

# NORTHERN TERRITORY LICENSING COMMISSION

## REASONS FOR DECISION

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<b>RESPONDENT:</b>	<b>Mr SANER CHAIYAPOE</b>
<b>LICENCE NUMBER:</b>	Private Security and Crowd Controller Licence Number 6589
<b>PROCEEDINGS:</b>	Complaint lodged under Part 53A of the <i>Private Security Act</i>
<b>HEARD BEFORE:</b>	Mr Richard O'Sullivan (Chairman) Mr Philip Timney (Legal Member) Mr John Brears
<b>DATE OF HEARING:</b>	18 May 2010
<b>APPEARANCES:</b>	Mr Saner Chaiyapoe Inspector Susan Whyte for the Director of Licensing
<b>IN ATTENDANCE:</b>	Ms Mere Bell, representative of New Millenium Security, employer of Mr Chaiyapoe

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### BACKGROUND

- 1) In a report dated 15 April 2010 Licensing Inspector Steven Holehouse lodged a complaint with the Licensing Commission against Mr Saner Chaiyapoe. Mr Chaiyapoe holds a dual Crowd Controller / Security Officer licence issued pursuant to the *Private Security Act* ("the Act").
- 2) Mr Holehouse's complaint concerns an incident at Rapid Creek Shopping Centre ("the Premises") on 11 March 2010 where Mr Chaiyapoe was engaged as a Crowd Controller. The complaint alleges that Mr Chaiyapoe used excessive force in attempting to evict a person from the Premises.
- 3) On 12 March 2010 the Director of Licensing received an email from a person who alleged that she had witnessed a security guard kick a person in an altercation at the Premises on 11 March 2010. Inspector Holehouse was tasked with investigating the complaint and obtained a Statutory Declaration from Mr Cost Miaoudis, manager of the Premises, in respect of the incident and was also provided with CCTV footage of the incident. Mr Holehouse's investigation revealed that the Crowd Controller involved was Mr Chaiyapoe.

- 4) In his Statutory Declaration Mr Miaoudis states that, at approximately 6.10 pm on 11 March 2010 he was asked for \$20 by a person, known only as Peter. Mr Miaoudis called Mr Chaiyapoe to remove Peter from the Premises as he was annoying patrons and stall holders at the markets.
- 5) Mr Miaoudis stated further that Peter started throwing punches at Mr Chaiyapoe as soon as he approached. Mr Miaoudis, wrestled Peter to the ground following which he says he felt a foot move past his head and connect with Peter's head. He says that he then moved Peter to a back area of the Premises who then ran from the Shopping Centre when he attempted to call Police.
- 6) The CCTV footage clearly shows Mr Chaiyapoe approach Peter following which he was punched three (3) or four (4) times to the head and face area. The footage also reveals that when Mr Miaoudis and Peter were wrestling on the ground Mr Chaiyapoe kicked Peter once to the shoulder / chest area, repositioned himself and then kicked him a second time to the head or upper body area.
- 7) On 22 March 2010 the Director sent a letter to Mr Chaiyapoe inviting him to respond to the complaint. The response from Mr Chaiyapoe was received on 8 April 2010. He stated that he was attacked by Peter without provocation and struck to the head approximately three (3) times. Mr Chaiyapoe says he was stunned and disorientated by the punches to the head and confirmed that he had kicked Peter twice whilst he was wrestling on the ground with Mr Miaoudis. He added that he was unsure where the kicks landed on Peter's body and that he had delivered the kicks in an attempt to assist Mr Miaoudis to restrain him.
- 8) The complaint was referred to the Commission pursuant to Section 53A of the Act, alleging undue use of force by Mr Chaiyapoe in the conduct of his duties as a Crowd Controller.
- 9) Having considered the complaint and the response from the security provider the Commission determined, pursuant to Section 53C(3)(b) of the Act, to conduct an Inquiry into the complaint against Mr Chaiyapoe.

