

Decision No. PH 1349-1350/2009

**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/93/08 issued to **THE WILLOWS TAVERN LIMITED** in respect of premises situated at 12 Ramshaw Lane, Arrowtown, known as "The Willows"

**BETWEEN**

**KEITH PHILIP NEWELL**  
(Police Officer of Queenstown)

Applicant

**AND**

**THE WILLOWS TAVERN LIMITED**

Respondent

**AND**

**IN THE MATTER**

of an application by **RICKY JOHN SCHULTZ** pursuant to s.118 of the Act for a General Manager's Certificate

**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 and opposition to application for General Manager's Certificate

Mr N B Horn – agent for respondent and applicant for General Manager's Certificate

Mr L Webster – Queenstown-Lakes District Licensing Agency Inspector – in opposition to application for General Manager's Certificate

### **ORAL DECISION OF THE AUTHORITY**

[1] Before the Authority are two related applications. The first application is brought by Ricky John Schultz for a General Manager's Certificate. This application was filed with the Queenstown-Lakes District Licensing Agency in late January 2009.

[2] It arose because Mr Schultz had come over from Australia to help manage the licensed premises known as "The Willows" in Arrowtown. Mr Schultz is 43 years of age. He had a history of ownership of licensed premises in Australia. When he came to New Zealand it was anticipated that he was going to purchase a share in the business.

[3] Not unnaturally the owners of the business were very supportive of his appointment. However, Mr Schultz' application incurred adverse reports from the Police and the District Licensing Agency Inspector. As far as the Police were concerned they discovered that earlier in the year, on Good Friday morning at about 3.00 am, a number of patrons were found drinking and socialising on the premises. Mr Schultz was in charge. The premises were required to close at midnight on Thursday before Good Friday. The incident resulted in a suspension application being filed against the licensee.

[4] Rather more importantly Mr Schultz was interviewed by staff at the Agency. Not only did he fail to answer a number of questions but he acted quite aggressively towards those who were questioning him. There was a subsequent need to discuss a drinks promotion with him. Once again Mr Schultz indicated an inability to listen or take advice. Finally there was a meeting in May with the reporting Agencies as well as with Mr Schultz and the proprietors of "The Willows". At the meeting Mr Schultz treated the proprietors with contempt and disrespect and showed no respect to the representatives of the monitoring agencies. In short, over a period of some months, Mr Schultz's reputation shows a number of serious flaws and the reports became even more adverse.

[5] However, there has been a considerable change of events since the application was filed. Mr Schultz left his employment in late October and left the country on 1 November last. On 25 October last the Police served Mr Schultz with a trespass notice ordering him to keep off the premises known as "The Willows" for a two-year period. There may yet be further implications in terms of employment law.

[6] It is our strong impression that as far as the reporting Agencies are concerned, the fact that Mr Schultz is no longer employed in a position of responsibility is a matter of considerable relief.

[7] Having left the country Mr Schultz failed to appear in support of his application. No letter of explanation was received. Although Mr Horn is here to represent him, no attempt was made to justify Mr Schultz's behaviour. It is quite clear to us that he is unable to establish to our satisfaction the various criteria set out in s.121 of the Act. He is unable to prove that he has valid and responsible employment in the industry in New Zealand. Accordingly we have no hesitation in declining his application.

[8] As indicated above the application for suspension of the on-licence held by The Willows Tavern Limited (hereafter called "the company") was filed with the Authority on 21 July 2009. By that time there had been the discovery of a number of people in the premises at a time when they should not have been present.

[9] The ground for the application was that the premises had been conducted in breach of s.171 of the Act. That is, patrons had been allowed in the premises after hours when they should not have been present. Mr Horn has pointed out that there was no proof of sales being made. However, it is quite clear that an attempt was made by Mr Schultz to justify what had happened. Furthermore, the evidence was that the patrons were drinking and socialising.

[10] When he gave evidence Sergeant Keith Newell, the Alcohol Harm Reduction Officer for Queenstown, referred to two other incidents. One occurred on 17 May 2009. A visit was made to the premises. Some people were discovered who appeared to be intoxicated. A letter was written to the licensee in which Sergeant Newell stated that abuse of alcohol on licensed premises was a serious issue and that while he did not intend to take the matter any further the contents of the letter would be mentioned at any future licensing hearings.

[11] That letter was never received by the company's shareholders and directors. Mr Schultz had been given responsibility to hire and fire staff and to pay the accounts. He also cleared the mail. He kept the information in the letter to himself.

[12] The third matter occurred on 12 September 2009. Once again Mr Schultz was the duty manager, and it was believed that intoxicated people were present.

[13] Although neither of the two latter incidents was included in the original application they were brought before us and we were asked to impose some form of sanction against the licensee as a reminder to be vigilant in terms of adherence to the Act.

[14] On the other hand it is clear that with the departure of Mr Schultz and another employee, there is an expected absence of these types of problems. There are a number of certificated managers available. The company has been placed under considerable stress as a result of what has happened. That stress includes financial issues as well as patronage and profitability.

[15] In those circumstances it seems to us that as part of the "*reasonable*" system of control over the sale and supply of liquor we are prepared to give the company one further and final opportunity to redeem itself. We have decided that the application will be adjourned in terms of s.132(7) of the Act. The adjournment will be for a period of six months. We note that this adjournment will take us past the following Easter which is a matter of some importance.

[16] This will give the licensee an opportunity to remedy the following matters. Firstly, the need to adhere to the conditions of the licence. In particular there is a special need to ensure that the premises are closed at midnight on the Thursday before Good Friday. The second, and in our opinion the more important issue, is the need to ensure that no persons who are intoxicated are allowed to be or remain on the premises. No persons are allowed to become intoxicated on the premises and finally no intoxicated people are allowed to be sold or supplied with liquor.

[17] If over the next six months there are any incidents of this nature then the applicant has the right to have the matter brought back before the Authority. The Authority will then hear the evidence and deal with the matter, including the present issues that are before it.

[18] If on the other hand the company survives the test, then as far as we are concerned the application will be declined.

**DATED** at WELLINGTON this 4th day of December 2009

B M Holmes  
Deputy Secretary