

IN THE MATTER OF A complaint made under s 73 & 74 of
the Private Security Personnel and
Private Investigators Act 2010

AGAINST **FIONA STEWART**

HEARD virtually on 27 July 2023

APPEARANCES

Artie McClelland and John Hennebry
for The Complaints, Investigation and Prosecution Unit
Fiona Stewart

DECISION

1. Ms Stewart is formally reprimanded.
2. Ms Stewart is granted an individual license with the trading name of LPS on the condition that she henceforth comply with her obligations under the Act.

REASONING

- [1] A complaint has been filed against Fiona Stewart, a certificate of approval (COA) holder in the classes of crowd controller, personal guard and property guard. Ms Stewart has also applied for an individual licence in the same classes with approval to use the trading name Loss Prevention Specialists (LPS) and therefore that application is considered as part of this complaint. The Police do not object to Ms Stewart's application for an individual license.
- [2] The complaint was referred to the Complaints, Investigation and Prosecution Unit (CIPU) for investigation and possible prosecution. CIPU's report¹ found as follows:
- (i) Ms Stewart is in breach of section 23(1)(e) of the Act by operating as a sole trader providing loss prevention security work at a number of grocery retail businesses without holding the required individual license to do so.

¹ June 2023

- (ii) Ms Stewart has been in breach of the Act since she purchased the business in October 2017 which was well before she applied for her COA in October 2021.
- (iii) There is sufficient evidence to prosecute Ms Stewart for breaching the Act.
- (iv) Ms Stewart has employed property guards knowing they did not hold the required COAs.
- (v) Ms Stewart has employed Tyrin Tutaki knowing that he has a conviction for unlawful sexual connection with a minor.

- [3] CIPU left the decision as to prosecution of Ms Stewart with the Authority. They note that Ms Stewart did cooperate fully with their investigation and since the investigation commenced, she has taken steps to regularise herself and her staff.
- [4] Ms Stewart for her part submits that her regulatory failures were genuine mistakes. She says she was previously employed by the person she purchased LPS from, and he told her she did not need a COA or a company license given the nature of the work. Her understanding, she says, was that as they did undercover work, they did not need a COA. She obtained a COA several years later for herself when undertaking contract work in her own name rather than under LPS.
- [5] Ms Stewart had three employees; Mr Tutaki, Ms Russell her daughter, and Mr Utiera who is relocating to Australia shortly. Mr Tutaki and Ms Russell have both applied for COAs. CIPU confirm that Mr Utiera and Ms Russell no longer work for LPS.²
- [6] Ms Stewart says she has worked extremely hard to build LPS to what it is now but accepts she relied on bad advice. She is clear she will do what it takes to continue the important work LPS does. She says they are the only loss prevention company in Dunedin and currently contract to seven stores. In the course of their work, they liaise with Police and youth aid officers, attend court as witnesses and FGCs on behalf of stores. She says they work extremely hard to keep the staff and products of the stores safe but attempt to work in a holistic way to support the shoplifters where possible as well.
- [7] New World, Night'n'Day and Pak'n'Save Dunedin have provided supportive references of Ms Stewart and LPS. An example of their comments, as follows:
"She along with her team provides an exceptional service, their knowledge and dedication to loss prevention is critical to our business."³
- [8] Ms Stewart has advised the Authority that all the shops were aware of the situation when they wrote the references and still wish to contract LPS for their loss prevention work. They have been spoken with by CIPU during the course of their investigation and are wholly complementary of Ms Stewart and LPS.

² 31.08.23

³ New World Centre City 13.6.23

- [9] On 25 May 2023, the Authority directed Ms Stewart to immediately cease employing security staff and not to do so until she had obtained her individual license. During the course of Ms Stewart and Mr Tutaki's hearings, the concern was raised that she may be breaching this direction. As a result, CIPU were directed to further investigate.
- [10] CIPU's findings are as follows:
- [i] No instances of staff being employed by Ms Stewart working in a property guard role since 25 May 2023 have been found.
 - [ii] There is no clear evidence that Mr Tutaki had been instructed by Ms Stewart to perform a role of a property guard at Night'n'Day.
 - [iii] Ms Stewart is highly thought of by the grocery retailers that she performs security work for. They support her application for a security licence and are of the opinion that if Ms Stewart and her business discontinued providing security work then their businesses would see an increase in retail crime.
 - [iv] Ms Stewart has an excellent working relationship with Police in prevention and detection of retail crime.
 - [v] Ms Stewart has suffered stress, reoccurrence of health issues and is working considerable hours to keep her business operational. She has also lost financially by not being able to fulfil the hours contracted.
 - [vi] Ms Stewart has expressed her willingness to take whatever steps necessary to obtain her individual licence.

Discussion and findings

- [11] The purpose of the Act is to ensure that people providing specified security services are suitably qualified to carry out that work and do not behave in ways that are contrary to the public interest.⁴ Ms Stewart and her business LPS are most certainly providing security services that fall within the definition of personal guard⁵ and property guard⁶ as defined by the Act.
- [12] Accordingly, Ms Stewart has breached section 23(1)(e) of the Act by providing property guard services in the name of LPS without holding the required individual license to do so. Every person who commits such a breach of the act is liable on conviction to a fine not exceeding \$40,000.⁷ She has also employed staff to provide the security work who did not have COAs and may not be eligible for them.
- [13] CIPU do not recommend a referral to prosecution despite there being sufficient evidence to do so. They took this approach having assessed the public interest

⁴ S3 of the Private Security Personnel and Private Investigators Act 2010 (the Act)

⁵ S10 of the Act

⁶ S9 of the Act

⁷ S23(2)(a) of the Act

factors, cost of prosecution and potential witnesses who if called to give evidence would have a degree of support and sympathy for Ms Stewart.