## **THE LEGISLATION**

- 10) Section 19 of the Act deals with conditions associated with the issue of a security provider licence, including a crowd controller licence. Sub-section 19(2)(c)(2) provides:

*A licence is subject to:*

- (c) *where a code of practice has been approved under section 48 in relation to such a licence, the condition that the code shall be complied with and not contravened.*

- 11) A Code of Practice for Crowd Controllers has been approved pursuant to section 48 of the Act. Clause 3 of that Code prescribes Professional Standards and Conduct and sub-clause 3.13 provides that:

*A crowd controller shall not use undue force in the course of their duties.*

## **THE INQUIRY**

- 12) The Inquiry was convened at 10.30 am on 18 May 2010 in the Licensing Commission hearing room in Darwin.
- 13) Mr Chaiyapoe was unrepresented for the Inquiry. However, Ms Mere Bell, a principal of New Millenium Security, Mr Chaiyapoe's employer, attended the Inquiry to assist the Commission and Mr Chaiyapoe. The Commission noted from the outset that Mr Chaiyapoe's command of English was limited to some extent and the assistance of Ms Bell was particularly helpful to the Commission in ensuring Mr Chaiyapoe understood the nature of the Inquiry and the potential outcomes.
- 14) Mr Chaiyapoe informed the Commission that he did not know Peter's surname at the time of the incident, nor is he aware of it now. He stated that he had seen Peter around the Premises on several occasions and had never had any problems with him previously.
- 15) Mr Chaiyapoe stated that he approached Peter on 11 March 2010 at the request of Mr Miaoudis, who had asked for him to be removed from the Premises for harassing patrons and humbugging them for money. Mr Chaiyapoe confirmed that when he approached Peter he was punched approximately three (3) times to the head. He said the attack was unprovoked and unexpected, given his previous uneventful dealings with Peter.
- 16) Mr Chaiyapoe confirmed that he had in fact kicked Peter twice and that he was unsure where the kicks landed on Peter's body. He stated that at the time of delivering the kicks he was still in a stunned and disorientated state due to the punches to his head. He added that he kicked Peter in an attempt to make him stop wrestling with Mr Miaoudis. Mr Chaiyapoe stated that he did not regard either of the kicks to be particularly forceful and that he recalled that the second kick was softer than the first.
- 17) Mr Chaiyapoe accepted that his actions in kicking Peter were inappropriate and that he would do things differently in the future if similar circumstances arise. He stated that he was confused and dazed after being punched in the head and asked that this be taken into consideration. The punches were delivered with some force as, in evidence from Ms Bell, his jaw and part of his face were swollen the next day. Mr Chaiyapoe did not attend a doctor after the assault but advised the Commission that he was bruised and sore for approximately a week after the incident.

- 18) Mr Chaiyapoe confirmed that the training required for a security provider licence did contain instruction in the monitoring and control of crowd and individual behaviour. He advised the Authority that whilst he was sometimes engaged as a crowd controller the majority of his duties were in the capacity of security officer.
- 19) In respect of penalty, Mr Chaiyapoe informed the Commission that a suspension of his licence would cause significant financial hardship. His role as a security provider with New Millenium Security is his only employment and his only source of income. Part of his income is used to support his daughter and a son in Sydney. He also provides financial support to ageing mother in Thailand as well as his older brother and three (3) sisters who are farmers and also reside in Thailand. Mr Chaiyapoe usually works around forty-eight (48) hours per week, predominantly in the capacity of a security officer.

## **CONSIDERATION OF THE ISSUES**

- 20) The CCTV footage of the incident at the Premises on 11 March 2010 was of particular assistance to the Commission. The footage clearly shows Mr Chaiyapoe approach Peter who almost immediately landed three (3) or four (4) significant blows to Mr Chaiyapoe's head area.
- 21) The footage also shows Mr Miaoudis wrestle Peter to the ground following which Mr Chaiyapoe delivered a kick to Peter's shoulder / chest area. The Commission notes that the kick was delivered with some significant force. Mr Chaiyapoe then repositioned himself and delivered a further kick to Peter's head or upper body area. The Commission noted that this kick was not severe and delivered with less force than the previous one.
- 22) The Commission, having viewed the CCTV footage and heard from Mr Chaiyapoe, is satisfied that he was severely provoked by the assault on him. The Commission accepts that the assault was unprovoked and unexpected by Mr Chaiyapoe and has no doubt that he was in a dazed or disoriented state immediately afterwards. The fact that evidence was presented that his jaw and facial area were swollen the next day and sore for approximately one (1) week following the incident does give weight to the likelihood of his disorientation at the time. However, even allowing for those factors, the Commission cannot condone Mr Chaiyapoe's action in responding by kicking Peter. Of particular concern to the Commission is the second kick whilst Peter was being restrained on the ground by Mr Miaoudis.
- 23) Taking account of the mitigating factors, the Commission has concluded that the level of force used by Mr Chaiyapoe in kicking Peter was unnecessary and an unreasonable in the circumstances. With hindsight, there were more appropriate and proportionate ways that Mr Chaiyapoe could have handled the situation, as conceded frankly by him in his evidence before the Commission.

