

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

HEARING: Mr Jayden Hillyer

LICENCE NUMBER: 4532/00

MATTER: Complaint Pursuant to Section 53C(3)(b) of the *Private Security Act* - Display Dishonesty or Lack of Integrity

HEARD BEFORE: Mr Richard O'Sullivan (Chairman)
Ms Merran Short
Ms Kerri Williams

DATE OF HEARING: 29 May 2008

DATE OF DECISION: 27 June 2008

APPEARANCES: Mr Phil Timney for the Director of Licensing
Mr Jayden Hillyer No Appearance

BACKGROUND

1. This Hearing was to determine whether Mr Jayden Hillyer ("Mr Hillyer") is an appropriate person to hold a Private Security Licence within the meaning of Section 15(6)(a)(i) of the *Private Security Act* ("the Act"). Section 15(6)(a)(i) provides inter alia:

"(6) In deciding whether a person is an appropriate person to hold a licence, the licensing authority may consider the following matters as indicating that the person may not be an appropriate person:

(a) that in dealings in which the person has been involved, the person has (i) shown dishonesty or lack of integrity; or ..."

2. On 21 February 2008 Mr Michael Griffen ("Mr Griffen") reported an incident to the Police and to Licensing and Regulation. Subsequently a Statutory Declaration of the incident dated 11 March 2008 was provided by Mr Griffen. The substance of Mr Griffen's report was that Mr Hillyer illegally charged Mr Griffen a fifty dollar (\$50.00) entry into the Lost Arc when there was no cover charge. A Complaint was laid by a Licensing Inspector with particulars of the Complaint as follows:

Count 1

That Mr Hillyer refused entry to a patron into the Lost Arc Nightclub due to his level of intoxication and then informed him that for a fee of \$50.00 being paid to Mr Hillyer, he would allow the patron entry.

Count 2

That on receiving the payment of \$50.00, Mr Hillyer subsequently allowed the patron entry into the Lost Arc Nightclub ("the Complaint").

3. The Complaint was subsequently laid by a Licensing Inspector regarding the report by Mr Griffen and on 6 March 2008 the Director of Licensing sent a letter to Mr Hillyer setting out the particulars of the Complaint and giving Mr Hillyer an opportunity to respond to the Complaint. Mr Hillyer provided a written response on 7 April 2008, Exhibit 7. In the absence of Mr Hillyer at Hearing this material presented the only submission on his behalf able to be considered by the Commission.

PROCEEDING WITH THE HEARING IN THE ABSENCE OF MR HILLYER

4. As stated above Mr Hillyer did not appear at the Hearing. Before proceeding to hear the matter the Commission needed to satisfy itself that Mr Hillyer had proper notice of the Hearing date. It was clear from the Brief that a letter dated 6 March 2008 was sent to Mr Hillyer and he responded to same, Exhibit 7.
5. A letter dated 8 May 2008 was sent to Mr Hillyer advising of the date of Hearing.
6. Notice of the Hearing date was hand delivered to Mr Hillyer in the form of the Brief which included the date and time of the Hearing. Mr Hillyer confirmed receipt of the Hearing Brief and accordingly the time and date of Hearing by signing a copy of the front cover of the Brief which was tendered by Mr Timney at Hearing, Exhibit 1.
7. In light of all of the above the Commission was satisfied that Mr Hillyer had proper and sufficient notice of the Hearing and decided to proceed in his absence.

THE EVIDENCE

8. The Commission heard evidence from Mr Griffen, who said that he was on a night out with friends and after visiting other licensed premises they attended at the Lost Arc. He admits to have been drinking prior to the circumstances giving rise to the Complaint but says he was not intoxicated. Mr Griffen got separated from his friends when he stayed back to pay for the taxi and when he attempted to gain entry to the Lost Arc he was told by the Crowd Controller on duty at the time, later identified as Mr Hillyer, that he was “too intoxicated” to enter the Lost Arc. After some discussion and being told by Mr Hillyer to sit and have a cigarette to “sober up”, Mr Griffen again attempted to gain entry and was denied. Mr Griffen by this time was concerned that his friends would be wondering where he was and asked if there was any way he could just go in and let them know what had happened. Mr Griffen told the Commission that it was then he was informed by Mr Hillyer that *“it’ll cost ya \$50.00.”*
9. Mr Griffen only had \$100.00 in his wallet and as he needed money to get a cab home and money for drinks so he went across the road to the ATM and “withdrew \$200.00 and went back to the Lost Ark (sic).” The evidence of the withdrawal was provided to the Commission in the form of a bank statement that included the date and time of withdrawal.
10. Upon returning to the Lost Arc Mr Griffen said as instructed by Mr Hillyer, *“I put the fifty dollars in my hand and went to give it to the bouncer (Mr Hillyer) but it blew out of my hand. I then bent down to pretend to adjust my shoelace, picked up the money and went past the entrance to Discovery Night Club. I then made my way back to the front door of Lost Arc, shook hands with the bouncer and passed the fifty dollars to him. He then let me inside.”*
11. In his oral evidence before the Commission, Mr Griffen, told the Commission that near closing time with what he says was ‘Dutch courage’, he confronted Mr Hillyer and asked for his money back because nobody else had to pay a cover charge. In his Statutory Declaration, Exhibit 4, he says:

“After being there for a while I saw the bouncer walking around the floor and spoke to him about the money he charged me to get in. I told him I wanted it back.

