

**IN THE MATTER**

of the Sale and Supply of  
Alcohol Act 2012

**AND**

**IN THE MATTER**

of an application pursuant to s 280  
of the Act for suspension or  
cancellation of on-licence number  
007/ON/9456/2015 issued to **LE  
BOX AUCKLAND LIMITED** in  
respect of premises situated at  
258-264 Karangahape Road,  
Auckland, known as "Le Box"

**AND**

**IN THE MATTER**

of an application pursuant to s.285  
of the Act for suspension or  
cancellation of manager's  
certificate number  
007/CERT/9159/2016 issued to  
**CHRISTOPHER ROY YATES**

**AND**

**IN THE MATTER**

of an application pursuant to s.285  
of the Act for suspension or  
cancellation of manager's  
certificate number  
007/CERT/10387/2016 issued to  
**BRETT DEAN RAVELICH**

**AND**

**IN THE MATTER**

of an application pursuant to s.285  
of the Act for suspension or  
cancellation of manager's  
certificate number  
007/CERT/9543/2016 issued to  
**VICTORIA DAWN TEIO**

**BETWEEN**

**SEBASTION IOAN MIKLOS**  
(Police Officer of Auckland)  
Applicant

**AND**

**LE BOX AUCKLAND LIMITED**  
First respondent

**AND**

**CHRISTOPHER ROY YATES**  
Second respondent

**AND**

**BRETT DEAN RAVELICH**  
Third respondent

**AND**

**VICTORIA DAWN TEIO**  
**Fourth respondent**

**BEFORE THE ALCOHOL REGULATORY AND LICENSING AUTHORITY**

Chairperson: District Court Judge K D Kelly  
Member: Mr R S Miller

**HEARING** at AUCKLAND on 20 February 2017

**APPEARANCES**

Mr G S Whittle – NZ Police – for applicant  
Mr J H Wiles – for respondents

**DECISION OF THE AUTHORITY**

**Introduction**

[1] There are four enforcement applications before the Authority. The first application is for the suspension or cancellation of the on-licence issued to Le Box Auckland Limited in respect of premises situated at 258-264 Karangahape Road, Auckland, known as “Le Box” night club.

[2] The second, third and fourth applications are for the suspension or cancellation of the manager’s certificates issued to Christopher Roy Yates, Brett Dean Ravelich, and Victoria Dawn Teio.

*First respondent*

[3] The application against the first respondent is brought pursuant to s 280(3)(a) and (b) of the Act (i.e. the licensed premises have been conducted in breach of the Act, and the conduct of the licensee is such as to show he or she is not a suitable person to hold a licence). It is alleged that the first respondent has breached s 258(1)(a) (failing without reasonable excuse to appoint a manager as required by s 212), and s 258(1)(c) (failing, without reasonable excuse, to comply with s 231) of the Act such that the sale or supply of alcohol was unauthorised for a period (per s 247).

[4] The applications against the first respondent allege the conduct of the first respondent is such as to show it is not suitable to hold a licence because:

- [a] of the misleading use of director’s names as ‘fronts’ for the second respondent in the running of the premises given the second respondent is not able to manage the business as an undischarged bankrupt;
- [b] of its director’s roles in misleading agencies in respect of the purchase of another licensed premises known as 67 Le Puha Limited trading as “Club Eetswa”, and in respect of an application for a temporary authority (Q/TEM/2016/2956) for this club; and

[c] an uncertified security officer was involved in an assault at the premises.

[5] The applications against the second, third and fourth respondents are brought pursuant to s 285(3)(b) of the Act and allege that the conduct of these respondents is such as to show that they are not suitable persons to hold certificates. It is alleged the second respondent is unsuitable to hold a manager's certificate because:

[a] he is an undischarged bankrupt who is still managing the first respondent company without the consent of the Official Assignee; and

[b] he has misled agencies in respect of the purchase of another licensed premises known as 67 Le Puha Limited trading as 'Club Eetswa', and in respect of an application for a temporary authority (Q/TEM/2016/2956) for this club; and

[c] an uncertified security officer was involved in an assault at the premises.

[6] In respect of the third and fourth respondents, it is alleged they are unsuitable to hold manager's certificates because:

[a] they are acting as 'fronts' for the second respondent in the running of the premises given the second respondent is not able to manage the business as an undischarged bankrupt; and

[b] they have misled agencies in respect of the directorship of 67 Le Puha Limited; and

[c] they allowed an uncertified security officer to be on the premises who was involved in an assault at the premises.

## The Law

[7] Section 69 of the Act states:

**(1) A company that holds a licence and is not a party to a listing agreement with a stock exchange must notify the secretary of the licensing authority of any change in—**

**(a) the shareholding of the company; or**

**(b) the directors of the company.**

**(2) ...**

**(3) Any notice required by subsection (1) or (2) must be given within 10 working days after the board of the company becomes aware of the change to which it relates.**

**(4) ...**

**(5) If a company fails to comply with any of subsections (1) to (4), every director of the company commits an offence and is liable on conviction to a fine not exceeding \$10,000.**

**(6) It is a defence to a director charged with an offence against this section relating to a failure to comply with one of its provisions if he or she proves that—**

**(a) the company took all reasonable and proper steps to ensure that the provision concerned would be complied with; or**

**(b) he or she took all reasonable and proper steps to ensure that the company complied with the provision; or**

**(c) in the circumstances he or she could not reasonably have been expected to take steps to ensure that the company complied with the provision.**

[8] Section 247 of the Act provides:

**A person who is the licensee or manager of any licensed premises must take all reasonably practicable steps to ensure that the licensee does not do any of the following things without the authority of this Act:**

**(a) sell or supply alcohol on the premises for consumption there; or**

**(b) let people consume alcohol on the premises; or**

**(c) sell or supply alcohol on the premises for consumption somewhere else.**

[9] Paragraphs 258(1)(a) and (c) of the Act provide:

**A licensee who fails, without reasonable excuse, to do any of the following commits an offence:**

**(a) appoint a manager as required by section 212 or 213:**

**(b) ...**

**(c) comply with section 231.**

[10] Section 212 states:

**Every holder of an on-licence (other than an on-licence endorsed under section 37), an off-licence, or a club licence must appoint a manager or managers in accordance with this Part.**

[11] Section 231(1) – (3) states:

**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 application for the licence was filed; and**

**(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.**

...

