

Decision No. PH 1354/2009

IN THE MATTER

of the Sale of Liquor Act 1989

AND

IN THE MATTER

of an application pursuant to s.135
of the Act for suspension of
General Manager's Certificate
number GM/007/919/08 issued to
HARBANS WILLIAMS

BETWEEN

SEEMA KOTECHA
(Auckland District Licensing
Agency Inspector)

Applicant

AND

HARBANS WILLIAMS

Respondent

BEFORE THE LIQUOR LICENSING AUTHORITY

Chairman: District Court Judge E W Unwin

Member: Ms J D Moorhead

HEARING at AUCKLAND on 22 October 2009

APPEARANCES

Mr D Thomson – Auckland District Licensing Agency Inspector – applicant

No appearance by or on behalf of respondent

Mr G S Whittle – NZ Police – to assist

ORAL DECISION OF THE AUTHORITY

[1] Before the Authority is an application brought by an Auckland District Licensing Agency Inspector for the suspension of a General Manager's Certificate issued to Harbans Williams. Mrs Williams was granted her certificate on 6 August 2008. The certificate has since been renewed. The ground for the application was that Mrs Williams had failed to conduct licensed premises in a proper manner.

[2] The evidence adduced from the application itself as well as from Mr David Thomson, an Inspector with the Auckland District Licensing Agency shows that Mrs Williams and her husband David Williams are co-directors and shareholders of Pontoon Limited (hereafter called "the company"). That company was granted a restaurant style on-licence in respect of premises situated at 1 Westhaven Drive, Auckland. The licence authorises the sale of liquor at any time on any day.

[3] The evidence shows that on 4 September 2008, the company made application for a special licence for an event to be held on 20 September 2008 between 8.00 pm

and 5.00 am the following day. The nature of the event was described as a fashion week wrap party. The nominated duty manager for the occasion was Mrs Williams.

[4] The Inspector opposed the application because there had been previous noise complaints at the premises. In any event the application was received late and there was insufficient time for a hearing to take place. Accordingly the company was informed that the event would not be permitted.

[5] The Inspector spoke with Mr and Mrs Williams and advised them that they were required to comply with the conditions of their licence and trade as a restaurant. The evidence indicates that despite that advice the company proceeded with the event. As a consequence an excessive noise direction was served on the duty manager of the premises at 2.30 am on 21 September 2008. The Noise Control Officer reported heavy thumping bass noise from the bar.

[6] The applicant contends that on the Sunday morning at about 1.15 am a Licensing Inspector observed the premises for about 15 minutes. There were a large number of people who were present, loud music was coming from the premises, the lighting was dim but there were flashing lights. In summary, the premises appeared to be operating in a manner which was consistent with a night club rather than a restaurant.

[7] There had been a contemporaneous enforcement application in respect of the premises because of alleged breaches of the conditions of the licence. However, that application was withdrawn because Mr David Williams had given an undertaking that an application was to be made for a variation of the conditions of the licence to enable the business to trade as a tavern rather than a restaurant. We were advised at the hearing that this had not happened. Evidence was also received that Mrs Williams has not been appointed as a manager of the premises in accordance with s.130 of the Act.

[8] The issue was complicated by the fact that Mrs Williams failed to appear. Mr Thomson had made contact with Mr David Williams on two occasions prior to the hearing. As recently as last Tuesday he was advised that Mrs Williams was out of the country and not expected back until the middle of next month. She was said to be in Singapore.

[9] We note that this application was due to be heard on 20 July 2009. Prior to the hearing an email had been received from Mr David Williams advising that Mrs Williams was presently away in her home town of Singapore and not due back for four to six weeks. Accordingly we adjourned the application. One of the reasons for doing so was we were going to wait to see whether in fact Mrs Williams applied to renew her certificate. The renewal was duly filed and the matter was again set down for a hearing.

[10] When Mr Thomson spoke with Mr David Williams he received confirmation that Mrs Williams would not be back for the hearing. However, further information was given to us from the Immigration Service advising that Mrs Williams had in fact returned from Singapore on 20 October 2009. In those circumstances having heard the evidence we propose to deal with the application in Mrs Williams' absence.

[11] Pursuant to s.135(6) of the Act we are satisfied that either of the grounds specified in subs.(3) of s.135 of the Act have been established, and that it is desirable to make an order.

[12] We are satisfied from what we have heard that Mrs Williams' conduct has been such as to show a lack of suitability to hold the certificate. In those circumstances we believe that the grounds have been established and that an order for suspension is highly desirable. It is only by deterrent sanctions in the nature of a suspension that we may anticipate greater compliance with the Act as well as the conditions of the licence.

[13] In our view and taking into account that this event occurred shortly after she had been granted a certificate, Mrs Williams' conduct left a lot to be desired. We have also taken into account the fact that she has failed to make any effort to be present or to provide any explanation for what happened.

[14] In those circumstances it is confirmed that General Manager's Certificate number GM/007/919/08, issued to Harbans Williams, is suspended for a period of three months commencing on Tuesday 1 December 2009.

DATED at WELLINGTON this 4TH day of December 2009

B M Holmes
Deputy Secretary