

[2023] NZPSPLA 060

**IN THE MATTER OF** The Private Security Personnel  
and Private Investigators Act  
2010

**AND**

**IN THE MATTER OF** Complaint against **RTC**  
**SECURITY LIMITED** and  
**SAMAGA UPU FILOA** made  
under ss 73 of the Act

**HEARD** virtually on 7 September 2023

**APPEARANCES**

CP

Samaga Upu Filoa, Director  
Tvonna Filoa, Office Manager

**DECISION**

1. Complaint upheld.
2. Finding of unsatisfactory conduct of Mr Filoa on behalf of RTC in relation to their investigation of a complaint and provision of those findings to the Authority.
3. RTC and Mr Filoa are reprimanded.
4. RTC is to provide refresher training for all of their staff within 6 months of this decision and provide evidence of that to the Authority. This training should be a minimum of a half a day in length and cover at the minimum, de-escalation training. Should they fail to do so, that failure will be taken into account in any further application they make to renew their company licence or if they face any further complaint.
5. Mr and/or Ms Filoa is to attend business management training which includes training on managing staff and complaints against them within 12 months of this decision. Should they fail to do so, that failure will be taken into account in any further application they make to renew their company licence or if they face any further complaint.
6. RTC is to provide the Authority with a copy of their company investigative process to be employed upon receipt of a complaint no later than 8 October 2023.
7. RTC is to ensure that they have an established complaints procedure with each store they contract with.

**REASONS**

- [1] CP has made a second complaint against RTC Security Limited (RTC). Her first complaint was resolved by decision of the Authority on 23 February 2023. Mr Filoa is the sole director of RTC, and it is his conduct whilst acting in that role that has been particularly complained about.
- [2] CP's complaint notes the following concerns (summarised):
- (a) That RTC did not conduct a proper and thorough investigation into Ms Godinet's complaint regarding the behaviour of one of their employees.
  - (b) That RTC advised the Authority that they had completed a thorough investigation when they had not.
  - (c) That RTC provided misleading information to the Authority which resulted in the Authority not being able to make the most appropriate decision.
  - (d) That RTC advised the Authority that they would institute a complaints procedure with Pak'n'Save Clendon however did not do so until CP took her complaint further; directly to Pak'n'Save's owner.
- [3] Essentially CP is saying that Mr Filoa as director of RTC has been guilty of unsatisfactory conduct or misconduct or gross negligence<sup>1</sup> in the performance of his role as director of RTC. Misconduct is defined in s4 of the Act as conduct by a licensee that a reasonable person would consider to be disgraceful, wilful, or reckless, or conduct that contravenes the Act or any regulations made under the Act. Unsatisfactory conduct is conduct that falls short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent licensee or certificate holder; or conduct that is incompetent or negligent; or conduct that would reasonably be regarded by private security personnel of good standing as being unacceptable.
- [4] A complaint once litigated cannot be relitigated; that is the principle of res judicata. It is this principle that prevents me from reconsidering the complaint originally filed by CP, nor would it be appropriate for me to do so given this is not an appeal. This complaint is distinguished from the first one as that primarily related to an employee of RTC and his conduct. The original complaint with regard to RTC particularly was on the following matters:
- [a] That their phone number and email address advertised on their website did not work therefore they are not able to be contacted by the public, i.e. they do not have an accessible complaints procedure.
  - [b] That they did not take her complaint seriously.
  - [c] That they are not providing competent security workers.

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<sup>1</sup> S73(4)(d) of the Act

[5] The above matters were resolved by my decision on 23 February 2023, and I do not reconsider them here.

*Was the investigation sufficient?*

[6] Having thoroughly considered the evidence regarding this complaint, I am satisfied that it is established that Mr Filoa and RTC did not provide a thorough investigation into CP's complaint. They did investigate, but relatively lightly. Ms Fiola agrees that in particular:

(a) they could have viewed the security footage more thoroughly to identify all the occasions CP complained of.

(b) they could have spoken with the relevant shop managers as opposed to the unrelated manager they did speak with.

[7] Ms Fiola was clear that RTC wish to learn from this experience and ensure their procedures are sufficient. Because of these omissions, RTC have agreed to the following directions:

- (i) RTC will provide the Authority with a copy of their investigative process to be employed upon receipt of a complaint.
- (ii) RTC will ensure that they have an established complaints procedure with each store they contract with.

*Did RTC mislead the Authority with respect to the investigation?*

[8] It was also established at the hearing that RTC had advised the Authority that they had spoken with the 'managers' at Pak'n'Save who were not aware of the complaint/situation. In fact, they had actually spoken to an irrelevant manager who could not be expected to know of the complaint as he was not working on the relevant dates. Therefore, the Authority was not provided with the accurate evidence upon which to make a decision.

[9] It was further apparent that when Mr Filoa advised the Authority that he had perused all relevant video footage, he did so without an understanding as to what CP looked like, or specific information such as times that would assist him in identifying any incidents. He did spend half a day viewing the footage but was hampered by the lack of information he had while doing so. The way he conveyed his actions to the Authority indicated that he had made a thorough search of the videos when in fact he had not. I consider the Authority was misled by the way these actions were described.