[12] Section 280(3) then sets out the grounds for an application in respect of a licensee:

**(3) The grounds on which an application for an order may be made are as follows:**

**(a) that the licensed premises have been conducted in breach of any of the provisions of this Act or of any conditions of the licence or otherwise in an improper manner:**

**(b) that the conduct of the licensee is such as to show that he or she is not a suitable person to hold the licence:**

**(c) that the licensed premises are being used in a disorderly manner so as to be obnoxious to neighbouring residents or to the public.**

[13] And, s 285(3) sets out the grounds for an application in respect of a managers certificate:

**(3) The grounds on which an application for an order under this section may be made are as follows:**

**(a) that the manager has failed to conduct any licensed premises in a proper manner:**

**(b) that the conduct of the manager is such as to show that he or she is not a suitable person to hold the certificate.**

[14] Further, s 436(1) of the Insolvency Act 2006 provides:

**A bankrupt commits an offence if he or she—**

**(a) acts as a director of a company; or**

**(b) fails without reasonable excuse to comply with section 149.**

[15] And finally, s 149 of the Insolvency Act 2006 states:

**An undischarged bankrupt must not, without the consent of the Assignee or the court, either directly or indirectly,—**

**(a) enter into, carry on, or take part in the management or control of any business:**

**(b) be employed by a relative of the bankrupt:**

**(c) be employed by a company, trust, trustee, or incorporated society that is owned, managed, or controlled by a relative of the bankrupt.**

## **Police submissions**

[16] The Police application has six parts. The first part relates to alleged breaches of s 258 of the Act (i.e. the failure to notify the appointment of a manager as required by s 231 of the Act) resulting in a breach of s 247 (unauthorised sale or supply).

[17] The second part relates to alleged breaches of s 69 of the Act (failure to notify changes to shareholding and directors of the first respondent company).

[18] The third part, relates to the alleged misleading use of the names of the directors of the first respondent, whereby the third and fourth respondents are alleged to be acting as 'fronts' for the second respondent who continues to manage and exercise control over the first respondent company.

[19] The fourth part of the application alleges that the second, third and fourth respondents intentionally mislead agencies in respect of the purchase of another club ("Club Eetswa") and in respect of an application for a temporary authority for this premises.

[20] The fifth part of the application relates to an uncertified security guard being involved in an assault outside the premises.

[21] Finally, the sixth part of the application relates to an intoxicated male being found on the premises in breach of s 252 of the Act.

#### *Breaches of ss 247 and 258 of the Act*

[22] The applicant submits that on 6 July 2016 the Police held a graduated response model meeting with the second respondent (Yates) and third respondent (Ravelich) as the sole shareholder and sole director of the first respondent company, respectively. This meeting was initiated because on previous visits to the premises by the Police, the third respondent was identified as the acting duty manager on six occasions and as the duty manager on a further occasion. The Police say that they had not been notified of the third respondent's appointment in accordance with s 231 of the Act. Police submit that at this graduated response meeting they advised both the second and third respondents that an enforcement application would be considered should notification of the appointment of the manager of the premises not be made as required by s 231. Notwithstanding this meeting, however, Police submit that the third respondent was the duty manager on six subsequent occasions without any s 231 notifications having been made. As a consequence it is submitted that all sales made between 1 July 2016 and the date notification was finally made (i.e. 5 August 2016), were unauthorised.

#### *Breach of s 69 of the Act*

[23] Police further submit that the first respondent failed to notify the Authority of changes to its directorship. In particular, the first respondent failed to notify the Authority of the appointment of the fourth respondent as director in August 2015, the third respondent as director in November 2015, and the second respondent's elderly mother as director in April 2016.

[24] Police submit that notwithstanding that they informed the second and third respondents on 6 July 2016 that they would consider enforcement action should the first respondent not comply with s 69, a search of the Companies Register on 12 August 2016 identified that the first respondent again failed to notify the Authority of the appointment of Mr Alekisio Taufaeteau as a director on 21 July 2016 (effective from 28 June 2016). Further, the Police submit that between September and November 2016, a number of changes to the shareholding of the first respondent company were made, none of which were notified to the Authority.

[25] The applicant submits that as the second and third respondents were advised of the need to notify these changes in accordance with s 69, none of the defences in s 69(6) apply.

*Misleading use of directors' names*

[26] The applicant submits that the first respondent has appointed directors (including the third and fourth respondents) who do not act in the capacity of directors but who are directors in name only, acting as 'fronts' for the second respondent who still manages the business notwithstanding that he is an undischarged bankrupt. By allowing these people to act as a front in this way, the applicant submits that the first respondent is not suitable to hold a licence. And, by acting as fronts, the third and fourth respondents are similarly unsuitable to hold manager's certificates.

