

IN THE MATTER OF

A complaint against **DILLON RYAN SMART** made under ss 23, 45, 74 & 75 of the Private Security Personnel and Private Investigators Act 2010

HEARD

by audio visual hearing on 7 March 2024

APPEARANCES

Senior Constable Holdaway for the Police

Ashneel Kumar for the Complaints, Investigation and Prosecution Unit

Artie McClelland also for the Complaints, Investigation and Prosecution Unit

DECISION

- (i) Complaint upheld.
- (ii) Mr Smart has been found to have breached the following sections of the Private Security Personnel and Private Investigators Act 2010:
 - (i) Section 23(1)(g) and 23(2)(a) by carrying on a business as a crowd controller under the name Smart Security Services without a licence to do so.
 - (ii) Section 45(2) by engaging at least one crowd controller on at least one occasion who does not hold a Certificate of Approval.
 - (iii) Section 69 by failing without reasonable excuse to comply with the requirement to keep records that are prescribed in regulations made under Section 114 of the Act.
 - (iv) Section 70 being a person who engages crowd controller employees failing without a reasonable excuse to show, make a copy of records, and documentation which he is required to keep, of every person employed or engaged by him as a contractor, or that he permitted to act as a crowd controller.
- (iii) Mr Smart has been found guilty of misconduct in the course of carrying out security work.
- (iv) For these breaches of the Act Mr Smart is reprimanded and barred from applying for a licence or certificate of approval for at least 3 years.
- (v) The breaches of the Act by Mr Smart are referred back to the Complaints, Investigation and Prosecution Unit for consideration as to prosecution.

REASONS

- [1] A complaint has been filed against Dillon Smart. Mr Smart held a certificate of approval (COA) that has recently expired on 21 February 2024. Prior to that it was suspended on 1 February 2024 due to his failure to comply with Authority directions.
- [2] The complainant was initially filed by a member of the public; however, the complainants were subsequently clarified as the Complaints, Investigation and Prosecution Unit (CIPU) and the Police. Both parties have provided reports to the Authority and oral evidence.
- [3] The grounds for complaint are allegations that Mr Smart has breached the Act on multiple occasions, is currently facing criminal charges and has gang affiliations. The matter was heard by way of hearing however Mr Smart did not attend.

CIPU Report

- [4] CIPU established in their report dated November 2023 that based on their investigations Mr Smart has breached the Act in the following ways:
 - (i) By carrying on a business as a crowd controller under the name Smart Security Services without a licence to do so. This is in breach of section 23(1)(g) and 23(2)(a) of the Act. The period for this breach CIPU established as proven by Mr Smart's admission was between 9 January 2023 to 18 September 2023. Smart Security Services was incorporated as a company on 2 September 2021 and removed from the Companies Register on 23 June 2022.
 - (ii) By engaging a crowd controller on 2 April 2023 who does not hold a COA in breach of section 45(2) of the Act.
 - (iii) By breaching section 69 by failing without reasonable excuse to comply with requirements to keep records that is prescribed in regulations made under Section 114 of the Act.
 - (iv) By breaching section 70 by being a person who engages crowd controller employees and failing without a reasonable excuse to show, make a copy of records, and documentation which he is required to keep, of every person employed or engaged by him as a contractor, or that he permitted to act as a crowd controller.
- [5] CIPU's submission is that the nature and circumstances of Mr Smart's offending is deliberate and undermines the purpose of the Act. They consider that he is not suitable to operate a crowd controller business given his lack of compliance with record keeping requirements and failure to provide documents under s70 of the Act. They support a decision of either cancellation of his COA and/or prosecution of Mr Smart.

The Police

- [6] The Police also have concerns about Mr Smart's suitability to work in security. They note the following which I have summarised:
- [a] He has been observed to have been providing security services to the Yard Bar on 2 February 2024 which was after his COA had been suspended.
 - [b] He was first observed working in security in September 2018 without a COA.
 - [c] He was involved in a violent interaction with a patron whilst he was providing security services in October 2022.
 - [d] He is currently facing a charge of common assault in relation to an incident of violence on 21 May 2023 whilst he was providing security services. He is currently awaiting a trial on the matter.
 - [e] He has been observed to have some interaction with the Outlaws Motorcycle gang.
- [7] The Police submission is that with Mr Smart's connections to the Outlaws and showing signs that he does not have the ability to deescalate confrontational situations without resorting to violence, they believe he is not a fit a proper person to hold a COA.

