

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

APPLICANT: **MR OWAIN CLIVE MORGAN**
52 Mitchell Street
DARWIN NT 0800

LICENCE NUMBER: Security Officer Number 7093

PROCEEDINGS: Complaint Pursuant to Section 53A
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: Licensing Inspector Shane McCorkell
No appearance by Mr Morgan

ATTENDANCE OF MR MORGAN AT THE HEARING

- 1) Inspector McCorkell informed the Commission that various attempts had been made to contact Mr Morgan regarding the Hearing, without success. The Commission noted that a show cause letter advising of the complaint was forwarded to Mr Morgan's registered address on 7 September 2010. No response was received to that letter and it was returned unopened to LR&AS. Since 7 September 2010 four messages have been left on Mr Morgan's mobile phone, again without response. Mr Jim Kelly, the proprietor of Visual Security and Mr Morgan's former employer, has advised he is unaware of Mr Morgan's whereabouts and has terminated his employment. Interviews with Crowd Controllers who were on duty on the night of the alleged incident that is the subject of this complaint have advised Inspectors that Mr Morgan is interstate. No response was received to the letter from the Chairman advising of the date and venue for the Hearing.
- 2) The Commission is satisfied that all reasonable attempts to contact Mr Morgan have been made and that Mr Morgan has elected not to take part in the Hearing of the complaint. The Commission determined to conduct the Hearing in the absence of Mr Morgan.

BACKGROUND

- 3) Mr Morgan was issued with a Dual Crowd Controller / Security Officer Licence on 3 December 2009. On 23 July 2010 Mr Morgan was employed by Visual Security to provide crowd controller duties at Wisdom Bar & Cafe Bar in Mitchell Street, Darwin. The complaint of the Director alleges that at approximately 1.55 am Mr Morgan was screening patrons at the front entry to Wisdom Bar & Cafe and denied access to two males as the premises were to close ie cease serving, at 2 am. Approximately 20 minutes later the two males who were refused entry returned to the front entry of Wisdom Bar & Cafe and engaged in a conversation with Crowd Controller Gary Lorger.
- 4) Shortly after the conversation began Mr Morgan joined Mr Lorger and the two males at the entry to Wisdom Bar & Cafe. The complaint alleges that Mr Morgan threatened and assaulted one of the males to whom he had earlier denied entry by punching and head butting that person.
- 5) The Director subsequently lodged a complaint against Mr Morgan pursuant to Section 53A of the *Private Security Act* ("the Act") alleging that Mr Morgan had threatened, instigated and participated in an assault on the unidentified male.

HEARING

- 6) Inspector McCorkell showed the Commission CCTV footage of the incident, taken from several different cameras. The footage clearly shows Mr Morgan refusing entry to the males and then speaking on his mobile phone. Inspector McCorkell advised that his investigations revealed that Mr Morgan had phoned a fellow crowd controller at Monsoons and suggested that the two males be denied entry there as well. Monsoons has later trading hours with drinks able to be served up until 4 am. The reason for that call is not evident as, based on CCTV viewing, the males did not appear to be intoxicated or aggressive when they were denied entry to Wisdom Bar & Cafe.
- 7) The CCTV footage then shows the two males returning to Wisdom Bar & Cafe at approximately 2.13 am, presumably after they had been denied entry to Monsoons. The males engaged in a conversation with Mr Lorger at the entrance and were joined by another person, identified by Mr McCorkell as Mr Joshua Webb, a Crowd Controller working at Monsoons on that night. A very short time later Mr Morgan joined the group at the entry. Mr McCorkell advised that Mr Morgan had changed from his security uniform to a white t-shirt as he had ceased duty at 2 am.
- 8) The two males did not appear on the CCTV footage to be aggressive or abusive towards any of the crowd controllers present. During the discussions an unknown person was seen to intervene and manhandle one of the males who had been refused entry earlier. None of the three Crowd Controllers present made any attempt to separate the pair. Suddenly, and without any

apparent provocation or reason, Mr Morgan is shown to move forward and throw a round arm punch at the male who was being manhandled. A very short time later Mr Morgan is seen striking the male with a head butt. A brief scuffle then occurs during which the male was restrained on the ground behind a vehicle on Mitchell Street.