[27] The Police submit that other persons have also been appointed as directors over time as 'fronts' for the second respondent, namely Mr Aleksio Taufaeteau and Mrs Dorothy Yates. Mr Taufaeteau, the second respondent's domestic partner, it is submitted, has limited experience working in licensed premises and less experience in running one. It is also submitted that the second respondent appointed his 96 year old mother as a director of the first respondent company who had no involvement in the running of the company.

[28] The applicant submits that the second respondent, does not have consent from the official assignee to manage the premises yet:

- [a] participated in meetings with the Police in respect of the premises; and
- [b] notified the Authority in February 2016 of changes in the directorship of the first respondent including his name as a director along with the names of the third and fourth respondents; and
- [c] provided letters of support for the applications for manager's certificates for the third and fourth respondents confirming they were employed at the premises and recording his position as 'director'; and
- [d] employed a security guard; and
- [e] received an offer for the sale of the premises.

[29] Further, it is submitted that the third respondent confirmed that the second respondent employs staff and security and "*calls the shots*". These actions, it is submitted, demonstrate that the second respondent is still in control of the business.

[30] In respect of the third respondent, the applicant submits that despite him signing a consent form acknowledging his appointment as director of the first respondent company, he denied to the Police that he had done so and stated that he had never acted in any capacity as a director for the first respondent, nor had he been responsible for anything other than the role of duty manager. The Police believe that the third respondent effectively turned a 'blind eye' to the second respondent's involvement in the running of the premises despite knowing of he was an undischarged bankrupt. These actions, the Police submit, are such that the third respondent is unsuitable to hold a licence and manager's certificate.

[31] As regards the fourth respondent, the Police submit that she has had no say in the running of the business despite being appointed director on 31 August 2015. The Police submit that the fourth respondent told Police that the second respondent "*hires, fires, pays the security*" and pays her a wage for what she does on the premises. The Police submit that the third respondent also confirmed to the Police

that the fourth respondent's role was limited to doing the 'paperwork' and paying bills but that he did not believe she had any decision making involvement in the company. The Police submit that the fourth respondent is also a front for the second respondent and as such is unsuitable to hold a licence or manager's certificate.

*Purchase of "Club Eetswa"*

[32] The Police submit that in June 2016 the second respondent advised Police that he had purchased two other licensed premises known as "Twist Bar" and "Duo" respectively 'from his pension'. Subsequently, on 20 June 2016, an alcohol licensing agent lodged an application for a temporary authority on behalf of 67 Le Puha Limited in respect of the "Twist Bar" which would now trade under the name "Club Eetswa".

[33] Included with the application was a copy of the sale and purchase agreement for the premises signed by the second respondent but as "*Sonny Paul and or nominee*". As the second respondent is an undischarged bankrupt, it is submitted he is prohibited from purchasing assets using property vested in the Official Assignee.

[34] It is submitted that the original named director for Le Puha Ltd was Mr Vetekina Naufahu and who was unsuitable to hold a licence as he is a member of an organised motorcycle gang namely the Australian Comanchero Outlaw Motorcycle Gang with criminal convictions in both Australia and New Zealand. As the Police objected to Mr Naufahu obtaining a licence, the Police submit that the second respondent signed the sale and purchase agreement and changed the directorship of Le Puha Limited to assist Mr Naufahu to obtain a licence for the premises knowing that Mr Naufahu would not have been granted a licence.

[35] The applicant also submits that the fourth respondent fabricated a story where she said she was given "Club Eetswa" in an attempt to mislead the Police as to the identity of the persons for whom the temporary licence for the premises was being sought. In doing so, it is submitted the fourth respondent acted as a front to assist the granting of the temporary authority.

*Uncertified security guard involved in an assault*

[36] On 21 August 2016 at 2.40am, the Police submit that an uncertified security guard on duty at the premises removed a male patron from the premises and assaulted him with a single punch. The duty manager on the night was the third respondent but also present was the second respondent. The Police submit that this incident demonstrates the premises are be used in a disorderly manner so as to be obnoxious to the public but also that the first respondent is unsuitable to hold a licence and the second and third respondents are unsuitable to hold manager's certificates.

*Intoxicated male being found on the premises*

[37] Finally, the Police submit that on 16 October 2016, a male person, who was assessed as intoxicated was found on the premises playing pool. It is submitted that this was a breach of s 252 that occurred when the second respondent was duty manager such that he is not suitable to hold a manager's certificate.



## *Summary*

[38] The Police submit that the seriousness of these breaches of the Act taken together is such that the respondents are individually and collectively unsuitable to hold an alcohol licence or manager's certificates. As a consequence, the applicant seeks the cancellation of the licence and manager's certificates issued to the second respondent. The applicant further submits that the third and fourth respondent's manager's certificates should be cancelled or, if not cancelled, be suspended for lengthy periods.

## **Respondents' Submissions**

[39] The second respondent, on behalf of the first respondent says that he is in the process of selling the business and that he is keen to preserve the licence pending this sale so that any new owners of the premises have the ability to obtain a temporary authority and a licence in their own right.

[40] The second respondent does not concede that the appointment of directors was a front intended to deceive the Official Assignee or the Police. Rather, the second respondent had "some vague idea" that appointing other persons might keep the business running pending its sale.

[41] The second respondent has conceded, however, that it may be appropriate for his manager's certificate to be cancelled and that he is willing to surrender it, but Counsel for the third and fourth respondents submit that nothing they have done justifies cancellation of their certificates.

### *Breaches of ss 247 and 258 of the Act*

[42] Counsel for the respondents submits in respect of ss 247 and 258, that s 258 has no application to the third respondent. While he may be liable to a fine, he cannot be sanctioned by way of suspension. Instead, it is submitted that the primary responsibility for compliance with s 247 rests with the licensee. In any event, it is submitted that the delay in notifying the appointment of the third respondent's appointment was not a serious breach that warrants suspension as this is a case of a late notification rather than a case of non-notification where, it is submitted, the Police were fully aware of the second respondent's appointment as a duty manager.

