

Northern Territory Licensing Commission

Reasons for Decision

Respondent:	Corey Winston James Holz
Licence Number:	Security Officer Licence Number 5434
Proceedings:	Complaints Pursuant to Section 53A of the <i>Private Security Act</i>
Heard Before:	Mr Richard O’Sullivan (Chairman) Mr Wally Grimshaw Mr David Brooker
Date of Hearing:	9 August 2012
Appearances:	Mr Tim Barrett, Counsel for the Director of Licensing Mr Tom Berkley, Counsel for My Holz and Mr Spooner

Hearing Preamble and Context

- 1) A complaint lodged by the Director of Licensing in July 2011 alleged that Mr Holz had breached multiple Sections of the *Private Security Act* (“the Act”) including Section 19(3) that refers to clause 3.22(f) of the Code of Practice for Security Officers.
- 2) The earlier Hearing into this matter before the Northern Territory Licensing Commission (“the Commission”) had determined penalty and considered the complaints settled. Mr Holz was found to have contravened the Sections of the Act as charged and was further found to be not an appropriate person to hold a Security Providers License or an appropriate person to hold office in a corporation holding a Security Firm License. The previous panel determined to suspend Mr Holz from holding a Crowd Controller and Security Officers License for a period of six months. At the expiration of this period reinstatement and reissue of the licenses the subject of the panels determination was to be conditional upon the receipt of confirmation of psychological counselling being completed satisfactorily as recommended by his attending physician.
- 3) After the Commission discovered that the Code of Conduct relied upon at first instance had not been promulgated at the time of Hearing it was determined that the matter should be re-opened in the interests of procedural fairness and natural justice. It is important to stress at this point, and essential to keep in mind for the balance of what appears below, that it was at the instigation of the Commission that the matter was reopened.
- 4) At the commencement of the Hearing Counsel for the Director of Licensing sought the opportunity to make a submission to the Hearing panel. He suggested that being given such a moment would enable a final outcome to be achieved without delay. The panel agreed to hear from Mr Barrett after receiving no objection from Mr Berkley.
- 5) The Commission heard that both parties had concerns about mounting costs pertaining to this matter and as the Commission operates within a “no costs” jurisdiction it was common ground between Counsel that should proceedings continue that this fact be kept in mind by the Commission.

Submissions from Counsel

- 6) Mr Barrett, for the Director of Licensing, submitted that the matter had run its course and that the penalty as proscribed by the previous panel had been largely served, save for the requirement to submit evidence of on-going monitoring and treatment of a mental disorder.

This disorder had been the subject of consideration by the previous panel who had seen fit to include reference thresholds to it in the penalty as determined. Among other things the previous panel determined that an updated medical report be received before the entire penalty would be considered spent.

- 7) It was submitted by Counsel for the Director of Licensing that the requirement for the mental health update should no longer be a part of the penalty as determined by the previous panel and, if the Commission were accepting of this position, the result would be that the entire penalty as determined by the previous panel should be considered served. Within this submission reference was made to the fact that this matter had taken an inordinately long time to come again before the Commission and the panel should further turn its mind to this when making any deliberations in this instance.
- 8) Mr Berkley concurred in full with the submissions of Mr Barrett while emphasising the strong desire of his client to put the matter behind him and move on.

Decision

- 9) The panel adjourned and considered the common sense and straight-forward arguments and submissions of both Counsel and determined that an extempore decision was appropriate in all of the circumstances.
- 10) With regards to the submission of Counsel in relation to the on-going financial impost on both the Defendant and the Department, the Commission was unanimous that this was a valid consideration. The allusion in the submission from Mr Berkley of a financial "Double Whammy", in a colloquial sense had some import with the panel. There is no doubt that the loss of income as a result of the decision of the previous panel when combined with the ongoing costs of the current appearance, compound to perhaps increase the actual penalty beyond what was contemplated by the initial panel. That said, it would be unfair to expect a decision maker to factor in the potentiality or otherwise of further costs, however categorised and generated, when making a decision.
- 11) With regards to the submission of Counsel in relation to the length of time between the initial decision of the Commission and the present review the view that the period exceeded what one would call expeditious is shared. The Commission is a strong advocate for timely scheduling and hearing of all matters presented to it, but must operate realistically and cooperatively with all parties to a dispute. The vicissitudes of day to day life mean that on occasion one party, or perhaps both, will feel as though an inordinate delay has deprived them of a just outcome in some way; however, in this matter the Commission panel is united when it finds that no delay in bringing the matter to Hearing can be attributed to it or the conduct of its secretariat.
- 12) The panel considers that the agreed submissions from both Counsel should form the basis of a consensual order. Such order is that any unpaid fines or outstanding conditions surviving from the initial decision be waived and that the specific reference to mental health counselling and the presentation of what amounts to a "fit to work" competency certificate be not required.
- 13) The Commission panel on review agreed with Counsel that the cost factor was of concern in this instance and sought placed on the record that the panel had taken serious consideration of this in arriving at its decision. Implicit in this component of the decision is an acknowledgment that the Defendant had incurred costs beyond what may have normally been expected, however, in recognition of this the panel determined to relieve the Defendant of any further expenses by making the orders below.
- 14) The panel concluded that the Commission agreed that the suspension required by the decision of the initial panel had already been served and was now spent. It further held for the record that the medical report be no longer required, resumption of duties as a Director of a security firm can occur, and that Mr Holz could resume work as a security provider.

Richard O'Sullivan
Chairman

19 October 2012