

IN THE MATTER OF

A complaint made under s 73 of the Private Security Personnel and Private Investigators Act 2010

AGAINST

BROWN GROUP & CO LIMITED and
ARTHUR BROWN

HEARD virtually on 20 September 2022

DECISION

[1] Arthur Brown through his company Brown Group and Co Limited was engaged by Nikau Rhythm Limited to provide security to the Otherside Festival held in Whangamata on 30 and 31 December 2020. Clayton Spence, the sole director of Nikau Rhythm, says that Brown Group and Mr Brown acted negligently in failing to provide adequate security in terms of its contractual obligations and the Security Plan. Mr Spence also alleges that the security provided was unprofessionally managed and under resourced and that security staff were rude to patrons and did not appear to be trained.

[2] Mr Brown denies that he failed to provide adequate security to the Otherside Festival and that the hours of security provided exceeded the hours contracted for. He accepts some guards were not always allocated to the places agreed but this was because of increased security demands in other areas. Mr Brown also says any issues with security were not a result of his failure to provide adequately trained security but poor management of the festival.

[3] The issues I need to decide are:

- a) Is Brown Group and Mr Brown guilty of misconduct or gross negligence in relation to managing security at the festival, running his business, or responding to the complaint? If so:
- b) What disciplinary action should be taken against either Mr Brown or Brown Group?

Background

[4] The complaint was set down for an initial telephone conference in August 2021. Prior to that conference Mr Brown provided a list of 140 people he claimed to be the security guards who worked at the festival. At the conference Mr Brown agreed to provide evidence such as time sheets and payment details to establish that the 140 security guards in the list did in fact work at the event and the hours they worked.

[5] Mr Brown did not provide any time records, payment data or any other evidence other than confirmation on ANZ letterhead of a withdrawal of \$67,750 on 6 January 21 noted as a chq/withdrawal. Mr Brown said this amount was paid in cash to Mr Tofa who he engaged to organise the guards to work security at the event and manage payments to them.

[6] As Mr Brown had not provided the information he agreed to provide and advised he would not or was unable to provide further information I referred the complaint to the

Complaints Investigation and Prosecution Unit (CIPU) for investigation and report. CIPU have concluded:

- Mr Brown provided a false document to the Authority as the staff list of 140 security guards contained names of people that did not work at the festival and some did not hold COAs. As the security manager for the festival Mr Brown would and should have known the number of guards that worked at the festival.
- Mr Brown knew the staff list was false when he presented it to the Authority.
- Mr Brown acted negligently by failing to provide adequate security in terms of the contract and the security plan.
- Mr Brown did not have the basic system and records in place which he should have. This included lack of records of numbers of staff engaged and the amount paid. Mr Brown's responsibility is not limited by the purported engagement of Mr Tofa . Even if Mr Brown's representations are accepted his actions were reckless and indicate incompetence in terms of business acumen and practice.

[7] The CIPU report was sent to the parties in late July 2022. It was accompanied by directions setting down a hearing for 2 September 2022 which was later adjourned to 20 September 2022 at the request of Mr Brown. The directions set out the steps Mr Brown needed to take if he wanted to challenge or question the report and provided a timetable for filing documents in advance of the hearing. .

[8] Other than a request to adjourn a hearing Mr Brown did not file any response, evidence, or further information in response to the CIPU report. In addition, he did not advise that he wanted to question Mr Kumar, the CIPU report writer, or any of the people Mr Kumar interviewed during his investigation.

[9] Mr Brown did not link into the virtual hearing on 20 September 2022. However, after the conclusion of the hearing Mr Brown emailed the case manager advising that he had been trying to link into the hearing but had been unable to do so. It is likely he was following the wrong link as we received no message that he was waiting in the foyer to be admitted. Despite that a telephone conference was arranged for the afternoon of 20 September to enable Mr Brown to orally respond to the complaint and the findings in the CIPU report.

[10] At that telephone conference Mr Brown asked if he could file evidence from the Thames Coromandel District Council and the local police. I gave Mr Brown a final extension until 9:00 on Friday 23 September to file any references or letters relating to his competency as a security worker.

[11] Mr Brown has not provided any further information or letters in support. He however emailed to advise that both people he has asked to provide a reference said that "a written response will take a while because it will need to be approved". He provided the names and telephone numbers and suggested we could contact them by telephone. I have not done so as Mr Brown had sufficient time to provide this information within the timetable set.

Is Brown Group and Mr Brown guilty of misconduct or gross negligence

[12] At the telephone hearing Mr Brown stated that he did not dispute the findings of the CIPU investigation. He said that he considered Mr Kumar's investigation was fair and thorough. Therefore, in deciding whether Mr Brown is guilty of misconduct, I have primarily relied on the information outlined in the CIPU report and Mr Kumar's findings.

[13] Misconduct is defined in s 4 of the Act as being conduct that "a reasonable person would consider to be disgraceful, wilful or reckless or conduct that contravenes this Act or any regulations made under this Act". In addition, any negligence needs to be gross to be a valid ground for a complaint.