### *Breach of s 69 of the Act*

[43] Similarly, the respondents submit that a breach of s 69 can only apply to the licensee company. And it is submitted that this non-compliance was merely the result of an oversight on the part of the second respondent.

### *Misleading use of directors names*

[44] Counsel for the respondents submits that the third respondent, Mr Ravelich, did not consider himself to be a director and never regarded himself as having any real control in the management of the company. It is also submitted that Mr Ravelich did know that Mr Yates was an undischarged bankrupt as he had assisted the second respondent in his appeal of the order of adjudication in a legal capacity. It is submitted that Mr Ravelich was not intentionally seeking to mislead agencies about his signing a consent form but was did so in order to try to help his employer and

friend keep the business running. It is submitted that he was honest in his failing to remember that he signed a consent form as director.

[45] It is further submitted that Ms Teio had “*very little say in the running or the management of “Le Box”*”. In respect of misleading statements made by her, it is submitted that she was “*clearly confused*” around the sale of “Le Puha” but was acting out of a misguided loyalty to the second respondent. It is also submitted by her counsel that Ms Teio “*appears to be completely naïve about company matters, directors obligations and such generally*”. Mr Wiles submits that “*Her instructions are that she did not know that Yates was an undischarged bankrupt when she consented to being appointed a director.*” Mr Wiles acknowledged further that:

*“The Police, however, were clearly aware at all times that Yates was in full control of the company and premises and not any other named director. In that Ravelich and Teio signed consent forms agreeing to act as directors, it is submitted that there was no intention to mislead agencies such as the Police and /or the Licensing Inspector. They were not, however, in control of the company and the Police knew that.”*

#### *Purchase of “Club Eetswa”*

[46] Mr Wiles for the respondents submits that the second respondent was initially unaware that Mr Naufahu had an assault charge or was associated with a motorcycle gang. Upon becoming aware of this, the second respondent had himself removed as a director of 67 Le Puha Limited. It is submitted that the second respondent did not intend to deceive the Police or any other agencies in any way with respect to the running of 67 Le Puha Limited as a separate business or, in respect of the proposals that were between Mr Yates and Mr Naufahu. In any event, the proposed establishment of “Club Eetswa” did not proceed.

[47] It is submitted that the third respondent knew little about these business dealings and that the third and fourth respondents, while agreeing to act as directors for a short time, did not do so in an attempt to deceive the Police. It is submitted that the third and fourth respondents had understood that the Police knew that the business was the second respondent’s business.

#### *Uncertified security guard involved in an assault*

[48] The third respondent submits that he did not witness the assault by the security guard and when he become aware, he saw no reason to stop the victim from re-entering the premises. The third respondent also submits that as the duty manager on the night, there was no responsibility on him to ensure that the security guard involved had a current certificate.

#### *Intoxicated male being found on the premises*

[49] At the hearing before the Authority, the second respondent conceded that the finding of an intoxicated person on the premises constituted a breach of s 252 of the Act. As a result, this breach is established.

#### *Summary*

[50] Counsel for the respondents submits that looked at in its totality, the second respondent was trying to ensure that his business was kept afloat having regard to

his obligations towards employed staff, the lessor of the premises, his responsibilities as a guarantor, and his obligations to his creditors. It is also submitted that he appears to have had the cooperation of the Official Assignee in keeping the business going. It is also submitted that the second respondent has assumed responsibility in conceding his manager's certificate may be surrendered.

### **The hearing**

[51] At the hearing before the Authority, the Police satisfied the Authority that on 21 and 28 May 2016, and 4, 18, 25 and 26 June 2016, the second respondent, Mr Ravelich was the nominated acting manager for the premises. And, on 2 July 2016 Mr Ravelich was nominated duty manager.

[52] The Authority also heard how on 6 July 2016, the Police discussed with the second and third respondents, their failure, and need to comply with s 231 of the Act. The evidence also established that at the same time, the Police discussed with the second and third respondents the need to notify the Authority of changes in the directorship of the company. Notwithstanding this meeting, however, on 9, 10 and 16 July 2016, the second respondent, Mr Ravelich was the nominated duty manager for the premises. Notification of Mr Ravelich as manager in accordance with s 231 of the Act was not made until 5 August 2016.

[53] By way of explanation for this, Mr Yates gave evidence that the delay was due to fact that he believed Mr Ravelich was only fulfilling the role of acting manager over some of the period and he was under the impression that there was no duty to notify his appointment. Mr Ravelich, for his part, gave evidence that he, Mr Yates and the applicant had discussed whether there was a need for a temporary authority to be notified where the appointment was for 48 hours only. In evidence, Mr Ravelich said:

*“Also discussed at the time was the requirement for me to advise the Police of my notification under s 231 which I agreed to do during that discussion. We had a light-hearted conversation with Constable Miklos about the difficulties involved with enforcing compliance with s 231 of any duty manager and licensee given the thousands of breaches that occur on a daily basis within the Auckland City of this particular notification requirement and further discussed with Constable Miklos how the system would be swamped seven days per week with Police attempts to enforce compliance. In this context I did not believe that there was such urgency required by Constable Miklos and accordingly the notification was posted by surface mail about 10 days after this conversation. I imagine it took another 10 days to get through the post and to be receipted by the Police on 5 August 2016. In all these circumstances I do not really believe that the delay amounted to a serious breach. The Police after all were fully aware I had been appointed a duty manager as this had been discussed at meetings with them throughout this time period. In a sense they were not notified as they were fully informed I was managing the premises.”*

[54] At the hearing, the Authority also heard that the first respondent failed to notify the Authority of the appointment of the fourth respondent as director in August 2015, the third respondent as director in November 2015. In respect of the appointment of his mother, the Authority heard from Constable Miklos that Mr Yates acknowledged at the meeting of 6 July that the appointment of Mrs Yates on 21 April 2016 had not been notified to the Authority.

