

IN THE MATTER OF

A complaint under s 74 of The Private Security Personnel and Private Investigators Act 2010 (the Act) against **SW**

HEARD virtually on 18 March 2024

APPEARANCES

Sergeant Tangney for the Police
Ms Roberts and Mr Foley, Mr SW's legal counsel
Mr SW
Mr Crichton (Co-Director, USOs's Keeper Protection).

DECISION

1. The complaint is upheld. Mr SW is found guilty of unsatisfactory conduct.
2. Mr SW is officially reprimanded.
3. The following conditions are to remain attached to Mr SW's COA:
 - a. Mr SW is to work cooperatively with the Police in the execution of his security roles.
 - b. Mr SW is not to come to the negative attention of Police.
3. Mr SW is to be actively supervised by a director or manager of Usos Keeper Protection Ltd for six months from the date of this order.
4. The complaint is enlarged to also be against Usos Keeper Protection Ltd.
5. Usos Keeper Protection Ltd are to provide the Authority with their training documentation relating to Police interaction.
6. Usos Keeper Protection Ltd are to advise the Authority within seven days whether they seek redaction of their identifying details from the published order.

REASONS:

- [1] SW holds a Certificate of Approval (COA) in the classes of Crowd Controller, Property Guard and Personal Security Guard that is valid until [redacted].
- [2] The Police have laid a complaint against Mr SW as on the 4th of June 2023 he was charged with refusing to admit Police into licensed premises pursuant to the Sale and Supply of Alcohol Act 2012. At the time he was working at [redacted] as a crowd controller when Police attempted to enter to conduct a liquor license check. Mr SW prevented their access into the club despite being warned three times that if he failed to allow them entry, he would be arrested. He was arrested and charged.
- [3] Mr SW pled guilty to the charge and has been discharged without conviction.
- [4] The Police remain of the view that Mr SW is not suitable to hold a COA given his acceptance of the events. They say he is guilty of misconduct and is not of suitable character to provide security services. They say he was aware of his obligations as he had also been warned the previous week and yet he chose to actively prevent Police from carrying out their work.
- [5] The questions for the Authority therefore are:
- [i] Is Mr SW guilty of misconduct?
 - [ii] Is he of suitable character to continue to work in security?
 - [iii] If so, what are the appropriate repercussions?

Is Mr SW guilty of misconduct?

- [6] The Police submit that Mr SW is guilty of misconduct because he knowingly obstructed Police in the execution of their duty.
- [7] Mr SW through his Counsel and on his own behalf submits that he was genuinely not aware of the relevant law at the time, and he thought he was following the correct process. He says it was the usual procedure at [redacted] to get the Duty Manager to assist the Police with their work whenever Police wished to attend the premise. He says Police attend the [redacted] regularly and he had been told by his superiors that when they did, he was to notify the Duty Manager before they entered because it was a private venue.
- [8] Mr Crichton, Mr SW's employer, was not involved personally in Mr SW's training prior to the event but accepts that he may not have been adequately trained in

Police powers. He says they have made changes to their training now. This point is addressed below.

