

Northern Territory Licensing Commission

Reasons for Decision

Respondent:	Mr Americo Cardoso
Licence Number:	Dual Licence 7861
Proceedings:	Complaint Pursuant to Section 53A <i>Private Security Act</i>
Heard Before:	Mr Philip Timney (Presiding Member) Mrs Jane Large Mr John Brears
Date of Hearing:	14 August 2012
Appearances:	Licensing Inspector Mark Wood for the Director of Licensing Mr Americo Cardoso in person

Background

- 1) On 19 June 2012 the Licensing Commission, pursuant to Section 53C of the *Private Security Act* ("the Act"), determined to conduct a Hearing into a complaint lodged against licensed Crowd Controller Mr Americo Cardoso. The complaint arose from an incident that occurred at licensed premises known as Monsoons on 26 January 2012 in which it is alleged that Mr Cardoso breached the provisions of the Code of Practice for Crowd Controllers in his dealings with a patron who had been evicted from the premises.
- 2) The Hearing was set down to commence on Tuesday 14 August 2012.

The Hearing

- 3) Inspector Wood provided the Commission with the following précis of facts in respect of the complaint against Mr Cardoso.
- 4) Mr Cardoso currently holds a dual licence as a Crowd Controller and Security Officer, Licence Number 7861, which expires on 10 May 2015. On 26 January 2012 Mr Cardoso was employed by Pro Active Security NT which is contracted to supply security services to the Monsoons premises.
- 5) On 26 January 2012 Police advised Licensing Inspectors of an incident which occurred at Monsoons at approximately 0.30 am on that date involving Mr Cardoso and an unidentified person. Mr Cardoso was observed on CCTV footage being directly involved in an altercation with the unidentified male on Mitchell Street outside the Monsoons premises.
- 6) Camera surveillance identified Mr Cardoso in uniform and on duty, along with a number of other Crowd Controllers, directly involved in the physical removal of a number of male patrons from the premises due to an altercation that occurred on the dance floor. Mr Cardoso was then involved in an altercation with one of the removed patrons on the footpath directly in front of Monsoons.
- 7) Shortly after 0.33 am, one of the patrons attempted to leave the area by crossing Mitchell Street. A second Crowd Controller tackled the patron to the ground in the middle of Mitchell Street. Mr Cardoso approached the second Crowd Controller and the patron on the ground and struck the patron in the head / shoulder region on three occasions. The second Crowd Controller was then observed to push Mr Cardoso away from the patron.

- 8) Mr Cardoso then moved off the road and walked towards the corner of Mitchell Street and Nuttal Lane and back inside Monsoons. The patron then walked up Mitchell Street before returning to Monsoons and again attempting to engage in a fight with the Crowd Controllers.
- 9) It is alleged by the Director that Mr Cardoso's actions constitute a breach of Section 19(2)(c) of the Act in that he breached the following provisions of the Code of Practice for Crowd Controllers:

- Clause 3.13: Use undue force in the course of duty; and
- Clause 3.14: Participate or encourage others to participate in assault;

The allegations in the memorandum from the Director to the Commission that Mr Cardoso had breached the following provisions of the Code of Practice were withdrawn:

- Clause 3.8: threaten a patron with physical violence;
- Clause 3.16: In the course of duty, fail to use mediation, negotiation, communication and conciliation as the primary methods of dealing with clients.

- 10) By letter dated 5 March 2012 the Director advised Mr Cardoso of the substance of the complaint and invited him to provide a response by 3 April 2012. Mr Cardoso submitted his response in a letter dated 3 April 2012. He confirmed that the matters set out in the letter of complaint were true and that he had nothing to add in terms of the allegations. He noted however that the CCTV footage showed that he was struck in the face by one of the patrons being ejected from the premises and that was the reason for his actions in pursuing and striking the patron.
- 11) Mr Cardoso acknowledged that he reacted poorly and regretted his actions on the night, which he stated were contrary to his training and his Christian beliefs. He also stated that he was not a bully in nature and was fair to people and that this was a one-off incident that would not be repeated. He added that he would abide by a decision of the Commission if a penalty was to be imposed.
- 12) Inspector Wood noted that the incident involving Mr Cardoso commenced when a fight broke out between a number of male patrons on the dance floor at Monsoons. He informed the Commission that, from the Director's point of view, the actions taken by the Crowd Controllers in removing a number of patrons from the venue were entirely appropriate and that the situation was handled in a proper and professional manner. The CCTV footage showed five or six patrons fighting and Mr Cardoso removing one of those patrons to the entrance of the premises. Inspector Wood noted that Mr Cardoso did not appear to be forcefully restraining the patron who appeared to be co-operating with his removal.
- 13) Once at the front of the premises the CCTV footage clearly shows one of the ejected patrons striking Mr Cardoso to the head whilst he was looking the other way dealing with the patron under his control. The person who struck Mr Cardoso then ran onto Mitchell Street where he was tackled to the ground by another Crowd Controller. Mr Cardoso is then observed moving towards that scuffle and striking the patron three times to the head / shoulder area. Mr Cardoso is then observed moving back inside Monsoons.
- 14) Inspector Wood did not dispute that Mr Cardoso was struck to the head by the patron who ran onto Mitchell Street and that this was most likely the cause of his reaction in striking the patron when he was restrained on the ground. He conceded that there were mitigating circumstances in this case and that Crowd Controllers are not required to be punching bags for aggressive patrons. Inspector Wood also noted that the patron who was struck by Mr Cardoso was the aggressor in the earlier incident and that he did not appear to be injured after being struck. To the contrary, after being punched by Mr Cardoso he ran back across Mitchell Street and tried to engage again in a fight with the Crowd Controllers.