[55] In his evidence, Mr Yates conceded that the Authority was not notified of directorship appointments as required by the Act. As a consequence, a breach of the Act is established. By way of mitigation, however, Mr Yates stated that this was:

*“purely an oversight on my part and a requirement of the legislation that quite frankly I had forgotten about”.*

[56] In response to questions from the Authority, Mr Yates stated that he had appointed his mother as director so she could have some comfort following the death of her husband, that should anything happen to Mr Yates the company would look after her. Mr Yates acknowledged that there was no serious intention for Mrs Yates to act in the capacity of director and that as a result, acknowledged that her appointment might not have been appropriate.

[57] The Authority also heard evidence that notwithstanding that the Police informed the second and third respondents on 6 July and 20 July 2016 that they would consider enforcement action should the first respondent not comply with s 69, the first respondent failed to notify the Authority of Mr Alek시오 Taufaeteau as a director on 21 July 2016 effective from 28 June 2016. To date, no such notification of this change in directorship has been made to the Authority. The Police also established that between September and November 2016, a number of changes to the shareholding of the first respondent company were made, none of which have yet been notified to the Authority.

[58] The Authority also heard from Mr Mike Bushell, Senior Investigator /Deputy Assignee working for the Official Assignee Compliance Unit which investigates offences committed under the Insolvency Act 2006. While any alleged offences under that Act are not within the jurisdiction of this Authority, Mr Bushell confirmed that Mr Yates was adjudicated bankrupt on 11 June 2015 and is not due to be discharged until 3 May 2019.

[59] Mr Bushell also gave evidence that on 26 April 2016 Mr Yates acknowledged receipt of a *“Notice to Bankrupt Person Warning”* that set out the restrictions that apply to bankrupt persons including that a bankrupt person must not enter, carry on, or run a business without the consent of the Official Assignee. Mr Yates in his evidence, confirmed that he signed this acknowledgment. Mr Bushell also gave evidence that Mr Yates has no consent to manage a business, to be self employed or to work for a relative. Mr Yates in response said that he understood that he had tacit approval from another member of the Official Assignee Compliance Unit but this was not substantiated before the Authority.

#### *Misleading use of directors’ names*

[60] The Authority heard evidence from Mr Yates that, at least until the appointment of Mr Taufaetau as director, it was he who was effectively trying to run and maintain the business. Mr Yates said:

*“So far as the Police are concerned, I do not believe that they have ever regarded me as anything but the real manager of these nightclub premises. They cannot claim that there has been a genuine attempt to deceive them. They knew it was my business. That is what I meant when I observed to Constable Miklos that ‘I don’t break the rules, I bend them’.*

*I was referring to restrictions on my being a director under the Companies Act and the Insolvency Act. Nominating other persons as directors was a somewhat futile attempt to circumvent such restrictions but I have never been under any delusion that the Police knew full well that it was my business and that I was effectively in charge. Indeed the Authority will note from the brief of Constable Michelle Seager ... that I was staying with Le Box – in other words effectively running it.”*

[61] The Authority also heard evidence that Ms Teio advised Police that Mr Taufaeteau was nominated as director on 28 June 2016, to ‘give him experience’ but his involvement in the company was limited to working behind the bar.

[62] Further, Mr Yates said in his evidence that Mr Ravelich was “*fulfilling the role of an acting manager only*”.

#### *Purchase of “Club Eetswa”*

[63] The Authority heard that on 25 May 2016, an agreement for the sale and purchase of “Club Eetswa” was signed by “*Sonny Paul and or nominee*” as purchaser with the contact details for Mr Paul being those of Mr Yates. In response to questions from the Authority, however, Mr Yates admitted that the name ‘Sonny Paul’ was entirely fictitious and plucked from the air. His intention in signing the sale and purchase agreement was to sign it on behalf of Mr Naufahu who was absent at the time.

[64] The Authority heard further that Mr Naufahu was unsuitable to hold a licence because he is a member of an organised motorcycle gang namely the Australian Comanchero Outlaw Motorcycle Gang with criminal convictions in both Australia and New Zealand. Mr Yates said in evidence, however, that at the time he signed the sale and purchase agreement for Mr Naufahu, he did not know that he had any gang connections.

[65] The Authority also heard that when the application for a temporary authority made for “Club Eetswa” was forwarded to the Police on 20 June 2016 for the purposes of the Police making inquiries under s 103 of the Act, the sole director of 67 Le Puha Limited was Mr Veterkina Naufahu. Nevertheless, Mr Yates was listed as the contact person for the applicant. A number of changes to the shareholding and directorship of the company then occurred over the ensuing month and by 8 July 2016 Ms Teio was the majority shareholder and sole director of 67 Le Puha Limited.

[66] Due to these changes to the Companies Office Register the Police, as part of their s 103 inquiries, met with Ms Teio on 13 July to clarify who was actually involved in the company and the intended running of “Club Eetswa”. The Authority heard evidence from Sergeant Woodward that at this meeting Ms Teio said that the club was purchased by Mr Yates but also that “Club Eetswa” had been given to her by Mr Yates with whom she was in a relationship. Before the Authority, Ms Teio acknowledged that this story was fabricated and said that she did not know why she said this other than that she was being “*flippant and a bit cheeky*”.

