

# NORTHERN TERRITORY LICENSING COMMISSION

## PENALTY DECISION

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| <b>HEARING:</b>          | <b>Mr Vanny Mann</b>   |
| <b>LICENCE NUMBER:</b>   | 4532/00  |
| <b>HEARD BEFORE:</b>     | Ms Merran Short (Presiding Member)<br>Ms Kerri Williams<br>Mr John Brears        |
| <b>DATE OF HEARING:</b>  | 2 April 2008   |
| <b>DATE OF DECISION:</b> | 23 July 2008   |
| <b>APPEARANCES:</b>      | Mr Philip Timney for the Director of Licensing<br>No Appearance by Mr Vanny Mann |

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### BACKGROUND

1. This is the penalty decision following the Hearing held 2 April 2008.
2. The Hearing on 2 April 2008 was regarding 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 (2) 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 (2) males.
4. Full details of the Hearing are outlined in the Reasons for Decision dated 16 May 2008.

### TIME TO MAKE SUBMISSIONS

5. Mr Mann did not appear at the 2 April 2008 Hearing and due to Mr Mann's absence at the Hearing the Northern Territory Licensing Commission ("the Commission") determined to offer Mr Mann the opportunity to make written submissions before moving to the penalty stage of this proceeding. Therefore, the Commission directed that each party be given twenty-one (21)

days from the date of the decision to make written submissions to the Commission regarding penalty.

6. The Commission also stated that If no submissions were received the Commission would proceed directly to impose a penalty which could include reprimand, fine, conditions imposed upon the licence, suspension or cancellation, see Section 53D of the *Private Security Act*, (“the Act”). It was noted by the Commission that Mr Mann’s licence expired on 5 April 2008 and in those circumstances neither suspension nor cancellation was an option however the Commission noted they could impose a fine or 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, or both.
7. The Commission received submissions regarding penalty from Mr Timney on 4 June 2008.
8. On 26 May 2008 Executive Officer of the Commission wrote to Mr Mann enclosing a copy of the 16 May 2008 Reasons for Decision and advised him that he could make submissions on penalty. As Mr Mann was away from Darwin working so this letter was delivered to Mr Mann’s parents on 29 May 2008 and they were told that Mr Mann had twenty-one (21) days to make submissions. Mr Mann returned to Darwin on or about 5 June 2008 and a copy of Mr Timney’s Submissions on Penalty were delivered to him. Mr Mann then telephoned one of the Inspectors of Licensing and Regulation and advised he had a full time job outside of Darwin and he sought an extension of time to make submissions. A further seven (7) days was given to Mr Mann.
9. As of the date of this Decision on Penalty no submissions have been received from Mr Mann.
10. Mr Timney submits that the Commission must have regard to the purposes of the Act when determining penalty. The purpose of the Act is to “provide for the regulation of the provision of security services and for related purposes”. In considering the provision of security services the Licensing Authority must consider the suitability of an applicant and in so doing assess whether they are an appropriate person to hold a licence including a renewal of licence.
11. In its Reasons for Decision dated 16 May 2008 the Commission found the Complaint lodged against Mr Mann was made out and in those circumstances the Commission is obliged to impose an appropriate penalty. As set out in the 16 May 2008 Reasons for Decision the penalty options open to the Commission are set out in Section 53D of the Act which provides:

**“53D.Determination of complaint**

(1) On completing its consideration of and investigations into a complaint under section 53A, the licensing authority must make a determination –

- (a) that, in the licensing authority's opinion, the complaint is of a frivolous, irrelevant or malicious nature, or that the complaint does not set out facts and circumstances that are sufficient grounds on which to base a complaint, and dismiss the complaint;
- (b) that no further action is warranted;
- (c) to reprimand the security provider;
- (d) to fine the security provider an amount not exceeding the prescribed amount;
- (e) to impose conditions on or vary the conditions of the security provider's licence;
- (f) to suspend the security provider's licence; or
- (g) to cancel the security provider's licence...

## **SUBMISSIONS OF MR TIMNEY**

12. Mr Timney submits that the factors to be taken into account by the Commission include the factual circumstances accepted by the Commission:

- that Mr Mann in his capacity as a Crowd Controller assaulted the Complainants,
- that Mr Mann stood by whilst another patron, an off duty Crowd Controller, who happened to be a friend of Mr Mann's', assaulted the Complainants,
- that Mr Mann instigated and aggravated the incident leading to the Complaint, and
- that he used inappropriate language.

13. In its Reasons for Decision dated 16 May 2008 the Commission said:

*"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."*

In the circumstances the Commission accepts and agrees with the submissions of Mr Timney.

14. Mr Timney further submitted that an aggravating factor is Mr Mann's conduct before the Commission that "he did not regard the complaint or the hearing as a serious matter." This was evident Mr Timney says by Mr Mann:

- attending half an hour late on the first occasion;

- admitting to the Investigating Inspectors that he did not “really bother with it (the complaint) unless it’s really really major.” Refer record of interview of Mr Mann, page 1 question 5;
  - his failure to attend at the Hearing on 2 April 2008, and
  - his complete lack of contrition.
15. The Commission agrees with Mr Timney that Mr Mann has shown little regard for the Commission and has not demonstrated any remorse for his actions. The Commission is also satisfied that Mr Mann was given every opportunity to make submissions on penalty on his own behalf and in the absence of any submissions the Commission will impose a penalty.
16. As stated above Mr Mann’s licence expired on 5 April 2008 some three (3) days after the Hearing and in those circumstances cancellation of licence is not a viable option for the Commission, or as Mr Timney states “...neither suspension nor cancellation of licence would result in any real penalty.” Imposing a fine is unlikely to have any detrimental effect on Mr Mann and so the Commission has determined to find that Mr Mann is not an appropriate person to hold a Crowd Controllers licence and place such a finding on Mr Mann’s file and should Mr Mann decide to re-apply at a later stage the Commission determines that such a finding be taken into account when deciding whether Mr Mann is an appropriate person to hold a licence under the Act.
17. Mr Timney submits that Mr Mann ought to be found by the Commission not to be an appropriate person under the Act and that finding ought to remain in place for a period of ten (10) years.
18. The Commission sees the sense in such a submission and is of the view that it is akin to a the period of time a person would be disqualified from holding a licence under the Act for a disqualifying criminal offence or relevant criminal history, that is ten (10) years.

## **DECISION**

19. The Commission finds that Mr Mann is not an appropriate person to hold a licence under the Act.
20. The decision of the Commission to be placed on Mr Mann’s file and the finding to be in place for a period of ten (10) years from the date of this decision.
21. The Commission directs the Director to write to Mr Mann advising him of this decision and enclosing a copy of this penalty decision.

22. The Commission directs that a copy of that letter and this decision be placed on Mr Mann's file to activate upon any future application for a licence under the Act within a ten (10) year period from the date of this decision.

Merran Short  
PRESIDING MEMBER

23 July 2008