

IN THE MATTER OF

A complaint made under s 73 & 74 of the Private Security Personnel and Private Investigators Act 2010 (the Act)

AGAINST

T LIMITED & MR T

DECISION

[1] Ms W says that Mr T breached the Code of Conduct for private investigators by installing a tracking device on her Audi motor vehicle without her consent. She therefore says that Mr T is guilty of misconduct.

[2] Mr T accepts he placed a tracking device on Ms W's Audi. However, he says that Ms W's former partner gave consent to install the tracking device. Therefore, he considers he complied with the Code of Conduct.

[3] The Private Security Personnel and Private Investigator's (Code of Conduct – Surveillance of Individuals) Regulations 2011 sets out the Code of Conduct for private investigators. A car falls into the category of personal property and r 6(2) of the Code states that a private investigator can only install surveillance equipment on any personal property if either:

- (i) The owner of the property has consented to the installation of the equipment, or
- (ii) The person who is lawfully entitled to the possession of the property has consented to the installation of the equipment.

[4] Misconduct is defined in s 4 of the Act as including conduct that contravenes the Act or any regulations made under the Act. As the Code is set out in regulations made under the Act, if Mr T breached r 6(2) by installing the tracking device, he is also guilty of misconduct.

[5] Mr T says that he was told the vehicle was relationship property and therefore he was entitled to act on the consent of Mr Z, Ms W's former partner, when installing the tracking device.

[6] The issue I therefore need to decide is whether Mr Z was the owner of the Audi or the person who was lawfully entitled to its possession and, if so, whether Mr T was entitled to rely on Mr Z's consent to comply with the Code. However, if the Code required Mr T to obtain the consent of Ms W before installing the tracking device, he has breached the Code and is therefore guilty of misconduct.

[7] The Audi is registered in Ms W's name only and has been since it was purchased. It is insured in the name of Ms W and she is the sole driver. Mr Z has not driven the Audi since their relationship ended in June 2019 and he did not retain any keys to it.

[8] At the time the tracking device was installed relationship property had not been settled. Ms W however advises that chattels had been divided by the end of October 2020

and it was agreed that Mr Z kept his vehicle and Ms W kept the Audi. The value of the chattels that remained in Ms W and Mr Z's possession, including the two vehicles, were to be taken into account when all property matters were finally settled. This did not happen until after the tracking device was installed.

[9] It is therefore likely that the Audi was still relationship property at the time the tracking device was installed. This gave Mr Z the right to share equally in it together with other relationship property. However, claiming a chattel is relationship property does not infer a legal entitlement to possession, particularly after chattels have been divided. In addition, I do not consider that Mr T could reasonably infer a legal entitlement to possession on the part of Mr Z when he knew that Ms W lawfully had possession of the Audi and Mr Z did not have keys or access to it.

[10] I also do not accept claiming the Audi to be relationship property means that Mr Z owned the Audi. Mr T appears to be arguing that as jointly owned property is relationship property then any relationship property is jointly owned and therefore subject to the conventional property rights of joint ownership or ownership in common.

[11] However, Ms W was the only registered owner of the Audi and it was insured in her name as the owner. The fact that Mr Z's share of the value of the Audi had not been formally settled by way of a relationship property order or agreement gave him an interest in the Audi, but does not necessarily mean he was the owner of the Audi for the purposes of the Code.

[12] The explanatory notes to the Code states that a private investigator is not to install a tracking device to a vehicle without the consent of the owner of the vehicle or the person who has lawful possession of the vehicle. The intention of the Code is that a private investigator should not covertly install a tracking device on a vehicle without the consent of the person who owns it and has it lawfully in their possession. The only person who had possession of the Audi was Ms W and she was also its registered owner.

[13] I accept it was reasonable for Mr T to conclude that Mr Z may have had a claim to some ownership rights as the Audi was relationship property. However, as it was not in Mr Z's possession, Mr T should have done more to ensure he was working within the Code. Given the invasive nature of tracking devices a mere claim by Mr Z that the Audi was relationship property was not enough for Mr T to rely on his consent. The Code required Mr T to do more to determine whether Mr Z had the ability to give the required consent.

[14] At the very least he should have determined who was the registered owner of the Audi. I do not accept Mr T's submission that he was unable to check who this was as he does not have access to the information held by NZTA regarding the registered ownership of a vehicle. Any member of the public can do a "confirmed registered person query" on the NZTA website free of charge if they have the registration number of a vehicle.

[15] At the time he installed the tracking device Mr T knew that the Audi was lawfully in Ms W's possession. It was always accepted to be Ms W's vehicle and Mr Z had agreed that Ms W could keep the Audi although its monetary value was still to be taken into account in any property settlement.

[16] If Mr T had done a check on the NZTA website, it would have confirmed that Ms W was the sole registered owner. As Mr Z was neither a registered owner nor had possession

of the Audi, Mr T was not entitled to rely on Mr Z's consent to attach the tracking device to the Audi.

[17] I therefore conclude that Mr T breached r 6(2) of the Code by covertly attaching the tracking device to the Audi without Ms W's consent. As Mr T has contravened a regulation made under the Act, he is guilty of misconduct.

[18] Misconduct is a discretionary ground for cancellation of a certificate or licence. Section 81(1)(c) of the Act says that instead of cancellation I can make other orders including suspending a certificate, ordering the certificate holder to undertake further training, impose conditions on the certificate holder, reprimand the certificate holder or impose a fine of up to \$2,000.

[19] In determining the appropriate penalty, I need to consider the gravity of the misconduct, the impact of any penalty and any other relevant factors in relation to Mr T's competency, experience and character.

[20] In an earlier direction I advised that if I concluded that Mr T breached the Code and was therefore guilty of misconduct, I would give both parties the opportunity to make submissions on appropriate penalty. In setting the following timetable I note that Mr T's misconduct is towards the lower end and therefore do not consider either cancellation or suspension of Mr T's certificate is the appropriate disciplinary action.

[21] I set the following timetable for the parties to make any submissions on penalty:

- a) Ms W has until 8 November 21 to make any submissions as to what disciplinary action should be taken against Mr T and T Investigations Limited.
- b) Mr T has until 20 November 21 to respond to any submissions made by Ms W and to make submissions on what, if any, penalty should be imposed.
- c)

DATED at Wellington this 29th day October of 2021



P A McConnell
Private Security Personnel Licensing Authority