- 9) In response to a query, Inspector McCorkell informed the Commission that there was no report of the incident recorded in the incident register, as required by Regulation 8 of the *Private Security (Crowd Controllers) Regulations*.
- 10) Inspector McCorkell informed the Commission that Mr Lorger reported the incident to his employer, Mr Kelly, and suggested that he obtain and watch the CCTV footage of the incident. Mr Kelly subsequently terminated Mr Morgan's employment with Visual Security.

CONSIDERATION OF THE ISSUES

- 11) Section 19 of the Act provides that a security officer licence is issued subject to the condition that where a Code of Practice has been approved under Section 48 of the Act that code will be complied with by the licence holder. A Code of Practice has been approved for Crowd Controllers. The following conditions of the Code of Practice are relevant in respect of this complaint, namely:

Professional Standards and Conduct:

Crowd controllers shall:

- 3.8 Not threaten any patron with physical violence*
- 3.13 Not use undue force in the course of their duties*
- 3.14 Not participate or encourage others to participate in assault*
- 3.15 In the course of their duties take action to prevent violence occurring*
- 3.16 In the course of their duties use mediation, negotiation, communication and conciliation as the primary methods of dealing with clients.*

- 12) The Commission is satisfied, on the basis of the CCTV footage, that Mr Morgan breached each of the conditions of the Code of Conduct set out above. Mr Morgan's actions in punching and head butting the male were not only excessive but appear to have occurred without any provocation on the part of the male. Mr Morgan engaged in an unprovoked assault and, considering the demeanour of the male, an unnecessary assault.
- 13) Mr Lorger, the on duty Crowd Controller at Monsoons, appeared to see no threat from the males who had earlier been evicted. He appeared to be speaking with them in a normal and restrained manner. There were no indications of aggression on the part of Mr Lorger or the males. From the CCTV footage it appeared that Mr Lorger and, to a lesser extent Mr Webb, had the situation under control. The males were not trying to forcefully enter

the premises. Mr Morgan displayed none of the mediation techniques envisaged by Clause 3.16 of the Code of Conduct.

“3.16 In the course of their duties use mediation, negotiation, communication and conciliation as the primary methods of dealing with clients.”

- 14) It is clear from the CCTV footage that Mr Morgan's actions, almost from the outset, were aggressive, threatening and intimidating. The force used against the male was unprovoked and excessive and without doubt escalated a situation that may very well have been resolved peacefully.
- 15) The prime function of Crowd Controller is to protect patrons and keep them safe with the use of physical force only to be used as a last resort. In this instance, a physical response was Mr Morgan's first and only response to a situation where force was not required at all.
- 16) An issue arose during the course of the Hearing as to whether Mr Morgan was actually on duty in his capacity as a Crowd Controller at the time he assaulted the male. Mr McCorkell advised that Mr Morgan had ceased duty at 2 pm, when Wisdom Bar & Cafe ceases serving drinks, and that he had changed out of his security uniform before returning to the entrance where Mr Lorger, who was still on duty as a Crowd Controller, was speaking to the two males.
- 17) On the one view, Mr Morgan was engaged in an uneventful exchange with the two males earlier in the evening when he refused them entry to Wisdom Bar & Cafe, presumably as the premises were about to close. The males simply walked away towards Monsoons. By the time they returned Mr Morgan had apparently ceased duty. Nonetheless, he took it on himself to join the later discussions with the males and Mr Lorger at the entrance, following which he committed an unprovoked assault on one of the males. It may be suggested that Mr Morgan came back on to duty to deal with the males that he had spoken to earlier in the evening. The alternative view is that Mr Morgan had ceased duty for the night and intervened in the incident in the capacity of the private citizen.
- 18) However, in the Commission's view nothing of any significance attaches to the distinction as to whether Mr Morgan was on duty or not, apart from the fact that private citizens are not subject to the conditions the Code of Conduct for Crowd Controllers. His behaviour on the night was not tolerable, regardless of whether the conduct was in his capacity as a crowd controller or a private citizen. His actions, whilst serious enough in themselves, had the very real potential to have resulted in a particularly nasty incident due to his aggressive and provocative actions. Mr Morgan intervened in a situation that appeared to be under control and by his own actions escalated the matter to a physical confrontation.
- 19) The Commission is satisfied that, for the reasons set out above, Mr Morgan is not a fit and proper person to hold a crowd controller or security officer licence.