- [9] Sergeant Tangney is sceptical of Mr SW's alleged lack of knowledge. His submission is that Mr SW was or should have been aware of Police powers for the following reasons:
- [i] A similar incident had occurred the week prior, and Mr SW had been warned for obstruction. He says that the attending officers would have clearly told Mr SW about their powers on that occasion.
 - [ii] Mr SW was acting as a supervisor at the time, and he would not or should not have been given this role without such knowledge.
 - [iii] Mr SW had worked on the door at [redacted] for a number of years and therefore would have had multiple opportunities to experience the Police exercising their powers. He says it is not Police procedure to wait for a Duty Manager before entering such a premise and they attend regularly.
- [10] Ms Roberts submits that Mr SW had misunderstood the Police warning the week prior and genuinely did not understand the law at the time. She submits that he has since accepted full responsibility and worked hard to upskill to ensure such a situation does not occur again.
- [11] Section 267 of the Sale and Supply of Alcohol Act 2012 states that a constable or an inspector may at any reasonable time enter and inspect any licensed premise in various circumstances (which would apply in this instance). This is a fundamental power of Police and one which is common knowledge in the bar/hospitality industry.
- [12] Having thoroughly considered the evidence of the parties, I am satisfied that Mr SW was aware of the law with respect to the Police powers and he therefore prevented their access with that knowledge. I make this finding primarily on the evidence that Mr SW had worked in this location for a number of years during which time there was regular attendance by Police. He had been specifically warned regarding his role the week prior and yet still chose to obstruct Police. He may not have been aware of the specific section of the Sale and Supply of Alcohol Act, but I find it more likely than not¹ that he was aware of the Police powers generally.
- [13] With respect to the training/monitoring Mr SW obtained from Usos Keeper, on the evidence I received, I find it more likely than not that he was told loosely about the

¹ The relevant evidential standard is the balance of probabilities, or what is more likely than not

relevant Police powers but clearly his training/supervision was not sufficient to ensure he was respecting them appropriately.

[14] Given this finding, I turn to the Police submission that this amounts to misconduct. Section 4 of the Act defines misconduct as being conduct by a licence holder “*that a reasonable person would consider to be disgraceful, wilful or reckless or conduct that contravenes the Act*”.

[15] The threshold for misconduct is high as it is reserved for the most serious of security workplace situations. For this reason, the Act also provides for less serious although still unacceptable situations by outlining provisions for actions that amount to gross negligence² or unsatisfactory conduct.³

[16] Gross negligence is not defined in the Act but is considered to be acts of negligence at the highest end of the scale. Unsatisfactory conduct is defined in the s 4 of the Act as:

(a) Conduct that falls short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent certificate holder ...;
or

(b) Conduct that is incompetent or negligent, or

(c) Conduct that would reasonably be regarded by ...private security personnel of good standing as being unacceptable.

[17] Being found guilty of misconduct or gross negligence is a discretionary ground for cancellation of a COA.⁴ Being found guilty of misconduct or gross negligence or unsatisfactory conduct requires the Authority to consider the variety of sanctions set out in section 81 of the Act.

[18] Having carefully considered the evidence and submissions available to me, I do not find Mr SW guilty of misconduct. Whilst I consider that he was aware that he was required to provide Police entry into the premise, I am not satisfied that his failure to do so was malicious or undertaken with the intent to hide an unlawful activity. I find it more likely than not that he got caught up in the situation and was acting under some misguided understanding of his own power and authority.

[19] Likewise, I do not find his actions on this night amount to gross negligence. However, I am satisfied that Mr SW's actions in obstructing Police was unsatisfactory conduct. There is no doubt that the reasonably competent crowd controller should be aware of Police powers in entering any licensed venue they are providing security services at. It is negligent of any crowd controller to misapply the law, particularly in situations when that law has been explained to

² Section 83(e) of the Act

³ Section 81(1A) of the Act

⁴ Section 83(e) of the Act

them by Police. Finally, it is unacceptable for a crowd controller to obstruct the Police in the lawful execution of their duty.

[20] Accordingly, I find Mr SW guilty of unsatisfactory conduct and I discuss repercussions below. Before I do, I turn to the second Police submission regarding Mr SW's character.

Is Mr SW still of suitable character to continue to work in security?

[21] The Police submission is that Mr SW, because of his actions in this instance, is no longer suitable to provide security services, particularly crowd controlling services. It is a requirement that security workers assist Police when serving in their security roles, and a failure to do so casts concern over their suitability to work in such a role.

[22] Acceptance of this submission is a discretionary ground for cancellation of Mr SW's COA.⁵

[23] Ms Roberts submits that Mr SW has made a mistake but has learnt from it. Mr SW has undertaken further training and done some research of his own, and he is willing to attend any further training that would be provided. He is dedicated she says, to upskilling in his chosen career.

