

Northern Territory Licensing Commission

Reasons for Decision

Respondent:	Mr Brian Ballinger
Licence Number:	Security Provider Number 7178
Proceedings:	Complaint Pursuant to Section 53A of the <i>Private Security Act</i>
Heard Before:	Mr Richard O'Sullivan (Chairman) Mr Wally Grimshaw Mr John Brears
Date of Meeting:	4 June 2013
Appearances:	Mr Brian Ballinger

Background

- 1) Mr Brian Ballinger was granted a dual Crowd Controller and Security Officer Licence on 17 March 2010, licence number 7178. Following successive renewals of his licence, Mr Ballinger's current dual licence is valid until 17 September 2015.
- 2) Through a letter dated 9 March 2013 the Human Resources Manager of Skycity Darwin Casino ("Skycity"), Ms Lauren Gill advised that Mr Ballinger's employment to provide security services at Skycity had been terminated due to "*gross misconduct – theft*".
- 3) Advice from Skycity triggered consideration by the Acting Director of Licensing as to whether Mr Ballinger continued to be an appropriate person to hold a dual Crowd Controller and Security Officer Licence. This question over Mr Ballinger's fitness to hold a licence resulted in Mr Ballinger being issued with a Show Cause Notice on 11 April 2013 inviting him to comment on whether he remained a fit and proper person pursuant to requirements of the *Private Security Act* ("the Act"). Section 15(6) states:
 - (6) *In deciding whether a person is an appropriate person to hold a licence, the licensing authority may consider the following matters as indicating that the person may not be an appropriate person:*
 - (a) *that in dealings in which the person has been involved, the person has:*
 - (i) *shown dishonesty or lack of integrity; or*
 - (ii) *Mr Ballinger on 16 April 2013 responded to this Notice.*
- 4) Mr Ballinger's termination of employment at Skycity was due to a matter which occurred on 7 March 2013 when Skycity accused Mr Ballinger of taking a mobile phone from the lost property area without authorisation. Skycity has provided information to the effect that Mr Ballinger was contacted by Mr Rod McPhee, Security Manager, Skycity following which the mobile phone was returned to Skycity and then its rightful owner.
- 5) Mr Ballinger's response to the Show Cause Notice refers to finding a mobile phone and without thinking putting it in his pocket, following which he drove home. His response to the Show Cause Notice further adds that early the following morning he drove to work to hand the phone in and to apologise for what had occurred and during this time Mr McPhee called him, following which he handed over the phone.
- 6) Due to the differences in the version of events the Commission determined to invite Mr Ballinger to a meeting of three Commissioners to explain his recall of events and to answer questions over inconsistencies between his statements and that of Skycity.

Meeting

- 7) Mr Ballinger was advised that the Commission had in its possession Statutory Declarations and Incident File Summary reports from Skycity personnel over the incident of 7 March 2013. He was invited to outline to the Commission his recall of events in relation to the theft or taking of the mobile phone from Skycity premises.
- 8) Mr Ballinger advised that on the night of 7 March 2013 he found a mobile phone, put it in his pocket and without really thinking took it home at the end of his shift.
- 9) On questioning from Commissioners, Mr Ballinger admitted that he found the phone in an office which he referred to as a Security Office and he conceded that it may be the office where lost property is normally located. He advised that some hours following, in the early morning, he was returning to Skycity to hand in the phone when he was contacted by Mr McPhee over the matter. Mr Ballinger referred to making a poor choice or exercising poor judgement over the matter and stated to the Commissioners that he had apologised to Mr McPhee over his actions. He described his behaviour as unfortunate and expressed sincere regret.
- 10) Senior Skycity staff involved with Mr Ballinger have provided Statutory Declarations and reports over the matter. These Statutory Declarations vary in some matters of detail with the account provided by Mr Ballinger. Commissioners outlined the contents of the Incident File Summary Reports from Skycity and Statutory Declarations from Mr McPhee, Skycity Security Manager and Mr Jeffrey Norton, Acting Security Shift Manager, Skycity.
- 11) The Commission advised Mr Ballinger that the Incident Report was based on staff viewing of the CCTV surveillance cameras and he was provided a summarised version of Statutory Declarations and Skycity reports at the meeting as follows:
 - (i) A patron at around 9.30pm on 7 March 2013 advised security that he had lost his mobile phone. The phone had earlier been logged into lost property at the security officer and placed in a container. Security cameras showed Mr Ballinger entering the security office and removing the phone from the lost property box.
 - (ii) Mr McPhee reviews the CCTV footage of Mr Ballinger removing the mobile from the lost property container and is advised that the lost phone had been logged into lost property and he then makes contact with Mr Ballinger to seek the return of the phone. On the following morning 8 March 2013 at around 00.30am Ballinger returns to Skycity and hands the phone over to McPhee.
 - (iii) Following the return of the phone to Mr McPhee it is then transferred to Mr Norton and in the early morning handed to the rightful owner who informs Mr Norton that it is his phone but that the SIM and SD card are missing.
- 12) Mr Ballinger acknowledged the events as sequenced and outlined in the Skycity reports and Statutory Declarations. On the matter of the missing SIM and SD card he informed the Commission that he could not account for the whereabouts of the missing cards and advised that he had not removed them from the phone and they were not in his possession.