FAILURE TO RECORD THE INCIDENT IN THE CROWD CONTROLLER INCIDENT REGISTER

- 20) Inspector McCorkell advised that Commission that the Incident Register maintained for Wisdom Bar & Café contained no record of the incident involving Mr Morgan on the night in question. He suggested this may be so as it was considered that Mr Morgan was off duty at the time with the result no record of the incident was deemed to be required.
- 21) The Commission does not necessarily accept that an incident of this nature is not required to be recorded. Section 56 of the Act requires the employer of Crowd Controllers to ensure that a register of crowd controllers, containing accurate records of prescribed information, is kept in a manner approved by the Commission. Regulation 8 of the *Private Security (Crowd Controllers) Regulations* prescribes the information that is to be kept by the employer in the incident register and includes:
- (d) the date of, and details in relation to, each incident in which physical force was used by or against the crowd controller while the crowd controller was providing his or her services as a crowd controller.*
- 22) As set out above, it is a moot point whether Mr Morgan was on duty at the time he assaulted the unknown male. Mr Lorgier regarded the incident as serious enough to report Mr Morgan's actions to his supervisor, Mr Kelly. Mr Kelly considered the incident serious enough to immediately terminate Mr Morgan's employment. It is rather incongruous to suggest that Mr Lorgier and Mr Kelly took those respective actions in respect of Mr Morgan acting in some capacity as a private citizen unrelated to his employment in providing crowd controller services to Wisdom Bar & Cafe. The incident took place outside Wisdom Bar & Café with an on duty Crowd Controller present and the origins of the dispute and subsequent incident relate to the original action of Morgan when on duty.
- 23) Having taken the actions they did, it is somewhat anomalous that neither Mr Lorgen nor Mr Kelly would make a note of the incident, or see a need to make such a note in the Incident Register. It must have been clear to Mr Lorgen, as it was to the Commission on viewing the CCTV footage, that Mr Morgan used physical force against a person whom he had dealt with earlier in the evening in his capacity as a Crowd Controller.
- 24) Regardless of the technical issue of whether Mr Morgan was on duty, the incident should have been noted in the Incident Register which would at the very least have provided a contemporaneous note of what Mr Lorgen observed during the incident. A contemporaneous note detailing the incident would be of assistance not only to the Commission but also to Police in the event assault charges arose and also to Mr Kelly, should there be any repercussions arising from his immediate termination of Mr Morgan's employment.

- 25) The Commission notes that Section 56 of the Act prescribes penalties for failure to comply with Section 56, being a maximum fine of \$13,300 for individuals and \$66,500 for a corporation. However the Commission notes there may be an argument as to why this incident was not noted in the Incident Register, although it considers it is not a particularly strong argument. The purpose behind the requirement to maintain incident registers is obvious. The evidentiary value of contemporaneous reporting of incidents involving assaults by or against Crowd Controllers is equally apparent and of benefit not only to the Commission and the Police but, in many instances, to the Crowd Controller and his employer.
- 26) In the circumstances of this matter the Commission is surprised that no record was made in the incident register, regardless of the argument as to whether the law required a record to be made. Given the significant fines applicable it would be in the interest of Crowd Controllers and their employers to err on the side of caution and to record incidents when any doubt arises.

DECISION

- 27) The Commission has determined that, in the circumstances of this complaint, including Mr Morgan's failure to appear at the Hearing, the appropriate course is the cancellation pursuant to Section 27 of the Act of the dual Crowd Controller / Security Officer Licence issued to Mr Morgan. The licence is cancelled effective from the date of this decision.
- 28) The Commission recommends that a copy of this decision be placed on Mr Morgan's file for reference in the event he applies for a similar licence in the Northern Territory in the future.
- 29) The Commission also recommends that the Director of Licensing forward a copy of this decision to both Mr Loriger and Mr Kelly and remind them of their obligations under Section 56 of the Act in terms of recording incidents, which involve physical force, in the Incident Register.

Richard O'Sullivan
CHAIRMAN

15 November 2010