[67] By 18 July 2016, the sole shareholder of 67 Le Puha Limited was once again Mr Naufahu and on 20 July 2016 an amended application for the temporary authority for “Club Eetswa” was received. The sale and purchase agreement for the premises had been re-signed by Ms Teio as director for 67 Le Puha Limited, as purchaser. The name “*Sonny Paul or nominee*” was crossed out.

[68] Further information provided to the Auckland Council on 15 August 2016 by Ms Teio and signed as “sighted by” Mr Ravelich stated further that Mr Yates loaned Ms Teio the funds to purchase the premises and that she would also be the “Director Operator and Employee” and that Mr Naufahu was guarantor for the lease for the premises and would repay Mr Yates for the purchase of the business.

*Uncertified security guard involved in an assault*

[69] In respect of the assault on the premises, CCTV evidence viewed by the Authority showed that on 21 August 2016 at 2.40 am, a security guard on duty at the premises removed a male patron from the premises and assaulted him on the footpath in front of the premises with a single punch. The nominated duty manager on the night was Mr Ravelich but also present was Mr Yates. Neither witnessed the assault, Mr Yates being inside and Mr Ravelich having his back turned. Mr Yates gave evidence that the security guard was not employed by the premises on that night but had in fact volunteered to work as security guard as he sometimes did. The evidence established that Mr Ravelich allowed the victim back into the premises and in response to questioning from the Authority, Mr Ravelich said that notwithstanding that the security guard had his arms around the shoulders of the victim as he re-entered the premises, he saw no reason to prevent the victim from re-entering the premises or to call for medical assistance. Nor was the incident brought to the attention of Constable Miklos who met with Mr Ravelich and Mr Yates later the same morning.

*Intoxicated male being found on the premises*

[70] At the hearing before the Authority, Mr Yates conceded that on 16 October 2016, a male person who was assessed as intoxicated was found on the premises playing pool in breach of s 252 of the Act.

## **Decision and Reasons**

[71] The test for suspension or cancellation is a two-stage process of which the second limb requires the Authority to be satisfied not only of the grounds specified in s.280(3) and s.285(3) respectively, but that it is desirable to make an order (per s.280(5) and s.285(5)).

*Sections 247 and 258*

[72] The Authority is not satisfied that the licensee company failed to comply with s 231 of the Act in not notifying the change in management of the premises in accordance with s 231 of the Act in respect of the dates of 21 and 28 May 2016, and 4, 18, 25 and 26 June 2016. Under s 231, appointment of a manager is not required in the case of a temporary or acting manager who was for a period not exceeding 48 hours. While the evidence of the Police established that Mr Ravelich was the acting manager on these occasions, the Police have not established that Mr Ravelich was acting for any periods exceeding 48 hours. Each of these days, when Police visited the premises, there was at least one day in between for which it is not been established that Mr Ravelich was the acting or temporary manager. While it is possible that Mr Ravelich may have been an acting manager for a period of greater than 48 hours within this period, this has not been established by evidence adduced by the Police.

[73] In respect of the dates of 9 , 10 and 16 July 2016, however, the Authority is satisfied that the second respondent, Mr Ravelich was the nominated duty manager (and not an acting or temporary manager), for the premises. The s 231 notification filed by Ms Teio in respect of Mr Ravelich, however, establishes that Mr Ravelich was only appointed a new certificate holding manager effective from 5 August 2016. Accordingly, the sales on 9, 10 and 16 July 2016 were not authorised under the Act.

[74] Mr Wiles, for the respondents has argued that s 258 has no application to Mr Ravelich and while he may be subject to a fine under s 247 of the Act, he cannot be suspended on the basis of a failure to comply with s 231. This overlooks the fact that Mr Ravelich was not only the supposed nominated duty manager but also a director of the company on 9 , 10 and 16 July 2016 having been appointed a director on 18 November 2015 and not ceasing in that role until 19 August 2016. While it is the licensee who is responsible under s 258 for compliance with s 231, the licence can only be exercised by its directors and the managers the licensee employs.

[75] The period between the graduated response meeting on 6 July 2016 and notification of the Mr Ravelich on 5 August 2016 as manager was only 22 days. Nevertheless, the Authority is satisfied that as a director of the company who is also a practising lawyer, the time requirements in s 231 (i.e. 2 working days after the appointment) would have been readily apparent to Mr Ravelich on a cursory reading of the Act. In any event, by his own admission Mr Ravelich acknowledged at the meeting with the Police on 6 July 2016, he agreed he needed to file a s 231 notice.

[76] The Authority found Mr Ravelich's evidence wanting in respect of the reasons he gave for the delay. In his evidence before the Authority Mr Ravelich implied that the delay resulted, in part, from not believing that there was any urgency required by Constable Miklos. Again, as a practising lawyer, a cursory reading of the Act would have alerted Mr Ravelich to the fact that this urgency was not a requirement imposed by the Police but was rather, a requirement of the Act.

[77] Further, Mr Ravelich stated before the Authority that the notification was posted by surface mail about 10 days after his conversation with the Police on 6 July 2016 and that he imagined it took another 10 days to get through the post and to be receipted by the Police on 5 August 2016. Given that the Notice of Management Change is dated 5 August 2016, however, Mr Ravelich's explanation is simply not credible.

[78] Similarly, to say that the Police were fully aware that Mr Ravelich had been appointed a duty manager because this had been discussed with the Police at meetings throughout the period avoids the fact that the responsibility for notifying the appointment of a manager is on the licensee in accordance with s 231. To suggest that the Police were 'in a sense' notified as they were fully informed that Mr Ravelich was managing the premises is not accepted by the Authority.

