

IN THE MATTER of the Sale and Supply of Alcohol Act 2012 (“the Act”)

AND

IN THE MATTER of an application by **Rikki Lee DIXON-KOMENE** pursuant to s.219 of the Act for the grant of a Manager’s Certificate

HEARING BEFORE THE FAR NORTH DISTRICT LICENSING COMMITTEE

Members: Mr Murray Clearwater (Chairperson)
Mr Martin Macpherson (Member)
Mr John Thorne (Member)

HEARING at **KERIKERI** on 23 APRIL 2024

APPEARANCES

Ms Rikki Lee DIXON-KOMENE (applicant)
Ms Jaydene DIXON-KOMENE to assist the applicant
Ms Megan Edwards – Far North District Alcohol Licensing Inspector – to assist
Sergeant Michelle Row- Police Alcohol Harm Prevention Officer - to assist
(attendance excused.)

ORAL DECISION OF THE COMMITTEE

INTRODUCTION

1. This is an application by **Rikki Lee Dixon-Komene** seeking the grant of a manager’s certificate.
2. The applicant is currently employed at Countdown Kerikeri. She holds the LCQ and has been appointed as a Temporary manager since the 19th of December 2023.
3. The Police reported with no matters of opposition.
4. The Licensing Inspector reported on the application and did not oppose the grant of the Certificate.
5. Of concern to the Committee was that Dixon-Komene had incurred a drink drive conviction in January 2023 following an apprehension in November 2022.

6. Consequently, the Committee set the matter down for hearing to enquire into the DIC conviction and Ms Dixon-Komene's drinking habits.

EVIDENCE OF THE APPLICANT

7. Ms. Dixon-Komene told us she started with Countdown in January 2023 and in August or September of that year she was offered the role of Duty Manager. She believed that she had been appointed as an Acting Manager and that she was still in that role as an Acting Manager.
8. It was subsequently determined that Ms. Dixon-Komene had been appointed to two terms as an Acting Manager and then appointed as a Temporary Manager from 19 December 2023.
9. She said her role was basically working the floor of the supermarket and responding to checkout requests to verify ID and assess intoxication. She had asked for ID and refused service on many occasions.
10. The Committee asked her to tell us about the DIC conviction and how, and why, it occurred.
11. With a refreshing degree of candour, she freely admitted that she had consumed 10-12 vodka and sodas during the day but had no intention of driving. Shortly after midnight her companions wanted to go to McDonalds for some food. The applicant decided she was the most sober and agreed to drive them to the store. At about 1am on the 16th of November 2022 she was processed at a routine traffic stop by Police and blew 554 micrograms of alcohol per litre of breath. The legal limit is 400 micrograms per litre of breath.
12. In her own words it "was a bad call" to decide to drive and she has "no plans to re-offend".
13. When asked about her drinking habits now she said she rarely drinks alcohol since that incident and that she now works a lot rather than socialising.
14. She was asked why her employer was not at the hearing to support her application. She said her Customer Service Manager, Eion Galloway, was going to come but was held up at work with staffing issues.
15. He had written a supportive reference for her and was aware that she had incurred the DIC conviction.

THE POLICE

16. Sergeant Michelle Row is the Alcohol Harm Prevention Officer for The Far North. Her attendance at the hearing was excused but we did request a certified copy of the DIC conviction and the Summary of Facts for the apprehension.
17. We noted that there were no aggravating features such as speed or dangerous driving or a crash. Ms Dixon-Komene was co-operative and pled guilty at an early stage of proceedings. She was fined \$650 and disqualified from driving

for 6 months. The fine has been paid and there were no breaches of the disqualification order.

THE INSPECTOR

18. The Inspector's Report was taken as read and Ms Edwards confirmed that she was impressed with Ms. Dixon-Komene during a face to face interview. She believed she only stumbled through some of the Committee's questions because of the stress related to the hearing environment.

THE LAW

Section 222 Criteria for manager's certificates

In considering an application for a manager's certificate, the licensing committee or licensing authority, as the case may be, must consider the following matters:

- (a) the applicant's suitability to be a manager:
- (b) any convictions recorded against the applicant:
- (c) any experience, in particular recent experience, that the applicant has had in controlling any premises for which a licence was in force:
- (d) any relevant training, in particular recent training, that the applicant has undertaken and evidence that the applicant holds the prescribed qualification required under [section 218](#):
- (e) any matters dealt with in any report made under [section 220](#).

REASONS FOR THE DECISION

19. There are three options open to the Committee. Grant the certificate now, adjourn the application for a period of time for the applicant to prove to the Committee that they can remain offence free, or to refuse the application.
20. We asked Ms Dixon-Komene why the Committee should find an exception in her favour and grant the certificate. She said, "**I've worked hard to get here, I've completed four courses - I love my job, my team and they support me in my role.**"
21. On the other side of the coin, we have an alcohol impaired person making a very bad decision to drive whilst under the influence of alcohol. She is very lucky to have not been involved in a crash and causing injury to herself or others. In fairness this was 17 months ago.
22. For someone working in a business that sells alcohol she should have known better and made the right choice to not drive a car on that night. She did tell the Committee that she was conflicted as she believed the other person was going to drive anyway so thought it was better that she did.

23. When deciding what the appropriate outcome should be, the DLC looks at precedent decisions of the higher authorities.
24. In **Re Sheard [1996] 1NZLR 751** Holland J said at 758¹: “*The real test is whether the character of the applicant has been shown to be such that he is not likely to carry out properly the responsibilities that go with the holding of a licence.*”
25. The same applies for managers of licensed premises. In the LLA decision of **Graham Leslie Osborne 2388/95**² the Authority declared a guideline of 2 years free of all offending and 5 years free of serious offending involving alcohol before the grant of a manager’s certificate could be favourably considered.
26. Ms Dixon-Komene is 17 months free of offending and if we were to follow the guideline a manager’s certificate should not be granted before November 2024.
27. The task for this Committee is to decide if the positive features of this application outweigh the negative aspects.
28. By a slim margin we believe they do, and we are prepared to give Ms. Dixon-Komene an opportunity to prove to herself, the community she lives in, and the Committee, that the drink driving incident was a one-off and will not be repeated.
29. If she does re-offend, she can expect swift action from this Committee as pursuant to section 201(4) of the Act, we can rehear any matter we have determined at any time for any reason. We would not be slow to do so.

DECISION

30. The Far North District Licensing Committee, acting pursuant to Section 221 of the Act, **grants** an application by **Nikki Lee Dixon-Komene** for a Manager’s Certificate.
31. The certificate will be granted for 12 months and, by consent, will be tagged for use only at Countdown Kerikeri for the duration of the certificate. A note to that effect is to be added to the Certificate.
32. The certificate can be issued immediately.

DATED at Kerikeri this 25th day of April 2024



Murray Clearwater



¹ Re Sheard [1996] 1NZLR 751 Holland J said at 758

² Graham Leslie Osborne 2388/95

Chairperson/Commissioner
Far North District Licensing Committee