- [10] I am satisfied that RTC did mislead the Authority as to the extent of their investigation which most likely did influence the Authority's decision. In particular, the evidence they provided indicated that CP had not been stopped by the employee on other occasions and that Pak'n'Save were not aware of the complaint and that the employee was wearing his identification badge. These now do not appear to be accurate.
- [11] I am not satisfied however that RTC intentionally misled the Authority. I consider that they thought they had investigated the situation appropriately and the information they obtained did not substantiate the complaint. This was a misguided view, however I consider it was taken genuinely. They are now aware of other steps they should have taken in the investigative process; particularly given they were advising the Authority of their findings.
- [12] As discussed above, RTC have confirmed they will improve their investigative processes. It is important that they maintain their procedure of only having a senior experienced manager conducting an investigation. It is likewise essential that they have documented and accountable processes for taking on such an investigation to ensure nothing is missed. It is a necessary function of a security company that they have a robust investigative process should someone complain about one of their staff. A security worker is in a position of responsibility and must be held accountable for their actions in dealing with the public.
- [13] It is also essential that officers of security companies do not wilfully mislead the Authority. The Authority is the governing body authorised to implement the Act. The purpose of the Act is to ensure that private security personnel are suitably qualified to carry out their security work and do not behave in ways that are contrary to the public interest.
- [14] Section 77C of the Act outlines the situations which are deemed to be in contempt of the Authority which is an offence and punishable upon conviction to a fine. I do not find that this situation fits into any of those outlined in s77 as I am satisfied that neither Ms Filoa nor Mr Filoa acted wilfully in presenting the Authority with incomplete information.

*Did RTC take the steps they advised the Authority they would?*

- [15] It was also established at the hearing that RTC, although they confirmed at the initial hearing they would institute a complaints procedure with Pak'n'Save Clendon, did not actually do so until the owner of Pak'n'Save Clendon got involved as a result of CP's complaint to them. Ms Filoa takes responsibility for this and explains that it got missed in her heavy workload.

[16] I accept this was a genuine error on Ms Filoa's part and that she did not intend to mislead the Authority as to her intentions. The complaints procedure has been established now and Ms Filoa commits to ensuring that such a procedure is a requirement of their contracts with any other retail outlet.

[17] Ms Filoa assured CP that they took her complaint very seriously but appreciates that it may not have seemed that way because of the level of their investigation. She explained that because they are a small company it can be difficult at times to complete all of their required work and therefore their investigation was a bit rushed. As I explained at the hearing, an essential function of a security company is having a robust investigative process should complaints be made by the public about staff.

### *Discussion and findings*

[18] Because of the way RTC investigated the complaint, the evidence they provided to the Authority was incomplete. I do not consider whether that would have changed my decision as this is not an appeal, nor would it be appropriate for me to consider an appeal of my own decision.

[19] I am however satisfied that RTC dealt properly with the staff member concerned by moving him to another store, ensuring he always wears his identification badge, and providing him with regular supervision and mentoring. They therefore responded to the concerns raised by the complaint in an appropriate manner.

[20] I do not find it established that Mr Filoa, as director and officer of RTC is guilty of misconduct or gross negligence pursuant to, (4)(d) of the Act. However, I do find that his limited investigation of the complaint and the way he conveyed his discoveries to the Authority amounts to a finding of unsatisfactory conduct. Mr Filoa's investigation was limited but was not presented to the Authority in that way. The extent of the investigation's findings were relied on by the Authority and Mr Filoa was aware of this. Despite that, there was clearly more information available that was not presented, and generalisations were made which were not accurate.

[21] As I have made a finding of unsatisfactory conduct, s78(1B) sets out the disciplinary powers available to me. Accordingly, upon this finding, I make the following directions:

- (i) As RTC have apologised to CP and agreed to the above-noted directions, and also on the basis of my finding that these were genuinely made errors, I reprimand Mr Filoa as director of RTC.

- (ii) However, as this is not the first complaint made against RTC with respect to the actions of their staff, I direct that within 6 months they provide refresher training for all of their security staff. This training should be a minimum of a half a day in length and cover at the minimum de-escalation training. They must provide evidence of the provision and attendance of this training within 6 months. Should they fail to do so, that failure will be taken into account in any further application they make to renew their company licence or if they face any further complaint.
  
- (iii) Given the concerns held over their investigative processes, I direct that within 12 months Mr and/or Ms Filoa is to attend business management training which includes training on managing staff and complaints against them. Should they fail to do so, that failure will be taken into account in any further application they make to renew their company licence or if they face any further complaint.

[22] CP is thanked for her dedication in pursuing this matter which has resulted in positive changes for RTC, Pak'n'Save Clendon and RTC's employee.

[23] This decision is to be published in with the complainant's details redacted as it is in the public interest to ensure that members of the public do not feel there are barriers to making complaints about security workers.

**DATED** at Wellington this 18<sup>th</sup> day of September 2023



K A Lash  
**Deputy Private Security Personnel Licensing Authority**