[79] The respondents' attitude that they do not see compliance with s 231 as a serious breach in the circumstances overlooks the importance that this section plays in the enforcement of the Act and, in particular, that the object of the Act is met. As was pointed out in *Nelson v Enzo Entertainment Limited* [2003] NZLLA 220 (4 April 2003), the authority to sell alcohol can only be conferred by a licence exercised by managers appointed in accordance with the Act. It is for this reason that the Act creates an offence for the failure to comply, without reasonable excuse, with s 231. As we said in *Enzo Entertainment* at page [9]:

*“The industry needs to be aware that this is a situation that is not to be treated lightly.”*

[80] This failure goes to the suitability of the licensee to hold a licence but also to Mr Ravelich’s suitability as a manager.

#### *Section 69*

[81] The Authority does not find the evidence of Mr Yates credible that the failure to notify the Authority of changes in the directorship of the company was merely an oversight. Mr Alek시오 Taufaeteau was added as a director on 21 July 2016 within a matter of weeks, and one day, respectively after the two graduated response meetings. And, further changes to shareholdings were made between September and November 2016. The Authority is of the view that the advice of the Police to comply with s 69 simply fell on deaf ears as the graduated response meeting was only a short time before these changes were made. Given the nature of the graduated response meeting, the Authority simply does not find it credible that the failure to notify the Authority of changes in the directorship of the company was merely an oversight.

[82] Mr Wiles again submits that a breach of s 69 can only be sheeted home to the licensee company. This again ignores the fact that the authority to sell alcohol can only be conferred by a licence exercised by managers appointed in accordance with the Act. As a consequence, this failure again goes to Mr Yates suitability given he was the duty manager on the night.

#### *Misleading use of directors names*

[83] The Authority is satisfied from the evidence before it that the control of the running of the first respondent company rested solely with the second respondent, Mr Yates. This is consistent too with submissions from Mr Wiles for the respondents that in respect of the third respondent, Mr Ravelich did not consider himself to be a director and never regarded himself as having any real control in the management of the company. And, as submitted by Mr Wiles, it is common ground that the fourth respondent, Ms Teio had *“very little say in the running or management of ‘Le Box.’”*

[84] The Police contend that the applicant appointed directors are acting as ‘fronts’ for the second respondent who still manages the business notwithstanding that he is an undischarged bankrupt. In doing so, the applicant submits that the first respondent is not suitable to hold a licence. And, the third and fourth respondents, in turn, by agreeing to operate as fronts in this way, are not suitable to hold manager’s certificates. The Authority agrees. In *Ferguson v C A McCullough* [2007] NZLLA 915, this Authority considered an application for the cancellation of an on-licence where it was alleged that the licensee had no involvement in the operation of the premises which were said to have been carried out by a third party. There the Authority was satisfied that the licensee was a licensee in name only and was acting as a front to others. The Authority said at [29]:

*“We regard a licence as a privilege not a right. However the privilege comes with obligations, one of which is to be honest with the reporting agencies and with the Authority.”*

[85] And at [33 - 34]:



*“To treat the licensing system with such contempt is quite intolerable. As we indicated in our earlier decision, we had not expected such duplicity. If a licensee is unable to be honest and transparent in his dealings with reporting agencies, and in his appearance before us, then there is a complete absence of suitability. Such a person will break the rules at will.*

*The suitability of a licensee is fundamental to the licensing system. To act as a front for others, (because they would be unable to obtain a licence), undermines the integrity of the Act.”*

[86] The Authority is satisfied that the second respondent, despite being adjudicated bankrupt continued to run the business. This again goes to his suitability as well as that of the licensee.

[87] In *Bentleys Bar and Café Limited (In Liquidation)* (9/4/1997 LLA No. 500/97), this Authority considered an application for an on-licence when the applicant was in liquidation. In that decision, we said at page [3]:

*“In considering the ordinary meaning of “suitability” we do not regard a company in liquidation as “well fitted for the purpose” or that it is “appropriate” for it to be granted an on-licence. An adjudicated bankrupt would be in a similar position of he or she sought a licence.”*

[88] Mr Ravelich said he had no intention to be involved as director of the company and gave evidence that he forgot that he consented to being a director. Instead, Mr Ravelich said his involvement with Mr Yates was to assist him as a friend knowing the financial difficulties he was having. Mr Ravelich gave evidence that he obtained his manager’s certificate in an attempt to assist Mr Yates financially and was not paid any remuneration for working for Mr Yates.

[89] Mr Ravelich’s evidence that he forgot that he consented to being a director of the company was not credible. As a lawyer taking on the role of director of the first respondent company, Mr Ravelich’s explanation that he knew little of the affairs of the company or of his responsibilities as director carry no weight with the Authority.

[90] Mr Ravelich’s empathetic evidence before the Authority that *“at no time did I ever contribute in any way to the conversations”* at the graduated response model meetings held with the Police, also proved to be untrue under cross-examination and questioning from the Authority.

[91] In any event, by his own admission he was not in control of the company. Whether intentionally or not, Mr Ravelich could only be regarded as, in effect, a front for Mr Yates who was in control.

[92] Similarly, as acknowledged by Mr Wiles, Ms Teio had very little say in the running or management of the business and was not in control of the company. As such, she too could only be regarded a front for Mr Yates who was in control.

#### *Purchase of “Club Eetswa”*

[93] The Authority is satisfied that the actions of the second, third and fourth respondents were aimed at assisting Mr Naufahu obtain a licence for the premises given that he would be unlikely to obtain one in his own right due to his criminal convictions.

