

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

APPLICANT: MR BRICE JAMES GILES JR
46 Rocklands Drive
TIWI NT 0810

LICENCE NUMBER: Security Officer Number 7380

PROCEEDINGS: Suspension of Licence Pursuant to Section 27(2)
Private Security Act

HEARD BEFORE: Mr Richard O'Sullivan (Chairman)
Mr Philip Timney (Legal Member)
Mr John Brears

DATE OF HEARING: 8 November 2010

APPEARANCES: Senior Licensing Officer Tammy Smart
Mr Brice Giles Jr, in person

BACKGROUND

- 1) Mr Giles was issued with a Dual Crowd Controller and Security Officer's Licence on 15 July 2010. He was charged with an offence of assault causing harm following an incident at Discovery Nightclub on 21 July 2010. Mr Giles was at Discovery as a patron and not in his capacity as a Security Officer. Assault causing harm is an offence against Section 188(2) of the *Criminal Code* and is a disqualifying offence for the purposes of the *Private Security Act* ("the Act"). As a condition of being granted bail, Mr Giles was not to attend any licensed premises in the CBD or be in the Darwin CBD between the hours of 8 pm and 6 am on any night of the week.
- 2) By decision made on 20 September 2010, the Licensing Commission determined to suspend Mr Giles' licence pursuant to Section 27(2) of the Act pending the outcome of the criminal proceeding.
- 3) The assault charge was heard before Magistrate Fong Lim on 23 September 2010. Mr Giles pleaded guilty to the offence following which Her Honour recorded no conviction and ordered that Mr Giles complete 112 hours of community work within six months.

- 4) Section 15(7) of the Act provides that a person is not entitled to hold a Security Officer's licence if the person has been convicted of a disqualifying offence. Mr Giles was not convicted of the disqualifying offence with the result he is not a disqualified person by virtue of Section 15 of the Act.
- 5) The Commission was subsequently asked to consider the lifting of the suspension of Mr Giles' licence on the basis of the Court outcome. The background material provided to the Commission included a copy of the transcript of the criminal proceeding in the Local court and a file note relating to an interview conducted by LR&AS officers with Mr Giles prior to the Court Hearing. Those records disclosed significant inconsistencies in respect of Mr Giles' recount of the circumstances leading to his being charged with assault causing harm. The Commission determined to conduct a Hearing in respect of those circumstances.

HEARING

- 6) At the Hearing Mr Giles outlined his recent employment history, including his current employment in the training and development of junior basketball players. He is a citizen of the USA who normally resides in New York and is currently in Australia on a working visa. He has been in Darwin for almost a year and plans to return here next year once his visa is renewed. Mr Giles plays basketball in Darwin and has in the past supplemented his income with security work. He informed the Commission that he wants to continue this type of employment as he enjoys being out working at night rather than socialising and drinking.
- 7) The inconsistencies in his statements to LR&AS officers and to the Court, summarised as follows, were put to Mr Giles. In an interview with Mr Giles on 25 August 2010 with LR&AS staff regarding the incident at Discovery on 21 July 2010 he provided the following background to the circumstances leading to his arrest. Mr Giles stated that he was at Discovery in the early hours of the morning when he was approached by Mr Michael Siebert (an employee of the premises) and questioned about an incident at the venue a few weeks prior. Mr Giles claimed no knowledge of that incident however Mr Siebert persisted and eventually punched Mr Giles in the face and escorted from the premises with the assistance of other crowd controllers.
- 8) Mr Giles stated that during the altercation with Mr Siebert he dropped his mobile phone. He requested that a friend retrieve the phone and when that did not occur he returned to Discovery to do so himself. He states that when he returned to Discovery he was surrounded by Security Officers outside the premises, including Mr Siebert who "squared up" as if preparing to fight Mr Giles. Mr Giles stated that he noticed from the corner of his eye another security guard approaching him and he then threw a punch that connected with that Security Officer. Mr Giles stated further that, at the time, he was "scared for his life" and thought that if he went down he would be set upon by all of the security officers. He stated during the interview that he was pressing charges against Mr Siebert.

