

Decision No. PH 1347-1348/2009

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 or cancellation of on-licence number 067/ON007/17/2005 and off-licence number 067/OF023/17/2005 issued to **ROBERT ALAN SMAILL** in respect of premises situated at Rapid 5592, Ettrick-Raes Junction Road (SH8), Millers Flat, known as "Bridge Tavern"

AND

IN THE MATTER

of an application pursuant to s.135 of the Act for suspension or cancellation of General Manager's Certificate number 067/GM/MC533/2004 issued to **ROBERT ALAN SMAILL**

BETWEEN

KEITH PHILIP NEWELL
(Police Officer of Queenstown)

Applicant

AND

ROBERT ALAN SMAILL

Respondent

BEFORE THE LIQUOR LICENSING AUTHORITY

Chairman: District Court Judge E W Unwin

Member: Dr J Horn

HEARING at QUEENSTOWN on 20 November 2009

APPEARANCES

Sergeant K P Newell – NZ Police – applicant

Ms T J Surrey – for respondent

Mrs S Wilson – Central Otago District Licensing Agency Inspector – to assist

ORAL DECISION OF THE AUTHORITY

[1] There are two applications dated 9 July 2009 before the Authority. The first is for the suspension or cancellation of on and off-licences issued to Robert Alan Smaill, in respect of premises situated in Millers Flat, known as "Bridge Tavern".

[2] The ground for the application is that the conduct of the licensee has been such as to show a lack of suitability. There is a related application for the suspension or cancellation of a General Manager's Certificate issued to Mr Smaill. This application is based on the ground that Mr Smaill's conduct has been such as to show a lack of suitability.

[3] Mr Smaill took over the "Bridge Tavern" approximately five years ago. He obtained a General Manager's Certificate and became the sole licensee of the on and off-licence. We are advised that sales in respect of the off-licence occur across the bar. The premises' trading hours are generally from 9.00 am until 2.00 am the following day, Monday to Sunday. The off-licence allows for trading between 9.00 am and 12.00 midnight.

[4] The evidence discloses that at about 6.30 pm on Friday 29 May 2009, Mr Smaill was driving a motor vehicle on State Highway One. It was noticed that he was weaving in his lane and that he crossed the centreline on several occasions. He exhibited signs of recent alcohol consumption. An evidential breath test revealed a level of 518 micrograms of alcohol per litre of breath. Mr Smaill indicated that he may have consumed a jug of beer. He had not appreciated that he was driving erratically.

[5] Mr Smaill had a previous conviction in 2002 which tends to aggravate the incident. As was pointed out by his counsel, the earlier incident occurred prior to Mr Smaill entering the industry. This earlier conviction did not impact upon his ability to obtain the licences and his manager's certificate some two years later.

[6] The issue is whether it has been established that there has been improper conduct, and whether it is desirable that some form of sanction be imposed. It has been pointed out that Millers Flat is a small farming community. The "Bridge Tavern" is the sole tavern in the immediate area. There is another off-licence that services the public.

[7] Mr Smaill has operated the business without fault for the past five years. He and his partner are the only certificated persons on site. The business is not particularly profitable. As a result any sanction that is imposed may have an impact on the community and will certainly have an impact on Mr Smaill.

[8] Mr Smaill produced two glowing references from members of the community. He has changed the way that he drinks as the result of what happened. In his own words he has undergone a major learning curve. It seems that he may well have changed the way he operates the business in that he is much more focused on the need to control the sale of liquor, and help ensure the safety of his patrons.

[9] We have done our best to try to fashion a sanction that reflects the uniqueness of the situation. At the same time the sanction should reinforce our policy that if there are breaches of the Land Transport Act 1998 arising from overindulgence in liquor, then managers and/or licensees must expect some form of sanction. This

expectation reflects the national drive to keep standards high in an effort to achieve the Act's objective.

[10] Accordingly we think it is desirable to make orders. Quite clearly cancellations of either the licences or the certificate are out of the question as being an unreasonable consequence. In all the circumstances our decision is to suspend both licences for a period of 24 hours, and to suspend the manager's certificate for a period of three weeks.

[11] For the reasons we have stated it is now confirmed that on-licence number 067/ON007/17/2005 and off-licence number 067/OF023/17/2005, issued to Robert Alan Smaill, are suspended for 24 hours commencing at 9.00 am on Monday 23 November 2009.

[12] General Manager's Certificate number 067/GM/MC533/2004, issued to Robert Alan Smaill, is suspended for three weeks commencing on Friday 20 November 2009.

DATED at WELLINGTON this 3RD day of December 2009

B M Holmes
Deputy Secretary