- [14] I agree with this position. I accept Ms Stewart's submission that her regulatory failures were genuine mistakes, and she is committed to ensuring the lawfulness of her work going forward. Ms Stewart has cooperated fully with both CIPU investigations and the Authority's procedure. On the basis of the information obtained from the stores she contracts to, LPS is clearly providing a valuable and competent service to those stores.
- [15] However, whilst I do not recommend Ms Stewart for prosecution because of this breach of the Act, I do find her guilty of gross negligence in the course of carrying out her security work. This is a discretionary ground for the cancellation of a COA.⁸
- [16] Further, as Ms Stewart has applied for an individual license, she must satisfy the Authority that despite her breach she is still of suitable character suitable to work in security.
- [17] Whilst as above, I do accept Mr Stewart's submission that her mistake was a genuine error, I find that she likely wilfully ignored the issue at times as well. I have come to this conclusion given the number of years Ms Stewart has worked in the industry, the fact that when she applied for her COA the information would have been readily available to her and the Critic article that was provided as part of the complaint. That article in July 2022, which Ms Stewart was aware of, makes the following comments:
- “Any person or company providing security services in Aotearoa needs to hold a Certificate of Approval (CoA) ...
 Anyone running a security company or working as a security guard without a CoA could be fined up to \$20,000. ..
 Tyrin, employed by LPS, did not appear to have a CoA at all...
 Stewart did not mention whether Tyrin holds a CoA, and did not respond to our repeated requests for comment. “*
- [18] It is also of concern to me that Ms Stewart and her employees have had significant interaction with the Police over the years and yet the Police have never raised the question of their regulatory compliance. Further, Ms Stewart advises that she has only been questioned once by a supermarket she was contracted to and when she advised them of her application for a COA, they were satisfied with that. I do accept that this lack of questioning by organisations and the Police did support Ms Stewart's belief that she was not acting contrary to the law.

⁸ S83(e) of the Act

- [19] Having thoroughly assessed all of the evidence and submissions available to me I make the following findings:
- (a) Ms Stewart has breached section 23(1)(e) of the Act and as such has committed gross negligence in the course of her work.
 - (b) Ms Stewart has knowingly employed security workers who do not hold the appropriate COAs to undertake the work.
 - (c) Ms Stewart has employed Mr Tutaki knowing that he may not be eligible for security work because of his previous convictions.
 - (d) On the basis of her breaches and disregard of the Act, I formally reprimand her.⁹
 - (e) Despite these breaches, I grant Ms Stewart's individual license with the trading name of LPS on the condition that she henceforth comply with her obligations under the Act. Should she be found to have breached any of these obligations, her license will likely be suspended and possibly cancelled.
 - (f) I take no further disciplinary action on the basis that Ms Stewart has complied openly with the investigations and proceedings and has taken the appropriate steps to regularise herself and her staff. I also take into account that she has suffered financially and in other ways by complying, and yet she has still done so.

Publication

- [20] With regard to the publication of this decision, Ms Stewart submits that it would pose a security risk to her should her details be published. She says she has had to install security cameras in her home as a result of targeted attacks by a shoplifter on a staff member of the shop he was apprehended in. She also talked about the online trolls who have made defamatory and disparaging remarks about herself and Mr Tutaki over the years.
- [21] I am required to publish this decision¹⁰ in full unless there are good reasons for me not to, or to suppress parts of it. The good reasons are detailed in the relevant section of the Act but the only one that would apply here would be if I considered that the publication would be contrary to the interests of justice.
- [22] I do not believe that the case here. All the supermarkets who employ LPS are aware of the proceedings and investigations, therefore it is unlikely the publication of the decision, essentially as it is in Ms Stewart's favour, would jeopardise that. Further, the work of LPS has been the subject of media attention and accordingly I consider it important that the public are aware of the Authority's view on the situation and the action taken.

⁹ S81(vii)

¹⁰ S96C of the Act

[23] I do not accept Ms Stewart's submission that she may be targeted by criminal behaviour because of this decision any more than she would be in the course of her usual work.

[24] Accordingly, this decision is to be published without redaction.

A further note

[25] A function of the work Ms Stewart and LPS has provided is the covert surveillance of shoppers. This type of work comes within the definition of private investigator (PI) under the Act¹¹. The distinction would be whether the surveillance is a key function of the work undertaken, or incidental to the property and personal guarding services they provide.

[26] Ms Stewart should be aware that if the surveillance work they provide is incidental to their guarding work, then she does not need to have the class of PI added to her license. However, in conducting this work she and her employees are required to have their identification badges in a reasonably visible place while working¹².

[27] If however, this work is a primary function of their employment and/or they wish to conduct it covertly, she will need to have the class of PI added to her license. The same will apply to her employees. In order to obtain that class, she would need to undertake formal PI training and obtain some practical experience working for a licenced PI or the Police.

DATED at Wellington this 1st day of September 2023



K A Lash

Deputy Private Security Personnel Licensing Authority

¹¹ S5

¹² S67 of the Act