

Decision No. **143/2014**

**IN THE MATTER**

of the Sale and Supply of Alcohol Act  
2012

**AND**

**IN THE MATTER**

of a notice of appointment of an acting  
manager by **Revelling in it Limited**  
pursuant to s.231 of the Act.

**BEFORE THE WHANGAREI DISTRICT LICENSING COMMITTEE**

Chairman: Councillor John Williamson  
Member: Paul Dimery  
Member: Mark Vincent

**HEARING** at WHANGAREI on 6 May 2014

**APPEARANCES**

Mrs Ketura Lambert – Licensing Inspector  
Sergeant Howard Clement – NZ Police- in opposition

**DECISION OF THE WHANGARE DISTRICT LICENSING COMMITTEE**

On the 1 May 2014, a notice of appointment of an acting manager's was made to the Whangarei District Licensing Committee under section 231 of the Sale and Supply of Alcohol Act 2012 by Revelling In It Limited. This company is the licensee of the premises situated at 117 Bank Street, Whangarei, known as Stakeout Bar & Grill (002/ON/11/2013).

The directors of the licensed company Revelling In It Limited, Robert Kerry Revell and Shona Gae Revell will be taking leave to visit family overseas from 10 May to 17 May 2014 and have appointed two Acting Managers in their absence one of whom is **Nicola Te Aroha Pawa**. The Police have opposed the appointment of Nicola Te Aroha Pawa on the grounds of a drink drive conviction in July 2012 which was the primary factor in the refusal by the Alcohol Regulatory and Licensing Authority to issue a managers certificate to Pawa in March 2013 [2013] NZARLA PH252.

There is no specific process set down in the Act for determining such opposed notices of appointments but it would be appropriate for provisions relating to opposed applications, section 202 to be followed in the course of natural justice. Because of strict time frames no notice of hearing has been made but there is agreement from the applicant and Police that the matter can be determined at this time by the sitting Committee. The matter has therefore been set down to be determined by a sitting committee.

It is noted that there was no appearance from the Licensee (Robert and Shona Revell) nor from the appointee, Nicola Te Aroha Pawa.

**Requirements relating to acting managers under the Sale and supply of Alcohol Act 2012**

Sections 230 and 231 relate to appointment of acting managers as follows:

*Section 230*

(1) *Despite any other provision of this Act, a licensee may appoint an acting manager –*

- (a) *for any period not exceeding 3 weeks at any one time where a manager is unable to act because of illness or absence; and*
- (b) *for periods not exceeding in the aggregate 6 weeks in each period of 12 months to enable a manager to have a vacation or annual leave.*

- (2) *Every person appointed as an acting manager in accordance with this section must, while the appointment continues, be deemed for the purposes of this Act to be the holder of a manager's certificate, and it is not necessary for that person to apply for or hold a manager's certificate.*

#### *Section 231*

- (1) *A licensee must give notice, in accordance with subsection (2), of the appointment, or the cancellation or termination of the appointment, of any manager, temporary manager, or acting manager.*
- (2) *Notice is given in accordance with this subsection if the notice is given within 2 working days after the appointment, or the cancellation or termination of the appointment, to –*
- (a) the licensing committee with which the licence is in force for any premises; or*
  - (b) the constable in charge of the police station nearest to –*
    - (i) the premises, where the licence is in force for any premises; or*
    - (ii) the office of the licensing committee with which the application was filed, where the licence is in force for a conveyance.*
- (3) *It is not necessary to comply with subsection (1) in respect of the appointment of a temporary manager or an acting manager for any period not exceeding 48 consecutive hours.*
- (4) *The licensing committee may, within 5 working days after receiving a notice of the appointment of any temporary manager or acting manager, notify the licensee that it does not approve the appointment, in which case it must give a copy of the notice to the constable referred to in subsection (2)(b).*
- (5) *On receiving notice under subsection (4), the licensee must terminate the appointment with effect from a date not later than 5 working days after the date of notice.*

#### The Police opposition

Sergeant Clements appeared before the committee and outlined that he opposed the appointment on the basis that Nicola Te Aroha Pawa was not a suitable person to manage licensed premises nor was she entitled to manage licensed premises. This is because in March 2013 the Alcohol Regulatory and Licensing Authority has refused the grant of a managers certificate to her on the basis of a drink drive conviction in July 2012 and a subsequent conviction of driving whilst disqualified. The Authority decision provided that in accordance with the *Osbourne* decision, at least two years need to have elapsed after the date of the last offence before the applicant becomes eligible for a general managers certificate, that is in January 2015. Sergeant Clements was of the view that given this restriction on her ability to hold a managers certificate, Pawa was likewise not entitled to manage licensed premises as an acting manager, given that she would have the same responsibilities.

#### The Licensee

Neither the Licensee ( Robert or Shona Reville) nor Nicola Te Aroha Pawa appeared before the committee. We heard from the Licensing Inspector that both the licensee and the appointee were aware of the fact that the Police had opposed the appointment and that the committee would deal with the matter on the 6 May 2014. Both of these parties had been invited to attend the hearing. We have been told by the Inspector that Shona Reville had advised that in lieu of attendance at the hearing she would provide a written statement to the committee but this has not been received by the inspector nor by the committee.

#### **THE DECISION**

After hearing from the Police we are satisfied that Nicola Te Aroha Pawa is not a suitable person to manage licensed premises and in considering the ARLA decision [2013]NZARLA PH252, is not entitled to manage licensed premises at this time. We therefore do not approve of the appointment and will issue the licensee with notice of this.

**DATED** at Whangarei this 6<sup>th</sup> day of May 2014

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Chairman  
**Whangarei District Licensing Committee**