- 9) During the Court proceedings, Mr Giles' legal representative made submissions in respect of the circumstances leading to the assault charge, summarised as follows. Mr Giles had only just arrived at Discovery when Mr Siebert asked him to leave the premises. Mr Giles queried why he was being ejected as he did not know Mr Siebert, he had never had any prior problems at Discovery and he was not drunk. Mr Siebert then called other security guards, 7 in all, and Mr Giles was dragged outside the premises. Mr Giles was then surrounded by the security guards with Mr Siebert challenging him to a fight.
- 10) During the altercation with Mr Siebert Mr Giles' attention turned to another security guard who was insulting him, by calling him a "nigger" amongst other things. Mr Giles was shocked by the insult and waited until the other guards left before confronting the guard who insulted him. Mr Giles was enraged by the insult and when the guard told him to "Fuck off" he punched him in the face.
- 11) The information provided to Police by Mr Giles after his arrest was similar, but not identical, to that provided during the Court proceeding. The Police précis says that Mr Giles stated that he was involved in an altercation at Discovery, evicted and challenged to a fight. He was surrounded by security, some of whom called him a "nigger". He left the area but returned a short time later and was unsure why he did this. He approached a Crowd Controller at the door who told him to "Fuck off" and again called him a "nigger". He became angry and said he could not recall what happened after that.
- 12) The stories, whilst plausible excuses for his reaction on the night, are notably different. In response to a direct question from the Commission, Mr Giles stated that the submissions made to the Court were a true account of the incident and that the racial slur had provoked him into assaulting the crowd controller. Mr Giles stated that "he could not recall" providing the other version of events during the interview with the LR&AS staff. He could also provide no explanation as to why he had not informed the police that he returned to Discovery to retrieve his mobile phone.
- 13) Mr Giles stated to the Commission that he had learned a lesson from the assault charges and he would handle the situation differently if his security licence was reinstated and he was again racially abused in the future in the course of his employment.

CONSIDERATION OF THE ISSUES

- 14) The racial taunts against Mr Giles by security guards involved in the incident at Discovery, assuming they were made, are not tolerable by any normal standards. More so in a situation where the abuse comes from a person meant to be engaged to provide security at a venue and to diffuse potentially violent situations. However, given the volatility of some patrons at licensed venues it is almost inevitable that at some stage Mr Giles would be

confronted with some form of verbal abuse in carrying out the normal duties of a Crowd Controller.

- 15) However, in this instance the Commission is concerned at the reaction by Mr Giles to return to the premises, after the initial incident had subsided, and his assault of the alleged perpetrator of the abuse. Crowd Controllers, and particularly those engaged at licensed venues, are regularly required to deal with and control unruly, aggressive and abusive patrons. Their training includes methods and techniques designed to prevent incidents or disputes from escalating. Mr Giles did not demonstrate the characteristics of a properly trained crowd controller in returning to the scene of the earlier incident and assaulting one of the crowd controllers.
- 16) The fact that Mr Giles was enraged to the point of returning to the venue for a physical fight is of significant concern to the Commission in respect of his capacity to deal with difficult situations and troublesome patrons were his security officer licence to be reinstated.
- 17) The Commission notes its concerns in respect of the different versions of events recounted by Mr Giles, as set out above. In addition, the Commission was not entirely satisfied that Mr Giles provided completely frank and candid evidence during the course of the Hearing. His lack of recall of the content of the interview with LR&AS staff was unconvincing, as was his explanation as to why he did not inform Police that he returned to Discovery to retrieve his mobile phone. His statement to LR&AS that at the time he punched a Crowd Controller he was surrounded by Security Officers and feared for his safety was also not borne out by his statement in Court.
- 18) Also his reference to being assaulted (punched) by Mr Siebert inside Discovery night club in the LR&AS obtained statement was not referred to in his Court Statement. If this were true it would have further mitigated his actions on the night.
- 19) In Mr Giles favour, he has no record of any prior criminal history and has been an active member of the Darwin community for the past twelve months, including periods of employment at Somerville and in the development of junior basketballers. Assault causing harm is a serious offence and one for which a conviction generally results in a security officer being barred from the industry for a period of ten years. However, in Mr Giles' case the Court determined that the circumstances surrounding the assault did not warrant the recording of a conviction. That represents a significant concession on the part of the Court and is indicative of a view that Mr Giles is unlikely to re-offend.
- 20) In carefully considering the competing issues before it, the Commission has decided on balance to reinstate Mr Giles' Dual Crowd Controller and Security Officer's Licence, subject to the conditions set out below.

DECISION

- 21) The Commission has determined to lift the suspension on the Dual Crowd Controller and Security Officer's Licence issued to Mr Giles for a period expiring on 14 July 2011.
- 22) During the period of six months from the reinstatement of the licence Mr Giles is to undergo anger management training to the satisfaction of the Director of Licensing. The Commission will review its decision to reinstate the licence at the expiry of the six month period and will take into account any report provided by the Director in respect of Mr Giles completing the anger management training and his performance generally in the security industry.

Richard O'Sullivan
CHAIRMAN

11 November 2010