

Decision No. PH 1345-1346/2009

IN THE MATTER

of the Sale of Liquor Act 1989

AND

IN THE MATTER

of an application pursuant to s.132 of the Act for suspension of on-licence number 068/ON/38/08 issued to **RED ROCK WANAKA 2008 LIMITED** in respect of premises situated 68 Ardmore Street, Wanaka, known as "Red Rock"

AND

IN THE MATTER

of an application pursuant to s.135 of the Act for suspension or cancellation of General Manager's Certificate number GM/005/134/2006 issued to **CHRISTOPHER MOSS RIDDING**

BETWEEN

KEITH PHILIP NEWELL
(Police Officer of Queenstown)

Applicant

AND

RED ROCK WANAKA 2008 LIMITED

First Respondent

AND

CHRISTOPHER MOSS RIDDING

Second Respondent

BEFORE THE LIQUOR LICENSING AUTHORITY

Chairman: District Court Judge E W Unwin

Member: Dr J Horn

HEARING at QUEENSTOWN on 19 November 2009

APPEARANCES

Sergeant K P Newell – NZ Police – applicant

Mr S Colborne – on behalf of first respondent

No appearance by or on behalf of second respondent

Mr L Webster – Queenstown-Lakes District Licensing Agency Inspector – to assist

ORAL DECISION OF THE AUTHORITY

[1] Before the Authority are two enforcement applications dated 28 July 2009. The first is for the suspension of an on-licence issued to Red Rock Wanaka 2008 Limited (hereafter called "the company") in respect of premises situated in Wanaka known as "Red Rock".

[2] The grounds for the first application are that the licensed premises have been conducted in breach of ss.166 and 168 of the Act. Section 166 of the Act makes it an offence to sell or supply liquor to a person who is already intoxicated. Section 168 creates the offence for allowing an intoxicated person to be or to remain on licensed premises.

[3] The second application is for the suspension of a General Manager's Certificate issued to Christopher Moss Ridding. Mr Ridding was granted his certificate in 2006 in the North Shore. The ground for the application is that Mr Ridding's conduct as the manager was such as to show a lack of suitability to hold the certificate.

[4] The evidence was read to us with the consent of the first respondent. It shows that Constable M I Johnston was conducting a routine visit to the premises known as "Red Rock" at about 2.25 am on Sunday 8 March 2009. He observed that the manager on duty was Mr Ridding. He noted that at the time he visited, about 40 to 50 people were present. He said he would not describe the bar as being overly busy. He observed a male in his late 30s to be standing and swaying on his feet. This person was hanging on to a barstool for support, his eyes were closed and he was alone. He had in front of him a glass of alcohol with some ice in it, indicating that it had recently been purchased.

[5] The Constable spoke with the patron who was quite cooperative but continued to be unsteady on his feet. The Constable then spoke with the duty manager. Mr Ridding agreed with the intoxication assessment. They went out to the footpath where the patron was having some trouble speaking clearly and standing without swaying. The patron claimed (somewhat unusually), that he should not have been allowed to stay in the bar because he was too drunk.

[6] Mr Ridding indicated that he missed this patron while managing the premises. He explained that he was short of bar staff that morning, which meant that he was unable to manage the bar as he would like.

[7] We heard from a shareholder and director of the company, Mr S M Colborne. Mr Colborne confirmed that he and his business partner have owned the premises for about two and a half years. It is not the only premises that they operate in the Wanaka district.

[8] Mr Colborne submitted that the company has set its own standards which are self imposed, and which require that there be a number of checks and balances in place. He said that Mr Ridding came to work for the company as the holder of a manager's certificate. The company employed Mr Ridding at two of their other premises as part of the team. After a period of nine months or so they gave him sole charge control of "Red Rock" and believed that he was up to the task.

[9] However, after about three months it was clear to the directors that Mr Ridding was not the sort of responsible employee they expected. There were two reasons for that. One was that there were certain discrepancies with the stock levels. As a consequence some three weeks after 8 March 2009, Mr Ridding was discharged from the company's employment. There were no consequences in terms of

employment law. It is not known where Mr Ridding is, although it is suspected that he may have gone back to Auckland.

[10] Secondly, Mr Ridding did not disclose what had happened on this particular Sunday morning, either in the incident book or to his employers. Mr Colborne took issue with the suggestion that there were any form of understaffing. He said their policy is to train full time members of their staff to reaching the Licence Controller Qualification and manager's certificate status. On this particular night it was off-season and the 40 or 50 patrons were nothing compared with the 200 that are normally expected at a busy time in Wanaka.

[11] The company had managed to establish that the takings for this particular night were about \$800. The records also showed that there were two other members of staff who were working on the premises besides Mr Ridding. The company's policy is that no duty manager will be trapped behind the bar but must be available to walk around the venue to check levels of intoxication and the ages of patrons.

[12] Mr Colborne believed that by failing to disclose what had happened and by not recording it in the incident book, Mr Ridding had failed to take responsibility for his own actions. He disputed any suggestion that the company had not provided enough staff. Furthermore it was his argument that they have a large pool of staff across the road that could have been immediately diverted to help out if there were pressure points.

[13] Mr Colborne advised that he was not aware of any difficulty with regard to this particular morning until he received a copy of the application on 5 August 2009, the day after the document was filed with the Authority, and some five months after the event.

[14] He indicated that by that stage the manager had been dismissed. He stated that had they known earlier they may have been able to check on the CCTV as well as the financial and staff records, to be able to present a clearer picture of what had happened.

[15] On that basis we must decide whether the allegations have been established, whether it is desirable that some form of sanction be imposed, and if so what that sanction might be.

[16] As far as the General Manager's Certificate is concerned we are more than satisfied from what we have heard that Mr Ridding's conduct on that particular morning showed a lack of suitability. In our view it is desirable to make an order, particularly given Mr Ridding's absence from the hearing. There has been no explanation for what happened. It may well be that Mr Ridding is no longer in the industry. For all these reasons we believe that a cancellation of the certificate is appropriate.

[17] We therefore order that General Manager's Certificate number GM/005/134/2006, issued to Christopher Moss Ridding, is cancelled.

[18] As to the company, it can be made responsible for the actions of its manager. It does not have to be found to have been irresponsible in any way for an order to be made. On the other hand the unfortunate delay in being made aware of the incident (caused by the manager), has created considerable difficulty for the company in being able to offer any explanation.

[19] In the final analysis we do not believe that it is desirable to make an enforcement order against this company. We cannot see that the company would be encouraged to change its systems in any particular way. We have decided that instead of making an order we will adjourn the application for six months pursuant to s.132(7) of the Act. The period of adjournment will commence from the date of the hearing.

[20] That will be a challenge for the respondent company because it will mean that over the next six months they will be going through one of Wanaka's busy tourist periods. The six months adjournment is to give the company an opportunity to remedy its systems or its appointment of its managers in such a way as to ensure that there are no other issues of intoxication on the premises.

[21] The basis of the adjournment is this:

- [a] If the company passes the test and there are no further issues in the next six months, then the enforcement application will be declined;
- [b] If issues do arise during the next six months, they will be dealt with along with the current allegation by way of a further public hearing.

DATED at WELLINGTON this 3RD day of December 2009

B M Holmes
Deputy Secretary