[14] Brown Group was contracted to provide 140 security guards for the festival. Despite being required to provide a list of all those engaged prior to the festival Mr Brown did not provide the organiser with a list of the guards engaged and only provided the police with a provisional list of 101 names. It was not until after the complaint was laid that Mr Brown provided the PSPLA with a list of 140 names that he claimed were the security guards who worked at the festival.

[15] Mr Brown did not provide any supporting evidence or records to show that the 140 guards listed were engaged and the majority of those contacted by CIPU advised they did not work in security at the festival. I therefore accept CIPU's conclusion that the staff list was a false document, and that Mr Brown knew it was a false document when he presented it to the PSPLA. A reasonable person would consider creating and filing a false document to be disgraceful. This accordingly amounts to misconduct.

[16] Mr Brown was not only contracted to provide security but was also the security manager at the festival. This means he must have known the number of security staff that worked at the festival and should have done some basic due diligence such as checking they had COAs before engaging them work. While the available evidence does not establish the number of security guards who worked at the festival, from the information available it is likely to be less than 100.

[17] I therefore conclude that Mr Brown was grossly negligent in failing to provide adequate security for the festival and failing to meet his contractual requirements and the security plan as his failure placed the public and risk. In addition, Mr Brown is guilty of misconduct and gross negligence by either failing to have basic business systems and records in place or subsequently destroying any records he did keep.

[18] Mr. Spence paid Brown Group well in excess of \$100,000 for security services for the festival. It is a basic business requirement when running a security business to have systems and records including numbers of staff engaged, hours worked, and amounts paid. Mr Brown was unable to provide any such information.

[19] I accept CIPU's conclusion that Mr Brown cannot distance himself and limit his responsibility through the purported engagement of Mr Tofa. It was Brown Group that had the contractual and legal duty to keep and retain records. I also agree that if Mr Browns submissions are accepted his actions were reckless and demonstrate incompetence in terms of business acumen and practice.

[20] I therefore conclude that Mr Brown and Brown Group Limited are guilty of misconduct and gross negligence by knowing filing a false document with the PSPLA, by failing to have in place basic business systems, failing to keep business records and failing to provide adequate security in terms of their contractual obligations and the security plan.

What disciplinary action should be taken against either Mr Brown or Brown Group?

[21] Misconduct is a discretionary ground for cancellation of a licence. Section 78(1)(c) of the Act says that instead of cancellation I can make other orders including suspending a licence, ordering the licence holder to undertake further training, impose conditions on the licence holder, reprimand the licence holder or impose a fine of up to \$2,000.

[22] In determining the appropriate penalty, I need to consider both the gravity of the misconduct, the impact of any penalty and any other relevant factors in relation to Mr Brown's competency, experience, and character.

[23] Brown Group holds a company licence in the classes of crowd controller, property guard, document destruction agent, repossession agent, security consultant, monitoring officer and personal guard. At the time the complaint was filed Mr Brown held an individual licence in most of the same classes. However, it expired on 25 July 2022 and has not been renewed.

[24] Despite accepting the findings in the CIPU report Mr Brown has not expressed or any remorse. To the contrary he continues to insist that Mr Spence is more to blame than him. This explanation is not credible as Mr Brown is solely responsible for creating and filing false evidence, failing to maintain and keep proper business records and failing to provide the number of security guards for which he was contracted.

[25] Throughout the process of this complaint Mr Brown has shown a lack of understanding of his responsibilities under the Act as a security business owner and his responsibilities in relation to business records and legal requirements. If Mr Brown's failings were limited to informally paying workers cash under the table, I may would have considered a lesser penalty than cancellation of Brown Group's licence. However, Mr Brown's failings go well beyond tax irregularities and demonstrate incompetence in terms of business acumen and practice. He has demonstrated that he is not suitable to be a licence holder.

[26] I have no confidence that Mr Brown has learnt from his mistakes and that if Brown Group keeps its licence there will be any improvement in the way Mr Brown runs the company. I also note that since 25 July 2022 Mr Brown has continued to provide private security services through his company without holding a certificate of approval or individual licence. This is both a breach of the Act and an offence under the Act.

[27] I therefore conclude that the appropriate disciplinary action is the cancellation of Brown Group and Co Limited's company licence. If Mr Brown's individual licence had not already expired, I would also have cancelled his individual licence.

[28] I accept that this will have a financial impact on Mr Brown as he has held a security licence for most of the time since July 2012. Therefore, I will not also impose a fine. I also note that cancelling Mr Brown's licence does not prevent him from applying for a certificate of approval so that he can work for another licenced security company as an employee.

[29] If Mr Brown wants to reapply for a company or individual security licence at any time in the future, he will need to show that he has completed a business management course, has appropriate business records and systems in place and understands the legal responsibilities and requirements for running a security business.

Summary and orders

[30] Mr Brown and Brown Group are guilty of misconduct and gross negligence by filing a false document, failing to have in place basic business systems, failing to keep business records and failing to provide adequate security to the Otherside Festival. The appropriate disciplinary action for such misconduct is the cancellation of Brown Group's licence.

[31] I make the following orders:

- a) Brown Group & Co Limited's security licence is cancelled effective immediately
- b) Arthur Brown is officially reprimanded

DATED at Wellington this 30th day of September 2022



P A McConnell
Private Security Personnel Licensing Authority