like to provide a written explanation for his omission to declare his conviction. Mr Pretty responded apologising and stating "I had completely forgotten this episode in my life".
18. The report notes that Police advised that the conviction was dated 24 March 2016.

### **Committee's Decision**

19. The matters which a Committee must consider in regard to renewing a Manager's Certificate are contained in section 227 of the Act:

#### **Criteria for renewal**

In considering an application for the renewal of a manager's certificate, the licensing authority or licensing committee concerned must have regard to the following matters:

- (a) the applicant's suitability to be a manager:
- (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 alcohol pursuant to the licence with the aim of contributing to the reduction of alcohol-related harm:

- (d) any matters dealt with in any report made under section 225.

### Suitability

20. Under the previous legislation, the High Court has stated:

The real test is whether the character of the applicant has been shown to be such that he is not likely to carry out properly the responsibilities that are to go with the holding of a license.<sup>1</sup>

21. The Liquor Licensing Authority has noted:

Each application is dealt with on a case by case basis. In determining suitability we assess the likelihood of a potential licensee or manager upholding the law in light of the evidence provided.<sup>2</sup>

22. The Committee is concerned about Mr Pretty's honesty both in terms of the two applications completed incorrectly and his statements made at the hearing. The Committee finds his statements at the hearing to be dismissive to the point of being evasive. The Committee does not find Mr Pretty's evidence to be reliable.
23. Mr Pretty's explanation of the incident also appears to minimise what occurred given that it was sufficient to find Mr Pretty guilty of assault.
24. The Committee does not accept that Mr Pretty would have simply forgotten the incident and the fact of the conviction in a period of a few years let alone in the period of months between the conviction and Mr Pretty's application for renewal of his manager's certificate in 2016.
25. Mr Pretty's explanation is even more unconvincing when considering that the incident that resulted in his conviction occurred at the licensed premises for which he is applying for a manager's certificate.
26. The Committee is concerned that a more likely explanation is that Mr Pretty omitted to declare his conviction as he was fully aware of the impact that it would have had on the renewal of his manager's certificate back in 2016 and hoped it would be overlooked, as it was.

### Convictions

27. As stated above, Mr Pretty has a conviction for common assault from 2016. He has not previously declared this on any application, so has not been subject to a stand-down period in respect of that conviction. Police have noted that they would have recommended a stand-down period of two years.

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<sup>1</sup>*Re Sheard* [1996] 1 NZLR 751 at 758

<sup>2</sup>*Deejay Enterprises Limited* (LLA Decisions 531/97-532/97)



28. In *Re Osborne*<sup>3</sup> the Liquor Licensing Authority said in respect of a manager's certificate, there should be an appropriate stand-down period in respect of serious convictions:

"The same approach, in our view, should apply to Managers' Certificates. Without fettering ourselves in this or other applications, it may be helpful if we indicate that we commonly look for a five year period free of any serious conviction or any conviction relating to or involving the abuse of alcohol, or arising in the course of an applicant's duty on licensed premises.

We regard Mr Osborne's convictions on 25 October 1991 as fitting squarely within this categorisation.

Less serious convictions are also weighed. By way of example is an isolated excess breath/blood alcohol conviction, or a single driving offence disclosing no pattern of offending. Nevertheless all convictions must be weighed as required by s.121(1)(b). In these and similar cases we frequently indicate that a minimum of two years from the date of conviction may result in subsequent favourable consideration – providing suitable reports from both the Police and a Licensing Inspector are received. In all situations we usually regard time as running from the date of conviction, rather than the date of offending.

29. We note that the conviction was for common assault and Mr Pretty was sentenced to a fine. The incident did occur on the licensed premises in which he works. In this case, the Committee is satisfied that a stand-down period would have been imposed in 2016 but for Mr Pretty's failure to declare his conviction meaning that it was not brought to the attention of the Committee.

#### Management of licensed premises

30. Mr Pretty has worked for Ruth Pretty Catering Limited for a significant period of time. As Mr Pretty has observed, neither he nor the company have come to the attention of the authorities in relation to the sale and supply of alcohol.

#### Other matters

31. The matters raised by the Police and Licensing Inspector have been discussed above.

#### Renewal criteria as a whole

32. The Committee is required to consider all the criteria set out in section 227. This is a balancing act.
33. The Committee has taken into account issues regarding Mr Pretty's suitability arising from his incorrect statements made in completing the two applications

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<sup>3</sup>LLA 2388/95 (13/10/1995)

which the Committee views as more than likely deliberate and dishonest. It is of concern that this dishonesty has resulted in Mr Pretty not being subject to a stand-down period when he applied for his manager's certificate to be renewed in 2016. Finally it is notable that while the conviction was not in respect of an offence under the Sale and Supply of Alcohol Act 2012, it did relate to an incident which occurred at the licensed premises at which Mr Pretty uses his manager's certificate.

34. In these circumstances, the Committee agrees that a stand down period is appropriate. This stand-down period should be for a period of twelve months from the date of this decision.

### Conclusion

35. Accordingly, the District Licensing Committee, having read the application and the submissions and reports filed by the parties and having listened to the capable submissions which were made by all parties, and having taken particular notice of the objects of the Act set out in Section 4, and having addressed the criteria for the renewal of a Manager's Certificate set out in Section 227, **declines** the application by Paul Pretty for a Manager's Certificate.

**DATED** at Paraparaumu on this 9<sup>th</sup> day of June 2020

  


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**Commissioner Fiona Vining**  
Chair  
Kāpiti Coast District Licensing Committee