

Decision No.PH 1338/2009

IN THE MATTER

of the Sale of Liquor Act 1989

AND

IN THE MATTER

of an application by
MATHANARAJ NADARAJA
pursuant to s.123 of the Act for
renewal of a General Manager's
Certificate

BEFORE THE LIQUOR LICENSING AUTHORITY

Quorum: Ms J D Moorhead
Mr P M McHaffie

HEARING at AUCKLAND on 27 October 2009

APPEARANCES

Mr M Nadaraja – applicant
Constable J K Ryder – NZ Police – in opposition

ORAL DECISION OF THE AUTHORITY

[1] Before the Authority is an application by Mathanaraj Nadaraja for the renewal of a General Manager's Certificate.

[2] The certificate was originally issued on 29 February 2008 by the Auckland District Licensing Agency. An application for renewal was received by the Agency prior to the expiry in February 2009. Mr Nadaraja is the holder of the Licence Controller Qualification and uses his certificate as a duty manager at "Eastridge New World" in Mission Bay.

[3] On the application for renewal he disclosed that he had been convicted of an offence since the issue of the manager's certificate, which he recorded as being a drink/drive offence. Police vetting procedures confirmed the existence of the conviction and, not unnaturally, an adverse report was filed by the Police opposing the application for renewal. The matter was accordingly set down for a public hearing.

[4] The evidence shows that on 23 October 2008 Mr Nadaraja was the driver of a vehicle that collided with a parked vehicle in Ellerslie, Auckland City. He exhibited signs of recent alcohol consumption and blood alcohol procedures were carried out. The end result was that Mr Nadaraja was convicted on 13 January 2009 in the Auckland District Court of driving with excess blood alcohol. He was also convicted of operating a vehicle carelessly. His blood alcohol reading was 181 milligrams of alcohol per 100 millilitres of blood; this is more than twice the legal limit of 80 milligrams of alcohol per 100 millilitres of blood.

[5] Mr Nadaraja gave evidence and confirmed that he still utilises his certificate at "Eastridge New World" and that he has worked there since 1998. He said in relation to the particular incident that he had been upset that day due to family matters. He did not know how much he had been drinking and did not think that he had been acting as a drunk person. He said that the collision occurred when he reached over to the passenger seat to get something that had fallen down and turned the wheel. Nevertheless he accepts that the whole incident is not 'a good look'. He says it will not happen again and that he has never done anything like this previously.

[6] We acknowledge that there are no previous convictions but also take note that this offending occurred within the first probationary year of the General Manager's Certificate.

[7] The criteria which we must have regard to in determining an application for renewal are set out in s.126 of the Act. It was also noted in the decision of *Deejay Enterprises Limited* LLA 531-532/97:

"The guiding hand or hands-on operator of any company or the potential holder of a General Manager's Certificate now receive greater scrutiny from both the Police and other reporting agencies. Character and reputation are closely examined. The law and human desires of patrons frequently tug in different directions. The Police cannot be everywhere. Little but a licensee's or manager's character and suitability may stand between upholding the law and turning a blind eye. Self imposed standards in accordance with the law must be set by licensees and holders of General Manager's Certificates who control and manage licensed premises."

[8] In all the circumstances we have decided to renew the certificate but for a shorter period. The normal renewal period is three years. In this instance we propose to renew the certificate for the lesser period of two years. In effect this will mean that the certificate will now expire on 28 February 2011 and therefore Mr Nadaraja will be required to complete a further probationary year. The certificate is renewed on those terms.

DATED at WELLINGTON this 3RD day of December 2009

B M Holmes
Deputy Secretary