

IN THE MATTER OF

A complaint under s 74 of The Private Security Personnel and Private Investigators Act 2010 against **JOHN WOOD**

HEARD virtually on 23 August 2023

APPEARANCES

C McLuskie – complainant
J Wood – Certificate holder

DECISION

[1] On 22 July 2023 Christopher McLuskie parked his car at the Richmond Centre car park while visiting the medical centre. A man wearing a hi viz vest with Naki Security on it came and chalked his car tyres. The man was John Wood.

[2] Mr Wood was not displaying a security ID so Mr McLuskie asked him if he was a registered security officer. Mr Wood replied that it was none of his business and refused to produce his security ID or to identify who he was, or who he worked for. Mr Wood was verbally abusive towards Mr McCluskie and his wife.

[3] Mr Wood holds a certificate of approval (COA) in the classes of property guard, personal guard, and crowd controller but not a security licence. He agrees that he was working as a self-employed property guard and that his conduct was unacceptable. However, Mr Wood says there were extenuating circumstances and that he did not know he needed a licence to run a security business.

[4] The issues I need to decide are:

- Was Mr Wood working in a role which requires him to have a security licence and not just a COA?
- Did Mr Wood contravene the Act by failing to wear his ID in a visible place and failing to produce his ID on request?
- Is Mr Wood guilty of misconduct?
- If so, what is the appropriate penalty?

Was Mr Wood working in a role which requires him to have a security licence?

[5] Mr Wood advises Naki Security is the trading name that his company Custom Auto Services Limited (Custom Auto) uses when he enforces parking time limits and clamping cars at both the Richmond Centre Car Park and one other car park in New Plymouth. Custom Auto has no formal contract to enforce parking, but Mr Wood has a casual understanding with the property managers. Mr Wood charges \$100 payable in cash only to unclamp cars.

[6] Mr Wood accepts the parking enforcement work he does falls within the category of property guard. Mr Wood is therefore for valuable consideration carrying on business as a property guard as defined by s 9 of the Act and is required to have a security licence. If doing this work through his company, Custom Auto is required to have a company licence. If working as a sole trader Mr Wood should have an individual licence. Neither Custom Auto nor Mr Wood hold a security licence.

[7] It is a breach of s 23 of the Act to carry on business as a property guard without a licence. Under s 23(2) it also amounts to an offence under the Act for which the maximum fine on conviction is \$40,000 for an individual and \$60,000 for a company.

[8] Mr Wood says he did not know he needed a licence and thought his COA was sufficient. However, a COA only allows a person to be employed or engaged by a licence holder and not run their own security business.

[9] I do not accept Mr Wood's explanation as he has been a COA holder since 2011. Someone with this length of experience in the security industry should be aware of the limitations of a certificate and that a licence is required to run a security business. In addition, Mr Wood advised both police and the property managers that he had a security licence. He therefore knew that he needed a licence rather than a certificate to be a self-employed property guard.

[10] I therefore conclude that Mr Wood has contravened the Act by running a property guarding business under the trading name of Naki Security without holding a security licence.

Did Mr Wood contravene the Act by failing to wear his ID in a visible place and failing to produce his ID on request?

[11] Section 67 of the Act requires a COA holder to wear their official security identification badge (ID badge) in a readily visible place at all times while working in security. Mr Wood accepts he was not wearing his ID badge on 22 July while working as a property guard at the Richmond Centre. He says the see-through pouch in which he usually wore his badge had ripped about a week prior and so he was carrying it in his pocket.

[12] Section 66 of the Act requires a certificate holder to produce his certificate on demand by any person with whom the certificate holder is dealing while working in security. Section 66 also requires a COA holder to on request advise the name and address of the person by whom they are employed or engaged.

[13] Mr Wood accepts he did not produce his certificate to Mr McLuskie when he requested to see it. He also agrees that he failed to provide details of who he was working for but told Mr McLuskie it was none of his business. Mr Wood returned approximately 10 minutes later and flashed his ID badge in front of Mr McLuskie. However, it was done so quickly Mr McLuskie could not read it and Mr Wood continued to refuse to provide the further information required.

[14] I accordingly conclude that Mr Wood contravened ss 66 and 67 of the Act by failing to wear his ID badge in a visible place and by failing to produce his COA on request and not providing details of who he was working for.

Is Mr Wood guilty of misconduct?

[15] Section 74(4) of the Act states that it is a ground for a complaint if a certificate holder, such as Mr Wood, has been guilty of misconduct or gross negligence. Misconduct is defined in s 4 of the Act as being:

Conduct by a licensee or certificate holder 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

[16] I have already concluded that Mr Wood has contravened s 66 and 67 of the Act by failing to wear his security badge in a reasonably visible place and by not providing the relevant information to Mr McLuskie when requested. He has also contravened s 23 of the Act by running a property guarding business without a licence. Therefore, Mr Wood is guilty of misconduct.

[17] I also accept that Mr Wood's behaviour on the day was rude and confrontational and fell short of the conduct expected of an experienced security guard. Mr Wood accepts that his behaviour towards Mr McLuskie was unacceptable and has apologised for this. While he accepts it does not justify his poor behaviour Mr Wood advises that he was not in a good place at the time due to a recent upsetting family situation.

What is the appropriate penalty

[18] I have concluded that Mr Wood has contravened the Act and is therefore guilty of misconduct. Misconduct is a discretionary ground for cancellation of a certificate. Section 81(1)(c) of the Act says that in addition to, or 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 Wood's competency, experience, and character.

[20] At the hearing Mr Wood advised he would remedy the most significant breach by immediately applying for the appropriate security licence. To date he has not done so.


[21] The information provided during the complaint process raises questions about whether Mr Wood is suitable to be a licence holder of the sole company officer of a security company licence holder. He does not appear to be aware of his obligations under the Act and at times has what at best can be described as a cavalier attitude towards some of the people with whom he comes in contact while working as a property guard.

[22] It is likely that further investigation will be required before deciding whether Mr Wood or his company should be granted a licence. Some of this information could be relevant to the appropriate penalty to be imposed. I therefore consider it is appropriate to put off making a final penalty decision until after those investigations are completed and a decision is made as to whether Mr Wood or his company will be granted a licence.

[23] I however make the following interim orders:

- a) Mr Wood is not to work for himself or his company as a property guard or clamp cars until such time as either he or his company is granted a licence.
- b) If the Authority is provided with any evidence that indicates Mr Wood has been continuing to work as a property guard without a licence his COA will be immediately suspended. I will also consider referring Mr Wood to the Complaints Investigation and Prosecution Unit for prosecution action.
- c) Mr Wood is to file an application for a licence by 4 September 2023 or advise the PSPLA in writing that he does not intend to apply for a licence as he will no longer be working as a self-employed property guard.
- d) I will issue either a penalty decision or further directions on how the outstanding issues will progress after 4 September 2023.

DATED at Wellington this 30th day of August 2023


P A McConnell
Private Security Personnel Licensing Authority

