

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

HEARING: Mr Vanny Mann

LICENCE NUMBER: 4532/00

HEARD BEFORE: Ms Merran Short (Presiding Member)
Ms Kerri Williams
Mr John Brears

DATE OF HEARING: 2 April 2008

DATE OF DECISION: 16 May 2008

APPEARANCES: Mr Philip Timney for the Director of Licensing
No Appearance by Mr Vanny Mann

BACKGROUND

1. This Hearing follows on from a preliminary hearing in this matter as to an issue of law regarding Section 53B of the *Private Security Act* ("the Act"). That decision was handed down on 31 January 2008.
2. This was a Hearing in respect of a complaint lodged with Licensing and Regulation ("Licensing") on 28 March 2007 in relation to an incident that occurred on 1 February 2007 at the Top End Hotel ("the Complaint").
3. The complaint related to an incident at the Top End Hotel ("the Hotel") where two females were allegedly assaulted by a male Crowd Controller and an off duty male Crowd Controller. Both females allege that they were assaulted and then verbally abused by the two males.
4. The complaint was lodged in writing in the form of a statement by the two (2) victims in the matter Ms Robyn Burton ("Ms Burton") and Ms Ingri Kontro ("Ms Kontro"). Ms Burton and Ms Kontro did not know that Licensing conducted investigations into complaints until informed by Ms Burton's Solicitor in late March, 2007. This matter was reported to the Police at the time the incident occurred.

5. Investigations with the Top End Hotel revealed that Mr Vanny Mann ("Mr Mann") was on duty that evening and was wearing the ID Badge Number 69. A copy of the Incident Register and Surveillance footage was collected from the Hotel.
6. On 10 April, 2007 a letter was sent to Mr Mann outlining the nature of the complaint and he was invited to respond to the complaint in writing within twenty-one (21) days. No reply was received from Mr Mann.
7. Further information was sought from Ms Burton and Ms Kontro and both attended the office of Licensing to view the surveillance footage. Ms Kontro also brought with her photographic evidence of the injuries she sustained during the alleged incident, and they were tendered as evidence at the Hearing, exhibit 4. Photographs pertaining to Ms Burton's injuries were also tendered into evidence at the Hearing, exhibit 6. A witness, Ms Michelle Morgan ("Ms Morgan") who was in company with Ms Burton and Ms Kontro on the night of the alleged assault, also submitted a statement to Licensing and it is exhibit 7.
8. On 15 May, 2007, Mr Frank Palazzo of JR Security who employs Mr Mann was contacted by Licensing and asked to get Mr Mann to contact Licensing and Regulation to discuss this matter further. There was no response to this request. On 31 May, 2007 Inspector O'Brien contacted Mr Mann directly and asked that he attend the Licensing offices to discuss the complaint.
9. On 1 June, 2007 Mr Mann attended at Licensing offices, where Licensing Inspectors ("Inspectors") interviewed Mr Mann. This interview was taped and later transcribed, with the consent of Mr Mann, exhibit 10. Mr Mann also viewed the surveillance footage ("CCTV footage"). In the interview Mr Mann named the other alleged offender as Mr James Couzins an off duty Crowd Controller who was a friend of Mr Mann.
10. On 8 June 2007, after several attempts Licensing was able to contact Mr Couzins who agreed to attend for an interview. Mr Couzins attended where he was also interviewed by Inspectors and shown the CCTV footage of the alleged incident. Again this interview was taped with the permission of Mr Couzins and is exhibit 11.
11. On 21 June, 2007 the Inspectors attended at the Top End Hotel and spoke to Mr Luke Overton, who was employed as the Duty Manager on the night of the alleged incident. A statement from Mr Overton in relation to his involvement in this matter was considered at Hearing.
12. A medical report outlining her injuries and dated 6 February 2007 was provided in respect of Ms Kontro, exhibit 3.