[94] In the case of Mr Yates, his signing of a sale and purchase agreement in a fictitious name, rather than for an on behalf of the Mr Naufahu appears to be intended to disguise Mr Naufahu's identity as purchaser. The Authority is satisfied that it was intended that Mr Yates fund the purchase of the premises by Mr Naufahu and sought to use Ms Teio as director and shareholder as a front for the transactions given his inability to be involved himself.

[95] For her part Ms Teio fabricated a story in what can only be seen as an attempt to mislead the Police as to the identity of the persons for whom the temporary licence for the premises was being sought.

[96] The information provided by Ms Teio to the Auckland Council on 15 August 2016 sighted by Mr Ravelich satisfies the Authority that on the balance of probabilities Mr Ravelich was aware that Mr Yates was seeking to purchase the premises for Mr Naufahu.

[97] While the purchase and establishment of establishment of "Club Eetswa" did not proceed, each of these actions raises concerns as to the suitability of each of the second, third and fourth respondents to be managers or directors of a company holding a licence and reinforces what we have already said about a licence being a privilege not a right. Again, that privilege comes with obligations, one of which is to be honest with the reporting agencies and with the Authority. We are satisfied that the respondents have treated the licensing system with contempt and have been duplicitous in their dealings with reporting agencies as well as cavalier in their approach to giving evidence before the Authority.

#### *Uncertified security guard involved in an assault*

[98] In respect of s 280(3)(a), consistent with the reasoning of the Court of Appeal in *Christchurch District Licensing Agency Inspector v Karara Holdings Limited* [2003] NZAR 752 [at 37-38] (which involved a controlled purchase operation), a single instance of conduct amounting to an offence under the Act is sufficient to show that the premises have been conducted in breach of the provisions of the Act and to found an application.

[99] What needs to be proved in order to establish that licensed premises are being used in a disorderly manner so as to be obnoxious to neighbouring residents or to the public was set out in *Lander v Richardson LLA PH 456-459/2004* at [40-43] :

*"...the Police have alleged that the licensed premises are being used in a disorderly manner so as to be obnoxious to neighbouring residents or to the public. We have not dealt with many applications which have relied solely on this ground. In order to succeed in their applications, the Police must prove a number of ingredients.*

*First, that the premises have been used in a disorderly manner. Proof of this would be required to show a certain level of awareness by management and staff. There would have to be proof that incidents of disorder were allowed to happen on a persistent and regular basis on the premises.*

*Secondly, there would have to be proof that the regular disorderly behaviour was obnoxious to the public or the neighbours. In this case, we did not hear from any member of the public (other than the Police). As will be seen in paragraph [30] above, Ms Petrie was unable to point to one specific incident*

*where the regular use of the premises in a disorderly way had been obnoxious to her. We accept that there have been many obnoxious incidents but there was no link between the incidents and the use of the premises except by implication. In the light of the evidence given by Mr Richardson and his employees, this is not enough.*

*For an application for enforcement to succeed, considerably more details of each incident are required. Furthermore, a respondent should if possible be given an opportunity to respond to the allegation at the time. Accordingly, and for these reasons, we have not been satisfied that the grounds for the applications have been established.”*

[100] The Police have established that the assault occurred on 21 August 2016 at 2.40 am and the security guard on duty at the premises was uncertified. A single incident, however, does not satisfy the Authority that incidents of disorder were allowed to happen on a persistent and regular basis. That a security guard whose certificate of approval had expired three weeks earlier was allowed to act in that capacity, however, again goes to the suitability of the licensee.

#### *Intoxicated male being found on the premises*

[101] In *Selby’s Sports Café v Sargent* [2004] NZLLA 568 (27 July 2004), we said at [40]:

*“It seems to us that allowing a person to be or become intoxicated while on licensed premises is the most vivid form of liquor abuse. As in every case the issue is how seriously the object of the Act should be taken. It is important to uphold the integrity of the principle that “a licence will be easy to get and easy to lose.”*

[102] At the hearing before the Authority, Mr Yates conceded that the licensee had breached s 252 of the Act. In the words of Mr Yates, *“That patron slipped through the net that night.”*

#### **Conclusion**

[103] As in *McCullough*, the Authority considers that the respondents have all acted in ways which have abused the privilege of a licence and brought the licensing system into disrespect. Most serious is the fact that the respondents have acted in ways that can only be described as fronts for the second respondent who is otherwise unable to manage or run the first respondent company and the licensed premises. The blatant actions of all respondents and the ease in which they were either dishonest with reporting agencies or cavalier in their approach to giving evidence before the Authority means that they are not suitable to hold a licence or manager’s certificates. Mr Yates, to his credit, acknowledged that his manager’s certificate might be surrendered but he has taken no steps to do so.

[104] Taken together, the actions of the respondents are such they are not suitable to hold a licence or to hold managers’ certificates. The actions of the respondents form a wider mosaic which paints a picture beyond each of its composite parts.

[105] Accordingly, the Authority makes the following orders:

- (a) On-licence number 007/ON/9456/2015 issued to Le Box Auckland Limited, is cancelled with effect from Friday 31 March 2017; and
- (b) Manager's certificate number 007/CERT/9159/2016 issued to Christopher Roy Yates is cancelled with effect from Friday 31 March 2017; and
- (c) Manager's certificate number 007/CERT/10387/2016 issued to Brett Dean Ravelich is cancelled with effect from Friday 31 March 2017; and
- (d) Manager's Certificate number 007/CERT/9543/2016 issued to Victoria Dawn Teio is cancelled with effect from Friday 31 March 2017.

**DATED** at WELLINGTON this 20<sup>th</sup> day of March 2017

District Court Judge K D Kelly  
Chairperson  
**Alcohol Regulatory and Licensing Authority**