Findings

- [8] I find it established to the relevant civil standard of the balance of probabilities (what is more likely than not) that Mr Smart has been running his security business Smart Security Services since at least 2019 without having a license to do so. I have made this finding on the following grounds:
- [i] Discussions CIPU had with the Yard Bar indicated that they had been employing him to do so since approximately mid-2019.
 - [ii] Mr Smart himself confirmed to CIPU that he has been providing security services to the Yard Bar for approximately four years.
 - [iii] Mr Smart has provided copies of invoices allegedly given to the Yard Bar in the name of Smart Security Services.
- [9] Smart Security Services has never held a company license, nor has it been established that they have ever applied for one. Smart Security Services were only ever registered as a company on the New Zealand Companies Register for 10 months between 2021 and 2022.
- [10] I also find it established as more likely than not that since 2019 Mr Smart has employed at least one crowd controller on at least one occasion who did not hold a

COA. In particular, Mr LK¹ whom CIPU established as working for Mr Smart on 2 April 2023 appears to have worked for him on other occasions. I make this finding on the following evidence:

- [i] Mr LK does not hold a COA.
- [ii] Mr Smart confirmed to CIPU² he has paid Mr LK on various occasions for providing security services.
- [iii] Mr O confirmed to CIPU³ that he has seen Mr LK providing security services at the Yard Bar on multiple occasions.
- [iv] The original complainant confirmed to CIPU⁴ that he has seen Mr LK providing security at the Yard Bar with Mr Smart on various occasions.

[11] CIPU requested the records from Mr Smart that he is required to hold regarding the details, including COA numbers of all his security employees. He has failed to provide this to them and has failed to provide them with a reasonable excuse for this. I do not assess the invoices he provided CIPU with as credible given they do not even add up and lack detail. I prefer the direct evidence from the COA holders⁵ CIPU interviewed as to their involvement with Mr Smart rather than his given the inconsistencies in the information he provided to CIPU.

[12] If Mr Smart is convicted of the charge of common assault, he will have a disqualifying conviction pursuant to section 62(f)(vi) of the Act.

[13] Having assessed the evidence available to me I am satisfied that it has been established that Mr Smart has breached the Act as outlined by CIPU. I accept the Police concerns as to his ability to manage situations of conflict and his anger management given the two alleged incidents of violence he was involved in whilst working in security. I find that he meets the disqualifying criteria of having previously held a COA that was suspended.⁶ Also concerning is Mr Smart's suspected gang affiliation.

[14] I consider the evidence sufficient to make a finding of misconduct⁷ against Mr Smart. I find it more likely than not that he was aware he was breaching the Act in running a security business without holding a company license to do so and in employing security staff who did not hold COAs. He himself held a COA during this time and as such would have been provided with information as to what he could and could not do whilst holding a COA. He discussed the matter with Police on occasion and has shown no remorse or concern regarding his breaches in his discussions with CIPU.

¹ Name redacted but known to CIPU and the Police

² Page 9 of the report

³ Page 12 of the report

⁴ Page 4 of the report

⁵ Pages 11 & 12 of the report

⁶ Section 62(g) of the Act

⁷ Pursuant to sections 4 & 83 of the Act

- [15] Given these findings I consider that Mr Smart is no longer of suitable character to hold a COA, nor any security license as could be prescribed under the Act. Given his COA has recently expired I find it appropriate to reprimand him and bar him from applying for a further COA or license for 3 years.⁸ Even after that time any application by Mr Smart would have to be suitably substantive as to assure the Authority of his altered suitability.
- [16] Given Mr Smart has been shown to have been working without a COA since his COA was suspended, has not followed the Authority's directions and did not attend the hearing, I also find it appropriate for CIPU to consider whether his breaches of the Act ought to be considered for prosecution. I refer the matter back to them for this deliberation.
- [17] A copy of the decision is to be published on the Licensing Authority's website.

DATED at Wellington this 8th day of March 2024



K A Lash
Deputy Private Security Personnel Licensing Authority

⁸ Pursuant to section 81(1)(c)(v)&(vii) of the Act