CONSIDERATION OF THE ISSUES

13. As set out above Mr Vann ignored early correspondence from Licensing. In addition to that, he presented at the first hearing date on 10 October 2007, half (1/2) an hour late and without legal representation, informing the Commission that he would “only get lawyers if it was serious!”
14. Also at the 10 October 2007 hearing, Mr Timney raised a legal issue in respect of the proper interpretation of Section 53B of the Act. After the Commission informed Mr Mann that it considered the matter to be very serious and that if he was found guilty he could have his licence cancelled, and in light of the legal issue raised by Mr Timney, Mr Mann was offered an adjournment to seek, among other things, legal advice. Mr Timney did not oppose an adjournment and an adjournment was granted. On this occasion Mr Timney had arranged for Ms Kontro to attend and to have his other witnesses available by telephone.
15. The hearing re-commenced on 12 December 2007 when Mr Mann appeared with his Legal Counsel Mr Hope from Maleys Solicitors. Mr Timney again appeared on behalf of the Director of Licensing. On this occasion due to the intention that the matter proceed by way of legal argument only, no witnesses attended. Mr Hope argued on behalf of Mr Mann that the complaint against Mr Mann was served upon him outside the 48 hours allowed pursuant to Section 53 B of the Act. The matter was dealt with as a preliminary issue and a decision was handed down on 31 January 2008.
16. Mr Mann is entitled to raise an issue in defence of the complaint and given the legal argument on 12 December 2007 Ms Kontro and the other witnesses were not required to give evidence and did not attend. However, Ms Kontro had attended at the first hearing date of 10 October 2007 and had taken time away from her work to do so.
17. Ultimately, the Commission found that the service of complaint was valid and set a date for the substantive hearing of this matter.

NOTICE REGARDING THIS HEARING DATE

18. Notices of this new Hearing date, 2 April 2008, were sent out by the Commission to the parties, including to Mr Peter Maley at Maleys Solicitors on 7 February 2008. The letter gave notification of the Hearing date. As noted above there was no attendance by Mr Mann at this Hearing. On the day Mr Timney contacted Mr Maley and asked whether they would be attending. Mr Timney advised the Commission that Mr Maley told him that “Maley’s no longer acted for Mr Mann and they expected Mr Mann to attend on his own behalf.” Further, Mr Maley confirmed to Mr Timney, who in turn told the Commission that Maley’s had advised Mr Mann of the Hearing date by letter to the address nominated by Mr Mann as his contact address.

19. In light of this information and due to the presence of witnesses, Counsel and the Commission; and given the prior delays the Commission was satisfied that Mr Mann had been notified of the Hearing date and elected to proceed with the Hearing in Mr Mann's absence.
20. After the completion of the Hearing, the Commission discovered that the address Mr Mann nominated to his solicitors as his contact address was that of his employer, Mr Frank Palazzolo at JR Security. This information came to light following receipt of a letter by the Commission from Mr Palazzolo advising that he mistakenly thought that the Hearing date was 4 April 2008 and in any event he had other worries concerning his ill father and he "took full responsibility for..." Mr Mann not attending the Hearing.
21. No explanation was given as to whether Mr Palazzolo had advised Mr Mann of the Hearing and forgotten to remind him or whether Mr Mann had made any enquiry of Mr Palazzolo as to the Hearing date, or whether notice regarding same had been received. To date the Commission has not had any apology from Mr Mann nor explanation from him directly for his non attendance, which in light of Mr Palazzolo's letter he must now be aware of. Mr Mann's failure to contact the Commission directly reinforces the Commission's view that Mr Mann is at best inconsiderate; at worst arrogant in respect of this proceeding. And he does not feel compelled at all to explain his non attendance to the Commission.
22. It could be argued that Mr Mann has not been directly informed of the Hearing date by either the Commission or his Solicitors. However, the Commission is of the view that although there may not have been direct communication, both the Commission and Maleys did all that they were required to do to notify Mr Mann. The Commission notified Mr Mann's Solicitor at the time, of the Hearing date and Mr Mann's Solicitor notified Mr Mann at his nominated address. In the circumstances and particularly in the absence of any account by Mr Mann, the Commission does not accept the explanation put forward by Mr Palazzolo to be a satisfactory reason for Mr Mann's non attendance at the Hearing.
23. In all the circumstances the Commission is of the view that Mr Mann could and should have made his own enquires to confirm the Hearing date and ensure his attendance at the Hearing. And, on balance the Commission is satisfied that overall Mr Mann has demonstrated a very cavalier attitude regarding this complaint. Demonstrated by ignoring the initial correspondence from Licensing and Regulation, turning up late and without Counsel to the first Hearing date, informing the Commission that he did not consider this to be a "serious matter", as well as stating in his record of interview, in response to a question as to why he had not responded to the 10 April 2007 letter from Licensing, that "I don't really bother unless it's really, really major", page 1 of exhibit 10.
24. Taking all these matters into account the Commission is not persuaded that a new Hearing date ought to be set. The Commission relies on Mr Mann's past

behaviour and the fact that to do so would put all the witnesses to further inconvenience and expense. In particular, Ms Kontro who had to arrange time off work for each attendance, each time expecting that the matter would be heard. The length of time since the alleged assault, being 2 February 2007, and the final Hearing over twelve (12) months later. The disrespect shown by Mr Mann at every step of the process and the complete lack of contrition or even apology for any inconvenience he caused to the Commission, parties or witnesses.

