

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

AND

IN THE MATTER of an application by
Ramswaroop Mahajan
ANTHWAL 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 10 June 2024

APPEARANCES

Mr Ramswaroop Mahajan ANTHWAL (applicant)
Mr Steve Ericksen – Far North District Alcohol Licensing Inspector – in opposition

RESERVED DECISION OF THE COMMITTEE

INTRODUCTION

1. This is an application made by **Ramswaroop Mahajan ANTHWAL** for a manager’s certificate.
2. The applicant is currently employed at Turmeric Restaurant in Kerikeri as a chef. He holds the LCQ, and he owns the business.
3. The Police reported with no matters of opposition.
4. The Licensing Inspector reported on the application and told us that there had been 8 failed attempts to get the applicant to attend an interview.
5. He believed that the combination of the written test results, failure to attend interviews, the applicant’s lack of knowledge, and his inability to effectively communicate in English did not establish his suitability to be granted a manager’s certificate.

6. The Committee set the matter down for hearing to assess the suitability of the applicant.

EVIDENCE OF THE APPLICANT

7. At the hearing, Mr Ramswaroop Mahajan ANTHWAL was invited to address the Committee and respond to questions. It became immediately apparent to the Committee that communicating with Mr. Anthwal was going to be difficult.
8. He told us he was the chef at Turmeric and worked there 4-5 hours a day 7 days a week.
9. He said he had been appointed as a temporary manager about 2 months ago, but he was always out the back making food. He said he had not had his name up as the duty manager despite the evidence of the Inspector that on a number of occasions when he had attended the premises Mr Anthwal's name was on the board, but he was not on the premises.
10. He told us he was also involved in another premises in Kaitaia, Indian Spice Kaitaia, but that there was no alcohol licence in place there, as it was a takeaway.
11. During questioning he admitted to the Inspector that sometimes his name had been on the board as Duty Manager. He also confirmed that he goes out shopping for the business when his name remained on the board.
12. He was asked about the drink drive, and dangerous driving, convictions he had incurred in 2021 and that he had not disclosed them on the application form. He had no real answer for the omission.
13. He confirmed that he did not appear for a previous hearing for managers certificate determination in September 2023. He said he was too busy in the restaurant to attend.
14. It was put to him that he was an alcoholic and he said yes, but we suspect he did not fully understand the question. He said he stopped drinking alcohol a few months ago.
15. He further acknowledged that he had not completed any recent training and did not know about the on line training tool, Servewise.

THE INSPECTOR

16. The Inspector's Report was taken as read and Mr Ericksen confirmed that he was still concerned that the applicant did not fully understand his obligations under the Act and that he would have difficulty communicating in English with customers.
17. He outlined the 8 attempts inspectors have made to conduct an interview with Mr. Anthwal and the numerous phone calls and visits he had made to the premises trying to locate him.

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](#). (Agency reports)

REASONS FOR THE DECISION

18. There are three options open to the Committee. Grant the certificate now, adjourn the application for a period of time for the applicant to gain further knowledge and confidence in communicating in English, or to refuse the application.
19. It is critical for managers and staff in licensed premises that they know the provisions of the Act and can communicate clearly and confidently in English.
20. As the Liquor Licensing Authority (LLA) stated, in its decision of Lim [2005] NZLLA PH 887/2005¹ at paragraph [8] in particular the position it took regarding the inability of applicants to communicate with patrons in English.

"If a manager is unable to communicate with the patrons in the English language, or with representatives from the enforcement agencies, then there is no way that we can be satisfied that the provisions of the Act, (in particular relating to sales to prohibited persons), will be respected and complied with.
21. We are firmly of the view that the certificate cannot be granted at this time. Equally we are not satisfied that Mr Anthwal will be sufficiently competent or knowledgeable for at least 12 months.
22. Equally we were surprised that the Police did not pick up the convictions during their vetting of the applications in 2023 and 2024. The alcohol reading was 692 mcg of alcohol per litre of breath at 9.30am in the morning and an aggravating feature was present i.e. dangerous driving.

¹ Lim [2005] NZLLA PH 887/2005

23. We note that the applicant is also the licensee and effectively has appointed himself as Acting manager from time to time.
24. Our decision to refuse a Certificate is not finite. Mr Anthwal must undertake refresher training both for himself and his staff if he wishes to be granted a Managers Certificate sometime in the future. He must also establish effective communications, and attending appointments, with the regulatory agencies.

DECISION

25. The Far North District Licensing Committee, acting pursuant to Section 221 of the Act, refuses an application made by Ramswaroop Mahajan ANTHWAL for a Manager's Certificate.
26. We also rescind his Temporary Manager appointment from the date of this decision.

DATED at Kaikohe this 15th day of June 2024



Murray Clearwater
Chairperson/Commissioner
Far North District Licensing Committee