He (Mr Hillyer) then asked me to go outside to the alley next to the club. I said no, I will stay here until closing and I didn’t want to get into a fight. I also told him if he touches me ‘All hell will break loose’.

I then walked away and got another drink. Then both bouncers came over and asked me to leave.”

Mr Griffen goes on to say he was physically escorted outside where he waited for his mates.

12. The Commission had the benefit of viewing CCTV coverage of the period during which Mr Griffen alleges the incident involving the handover of \$50 took place and it is fair to say that the CCTV footage supports Mr Griffen's evidence and his version of events. In addition, the Commission found Mr Griffen to be a forthright, honest witness who was not prone to exaggeration.
13. The only evidence the Commission had from Mr Hillyer was his written reply to the Director dated 7 April 2008, Exhibit 7. Mr Hillyer states in his response that Mr Griffen's *"demeanour was very stand offish so I told him to have a break before entering the club"*. To this he asked if he could *"sit at the left hand tables for a while"*, to this I replied *"that will be okay"*. It is worth noting at this time that the CCTV footage does show Mr Griffen sitting at a nearby table having a cigarette, however there is no evidence in the footage that Mr Griffen was "stand offish" or "intoxicated", which was the reason Mr Hillyer gave Mr Griffen when initially refusing him entry. Mr Hillyer then goes on to state that after a short time Mr Griffen returned and whilst *"he was approaching the door he dropped a \$50 note on the ground, I informed him that he had dropped his money, he then picked it up and walked past the front door of the club towards the inner CBD."* Mr Hillyer goes on to say that Mr Griffen *"seems to have benefited from his walk and appeared to be ok to now come in."*
14. It is Mr Hillyer's contention that Mr Griffen was later considered by Mr Hillyer to be intoxicated and he was asked to leave the club and it was then Mr Griffen accused Mr Hillyer of taking his \$50.00.

CONSIDERATION OF THE ISSUES

15. In the absence of Mr Hillyer at Hearing neither Mr Timney nor the Commission could test the veracity of the statements made in his response to the Director. In Mr Hillyer's absence the Commission was left with Mr Griffen's evidence and the CCTV footage. In the opinion of the Commission the CCTV footage which is objective evidence was clearly more supportive of Mr Griffen's evidence than that of Mr Hillyer.
16. Further, it was put by Mr Timney, despite the proper service of Notice of the Hearing, Mr Hillyer had elected not to appear and give evidence and in those circumstances it was open to the Commission to make a finding that both Counts of the Complaint were made out.
17. The Commission considered all the evidence and gave particular weight to the oral evidence of Mr Griffen, which as stated earlier the Commission found credible and truthful. In addition the CCTV footage which can only be described as completely objective fits more believably with the evidence of Mr Griffen. Whereas, the evidence of Mr Hillyer seemed more tailored to fit the CCTV footage, which is of concern to the Commission, because it is set out in the 'Camera Surveillance Requirements at Licensed Premises 2004'

which applies to the Lost Arc, that *“unsupervised access to recordings is strictly limited to a Licensee, Nominee or Duty Manager of the premises, a member of the Commission, the Director, Licensing Inspector or a member of the Police in the performance of his or her duties and for a purpose related to and consistent with the objectives of these Requirements.”*

18. Finally, none of the footage showed Mr Griffen had obvious signs on the part of intoxication, the reason he says he was given by Mr Hillyer for not being allowed into the Lost Arc. Mr Griffen was able to bend easily to “pretend to adjust” his shoelace and he also showed agility in stepping around a chair and over a rope barricade when exiting the table at which he was sitting to have a cigarette.

DECISION

19. For the reasons set out above the Commission is satisfied that the Complaint is made out. Mr Timney has submitted to the Commission that cancellation of licence is the appropriate penalty. The Commission finds this submission very persuasive. However, due to Mr Hillyer’s non attendance at the Hearing prior to making a final decision the Commission has determined to offer Mr Hillyer the opportunity to make written submissions before moving to the penalty stage of this proceeding. Therefore, the Commission directs that Mr Hillyer be given fourteen (14) days from the date of this decision to make written submissions to the Commission regarding penalty.
20. 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.

Richard O’Sullivan
CHAIRMAN

27 June 2008