24) The Commission determines that Mr Chaiyapoe has breached sub-section 19(2)(c)(2) of the Act, with reference to clause 3.13 of the Code of Practice for Crowd Controllers, in that he used undue force in the course of his duties as a Crowd Controller.

## **PENALTY**

25) In determining penalty for a breach of this nature the Commission is required to take account of the severity of the force applied by Mr Chaiyapoe in comparison to what would be regarded as reasonable force. Whilst it appears that Peter suffered no significant injuries, that fact is a matter of good fortune given that the second kick was intentionally or otherwise aimed in the vicinity of his head.

26) The Commission considers such action by a Crowd Controller to be at the more serious end of the scale and the degree of force used brings with it a requirement for general and specific deterrence in terms of the penalty to be applied to security officers who exceed the bounds of reasonable force.

27) The Commission has acknowledged on numerous occasions that the application of measured force by a Crowd Controller may be necessary in particular circumstances where they are dealing with violent or aggressive patrons. However, the application of force by a Crowd Controller in the course of his duties must be commensurate with the degree of danger posed by the person who is being restrained.

28) The Commission, and presumably the majority of the general community, regard the act of kicking another person as a deplorable act and one that cannot be condoned except in the most severe of circumstances. Allowing that Peter was being restrained at the relevant time, the Commission does not accept that the situation was sufficiently dangerous or serious to warrant or in anyway justify his being kicked.

29) The Commission determines that an actual period of suspension of the dual licence is warranted in the circumstances of this complaint as Mr Chaiyapoe took action that was well beyond what would be regarded as a reasonable response. Given that the offence was committed in his capacity as a crowd controller and related to a lack of control of his anger, the greater part of the penalty should be applied to the Crowd Controller component of his dual licence

30) In determining the appropriate penalty the Commission has applied a significant discount to the penalty it may otherwise have applied in respect of the actual period during which Mr Chaiyapoe will be unable to perform any security work. The Commission does so based on the significant provocation and injury of Mr Chaiyapoe by Peter, his frank and candid admissions in evidence before the Commission and in his response to the Director as well as his relative inexperience in dealing with violent situations. The Commission also takes into account that his employment in the provision of

security services is Mr Chaiyapoe's sole source of income and a more lengthy suspension would have a significantly detrimental effect on not only Mr Chaiyapoe's but on dependent family members, to whom he provides financial support.

- 31) Taking account of the mitigating factors the Commission remains of the view that a period of actual suspension of the dual licence is appropriate in the circumstances.

## **DECISION**

- 32) The Commission finds that Mr Saner Chaiyapoe has breached sub-section 19(2)(c) of the Act, with reference to clause 3.13 of the Code of Practice for Crowd Controllers, in that he used undue force in the course of his duties as a Crowd Controller in attempting to remove a person known as Peter from the Rapid Creek Shopping Centre on 11 March 2010.
- 33) Mr Chaiyapoe currently holds a dual licence enabling licensed employment as a Crowd Controller and a separate element of the licence entitling him to be employed as a Security Officer. The penalty imposed treats each aspect of his dual licence separately.
- 34) Accordingly, the Commission determines, pursuant to Section 53D(1)(c) of the Act, that the appropriate penalty is a suspension of Mr Chaiyapoe's Security Officer licence for a period of three (3) days from Thursday 10 June 2010 until Saturday 12 June 2010 inclusive, which includes a Thursday being the day on which the incident occurred. Mr Chaiyapoe's Crowd Controller licence is suspended for a period of six (6) months commencing on 10 June 2010. During that period Mr Chaiyapoe must not work as a Crowd Controller. In addition, during that six (6) month period Mr Chaiyapoe is to undergo a course in anger management or similar training to the satisfaction of the Director.

Richard O'Sullivan  
CHAIRMAN

31 May 2010