[24] Mr Crichton is fully supportive of Mr SW's character, particularly with respect to his security work. He has promoted him to a supervisor position and says he is held in high regard at their company. To this end they are prepared to support him fully and consider he ought to be provided with a second chance.

[25] Given Mr Crichton's support of Mr SW, the part his employer played in this event by failing to provide adequate training, and that Mr SW has taken responsibility for his actions, I am satisfied that at this stage he remains of suitable character to continue to work in security. He has made several mistakes here but given his actions since then, I accept that he has learnt from them.

[26] Accordingly, I decline to cancel Mr SW's COA.

What is the appropriate penalty?

[27] Given my finding of unsatisfactory conduct, I must consider the appropriate penalty.⁶

⁵ Section 83(ab) of the Act

⁶ Persuadn to section 81(1B) of the Act

[28] Ms Roberts submits that Mr SW is young and currently financially supporting his family on his security income. He has accepted responsibility and remained accountable for his actions throughout proceedings. She notes that this is his first and only instance of transgression, despite having worked in security for a number of years. She also relies on the low level of seriousness with which the District Court attributed this event as Mr SW was discharged without conviction.

[29] Security is Mr SW's career and he is heavily reliant on this income. He is remorseful and I accept genuine in his desire to learn from this event. I take into account the support Mr SW has which is evidenced by his references and the extent to which his employer is willing to support him.

[30] Having considered the situation and evidence carefully, I make the following directions:

- [i] Mr SW is officially reprimanded.
- [ii] The following conditions are to remain attached to Mr SW's COA:
 - a. Mr SW is to work cooperatively with the Police in the execution of his security roles.
 - b. Mr SW is not to come to the negative attention of Police.
- [iii] Mr SW is to be actively supervised by a director or manager of Usos Keeper for six months from the date of this order.

[31] I note that had there been specific training available regarding Police powers and a security workers' responsibility in working with Police, I would have directed that Mr SW attend that. However, I am not aware of any specifically relevant training and entrust that issue to Usos Keeper to continue to progress.

Usos Keeper

[32] Given my findings on Mr SW's lack of training and/or adequate supervision, at the hearing I enlarged the complaint to include Usos Keeper as Mr SW's employer. The Police remain as complainant. To this end I directed Mr Crichton to provide me with their updated training documentation for such situations. He was advised that if the training was considered insufficient the matter would be progressed. Further directions will be made upon receipt of that information.

[33] I do note that Mr Crichton has met with Police following the incident and while Sergeant Tangney was initially concerned regarding their level of understanding of the law, he felt the meeting was productive. It is to Usos Keeper's credit that they have engaged with Police and made active changes to ensure that such a situation does not happen again with any of their employees.

Should the decision be redacted?

- [34] Pursuant to section 96C of the Act this decision will be published. Ms Roberts requests Mr SW's name be redacted from the published decision on the grounds that he is young and there is a risk that publication will detrimentally impact his family and future. The Police are neutral as to publication.
- [35] There is high public interest in this matter as the public are entitled to expect that Police are enabled to enter licensed premises in the execution of their duties. It is also important, given the misunderstandings discussed in this decision, that the law be clear and readily available.
- [36] I do not consider there is any particular reason why Mr SW's name should be published. He is young and has a career in security ahead of him. As discussed above he demonstrated a willingness to learn from these mistakes and has accepted responsibility for them.
- [37] Accordingly, I direct that this decision be published however Mr SW's name is to be redacted from the published decision.
- [38] Usos Keeper were provided with seven days from the date of this order (22 March) to make submissions as to the suppression or otherwise of their identifying details from this order. They have not provided those submissions; accordingly I make no suppression orders in their favour.

DATED at Wellington this 2nd day of April 2024



K A Lash
Deputy Private Security Personnel Licensing Authority