25. On balance therefore the Commission is satisfied that Mr Mann had valid notice of the Hearing date and otherwise he had ample opportunity to make his own enquires with his employer, his former lawyers or the Commission itself.

CONSIDERATION OF THE ISSUES

26. Ms Kontro and Ms Burton gave evidence that was substantially similar and this evidence was supported by Ms Morgan who witnessed the events and their evidence as a whole married up with the CCTV coverage that was available for viewing.
27. In the absence of Mr Mann there was no evidence that contravened their evidence however the Hearing Commissioners did test the veracity of their evidence by questioning them as to the events of the night.
28. In addition the Commission admitted into evidence the record of interviews ("ROI") of Mr Mann and Mr Couzins as well as considering the statement of Mr Luke Overton, the Duty Manager of the Hotel at the time of the incident.
29. Dealing firstly with the ROI of Mr Mann, Mr Mann, at page 7 of exhibit 10, after denying hitting or punching anyone, Mr Mann does admit that he pushed Ms Burton (although he did not know her name at the time) with excessive force. In addition, the overall impression the Commission got when reading Mr Mann's ROI is that Mr Mann is being somewhat flexible with the truth. Further, he freely admits standing by whilst Mr Couzins, who although he was a licensed Crowd Controller was not on duty at the time and was for all intents and purposes a 'patron' of the Hotel and a friend of Mr Mann, heavily manhandled a slightly built woman, twisting her arm up behind her back, This is clearly visible from the CCTV footage. It is also supported by the Shift Incident Report wherein Mr Mann refers to Mr Couzins as a "patron".
30. In addition the Shift Incident Report simply does not gel with the CCTV footage, indeed it is fairly clear from the CCTV footage that there was excessive force used by Mr Couzins and by his own admission Mr Mann in "slapping" the drink from Ms Burton's hand.
31. Additionally, there was no evidence that any signs were signposted at the exit where Mr Mann stopped Ms Burton from exiting the bar, indeed according to the licence; the area in which Ms Burton and Ms Kontro were assaulted was

still within the licensed premises of the Hotel. Whilst the Commission agrees that it is a matter for the Hotel to determine where its patrons can walk with their drinks, it would be prudent to perhaps signpost those areas.

32. Taken as a whole, the Commission feels that the reaction of Mr Mann was overly excessive necessary to the circumstances and that neither the actions of Ms Burton nor Ms Kontro warranted the force used upon them to control the situation. In addition the Commission finds that Mr Mann was negligent in his duty as a Crowd Controller when he stood by and allowed Mr Couzins to assault Ms Burton by throwing her against a wall and twisting her arm behind her back and then verbally abusing Ms Burton and Ms Kontro.
33. Finally, the Commission does not accept the evidence of Mr Overton, the Duty Manager of the Hotel, given in his statement to Licensing. Mr Overton attests to the fact that he observed all three (3) "...females attacking Jimmy (Mr Couzins) physically, punching, scratching and pulling hair". There is no evidence to support such 'fact' either on the CCTV or by any of the witnesses who gave evidence. Indeed it is clear from the CCTV coverage that Ms Morgan, one of the three (3) females, was not physically involved with Mr Couzins at any time, rather she spent the entire time on a mobile telephone speaking to the Police. Further, Mr Overton states that all three (3) females "have been in since the incident". Ms' Burton, Kontro and Morgan denied such a claim in evidence. In fact all gave evidence that since the incident they no longer go out at night on a regular basis and Ms Kontro, who is the only one who still resides in Darwin, has not been out at night in Darwin except to attend at the Casino.
34. In all the circumstances the Commission found the ROI of Mr Mann and Mr Couzins was not credible and the statement of Mr Overton to be factually incorrect in more than one instance.
35. In all the circumstances the Commission prefers the evidence of Ms Burton, Ms Kontro and Ms Morgan in its entirety and is satisfied that the complaint as laid out against Mr Mann was proved on the balance of probability.

DECISION

36. Due to Mr Mann's absence at the Hearing the Commission has determined to offer Mr Mann the opportunity to make written submissions before moving to the penalty stage of this proceeding. Therefore, the Commission directs that each party be given twenty-one (21) days from the date of this decision to make written submissions to the Commission regarding penalty.
37. If no submissions are received the Commission will proceed directly to impose a penalty which could include reprimand, fine, conditions imposed upon the licence, suspension or cancellation, see Section 53D of the Act. It is relevant that Mr Mann's licence expired on 5 April 2008 and in those circumstances neither suspension nor cancellation is an option however the Commission can impose a fine and make a note on his file for future

applications that the Commission does not consider him to be an appropriate person to hold a licence.

Merran Short
PRESIDING MEMBER

16 May 2008