Contact with referees

- 13) Mr Ballinger provided the Commission with a list and contact details for five referees who would be able to provide comment on his character. The Commission contacted two of these referees, namely Constable Adam Wallace of Northern Territory Police and Ms Lynette Merrall, Day Manager and Nominee of Bogarts Restaurant.
- 14) Constable Wallace outlined that he had worked at the Police Casuarina shop front when he had frequent contact with Mr Ballinger who was employed to provide security services to the Casuarina shopping centre. He described Mr Ballinger "*as quite professional*",

whose actions were always lawful and whose behaviour was always cooperative with Police. Constable Wallace further advised that Mr Ballinger knew his role and the lawful requirements under which he acted and that he was professional in all his contacts with Police.

- 15) Ms Lynette Merrall stated that Mr Ballinger provided part-time security services at Bogarts Restaurant, generally on Friday and Saturday nights as well as functions during the week. She stated, *"I could not say a bad word about Brian, he would diffuse situations and everybody loves him"*. She stated he interacted well with patrons and management. She stated Mr Ballinger had been working at Bogarts through a security company for around six months.
- 16) She stated she did not want to lose him and hoped that he would remain in employment as one of his attributes was that he was not physical in his approach which she considered was appropriate for her patron base.

Consideration of the issues

- 17) Commissioners noted there was some discrepancies of the version of events over the taking of the mobile phone from Skycity between that of Mr Ballinger and that of Skycity personnel. The Commission was of the view that while Mr Ballinger may not have shown blatant dishonesty, in his portrayal of how the mobile phone came to be in his possession and taken home, his version was to a degree self-serving and portrayed a lower level of inappropriate conduct than that alleged by Skycity.
- 18) Commissioners are aware that persons who hold both Security and Crowd Controller licences should be persons of good character and honesty. Mr Ballinger's actions in removing the mobile phone from an office and taking it to his home in the Commission's views clearly shows dishonesty or lack of integrity pursuant to Section 15(6)(a)(i). Dishonesty or lack of integrity are characteristics which under the Act indicate that a person may not be an appropriate person to hold either a Security or Crowd Controller licence.
- 19) It would appear that Mr Ballinger has engaged in a wilful and opportunistic act of theft. Earlier statements by Mr Ballinger that he had picked up a lost phone and absent mindedly put it into his pocket and taken it home after his shift have now been discredited. The Commission regards his action as one off and aberrant as there is no evidence of his systemic dishonesty.
- 20) Mitigating the severity of the offence and penalty are the facts that Mr Ballinger, during the meeting with Commissioners, appeared to show genuine remorse and regret. Whether this remorseful display was due to being caught out and punished or for the act of dishonesty itself is open to conjecture. Previous criminal history checks obtained during Mr Ballinger's initial licence application have shown there are no offences relating to lack of integrity or dishonesty.
- 21) Additionally the two referees contacted by Commissioners spoke highly of Mr Ballinger and it appears he adopts a moderate and thoughtful approach when dealing with people and this is in his favour.
- 22) Taking all matters into consideration the Commission cannot disregard that in the particular instance of the mobile phone taken from Skycity, Mr Ballinger has shown dishonesty and lack of integrity. Based on such a consideration the Commission feels bound to impose a period of suspension to Mr Ballinger's licence. However given his evident remorse and the unlikelihood of similar occurrences in the future, particularly when taking into consideration his referee comments, the Commission is willing to suspend this suspension.

Decision

- 23) As Mr Ballinger has shown dishonesty or lack of integrity in his conduct whilst employed as a licensed Crowd Controller and Security Officer the Commission imposes a suspension of Mr Ballinger's licence from the date of this Decision for three calendar months. Given the mitigating circumstances, the Commission suspends the suspension for a period of twelve months from the date of this Decision. However, should Mr Ballinger come before the Commission and be found to have committed any breach of his licence conditions in the following twelve months, the suspension will apply as well as any new and additional penalty.
- 24) Pursuant to Section 27(4)(d) of the *Private Security Act*, you may appeal to the Local Court against the decision of the Licensing Commission. Such an action may be commenced by filing a written notice of appeal with the Registrar of the Local Court, within twenty-eight days of your receiving this letter, and serving a copy of the notice on the Northern Territory Licensing Commission.

Richard O'Sullivan
Chairman

23 July 2012