- 15) Mr Cardoso referred to his written response to the complaint and confirmed that he admitted the facts as alleged by Inspector Wood. He reiterated that the reason for his behaviour on the night of the incident was the fact that he had been punched to the head in a fight involving five or six patrons. Mr Cardoso stated that he had not been involved in any physical scuffles in his time as a Crowd Controller and this was the first time he had been involved in a fight and punched whilst on duty.
- 16) Mr Cardoso stated that he could not provide any real justification his actions however he was stunned after being punched and suffered a swollen lip and was not thinking clearly at the time. He noted that his actions were a result of poor judgement on his part and a spur of the moment reaction. He submitted that his actions were out of character and a one-off incident that was unlikely to be repeated. He added that he regarded himself as a professional Crowd Controller and that he had demonstrated on numerous occasions that he was capable of dealing with abuse from patrons without resorting to physical confrontation.
- 17) Mr Cardoso informed the Commission that security work was his only form of employment and that he generally worked as a security officer on a full time basis whilst also working part time as a Crowd Controller in Mitchell Street on weekends. He stated that he requires a regular income to meet accommodation and living costs as well as his car repayments.
- 18) In respect of the appropriate penalty, Inspector Wood noted that Mr Cardoso has held a dual licence for approximately eighteen months and that he had not been the subject of any complaints during that period. He submitted that Mr Cardoso should be given credit for the early admission of the breaches contained in his response to the complaint and also for the frank and candid manner in which he presented his evidence before the Commission. Inspector Wood noted that the patron who struck Mr Cardoso was the aggressive party and that he did not appear to have suffered any serious injury at the hands of Mr Cardoso and, in fact, had attempted to re-join the fight outside Monsoons after Mr Cardoso had struck him.
- 19) Inspector Wood submitted that, given the mitigating factors in Mr Cardoso's favour, the appropriate penalty would be a formal reprimand or a modest fine.
- 20) Mr Cardoso reiterated to the Commission that this behaviour during the incident in question had been inappropriate, that he had learned from the experience and was unlikely to act in a similar manner in the future. He acknowledged that he had the capacity to pay a modest fine.

Consideration of the Issues

- 21) Section 19 of the Act provides that a Crowd Controller licence is issued subject to the condition that, where a Code of Practice has been approved under Section 48 of the Act, the Code will be complied with by the licence holder. A Code of Practice was approved for Crowd Controllers. The following conditions of the Code of Practice are relevant in respect of this complaint:

Professional Standards and Conduct:

Crowd controllers shall not:

- *Clause 3.13: Use undue force in the course of duty; and*
- *Clause 3.14: Participate or encourage others to participate in assault.*

- 22) Mr Cardoso has admitted the breaches and the précis of facts as alleged.
- 23) The Commission generally regards breaches of the Code of Practice that involve assault or the use of undue force as being at the more serious end of the scale of offending by Crowd Controllers. The usual penalty, depending on the seriousness of the offending, is a

suspension of licence for a period of time. In this instance there are a number of mitigating factors in Mr Cardoso's favour that militate against the imposition of penalty of suspension of licence.

- 24) Those factors include the fact that Mr Cardoso was himself assaulted when he was king hit during the melee that occurred when a number of patrons were appropriately being removed from the Monsoons premises. Mr Cardoso admitted that he had reacted inappropriately in response to being punched to the head, both in his written response to the complaint and in his submissions at the hearing. The Commission accepts Mr Cardoso's submission that this was a one off incident and that his actions in striking the patron were out of character and unlikely to be repeated.
- 25) The Commission also notes that the patron who Mr Cardoso struck was one of the aggressors in the fight with the Crowd Controllers and that he was not seriously injured after being struck by Mr Cardoso, evidenced by the fact he ran back afterwards to re-join the fight. The Commission also takes account of the fact that Mr Cardoso has not been the subject of any prior complaints during the period he has held a security licence and that security work is his only form of income.
- 26) The Commission has stated on numerous occasions that it will impose periods of actual suspension of licence where a Crowd Controller uses force that is more than what is required to control a particular situation. By Mr Cardoso's own admission, his actions in pursuing and punching the patron who assaulted him were totally inappropriate. His action in engaging in the fight in middle of Mitchell Street after he was struck was completely unacceptable and had the very real potential of exacerbating an already volatile situation involving a number of aggressive patrons and the Crowd Controllers on duty. Mr Cardoso was clearly provoked into taking the retaliatory action he did however, as a licensed Crowd Controller, he is expected to have sufficient skills and training to cope with situations of that nature in a far more professional manner.
- 27) In all the circumstances the Commission is of the view that the appropriate penalty, taking account of the matters set out above, is the imposition of a modest fine.

Decision

- 28) Section 53D(1)(d) of the Act provides for the imposition of a fine where a Crowd Controller is found to have breached a condition of licence. Section 19 prescribes a maximum penalty of 100 penalty units for such a breach, being \$14,100. 00.
- 29) Mr Cardoso has admitted to breaches of clauses 3.13 and 3.14 of the Code of Conduct for Crowd Controllers. Taking account of the mitigating factors set out above the Commission determines to impose a fine of \$300.00 in this instance.
- 30) Mr Cardoso is advised that Section 53E of the Act provides that he may, within twenty eight days of being notified in respect of this decision, seek a review of the decision under Part 4 of the *Northern Territory Licensing Commission Act*. In accordance with Section 28 of that Act, an application for review of the Commission's decision is required to be in writing, accompanied by the prescribed fee and to set out the grounds on which the request for review is made and the facts relied on to establish the grounds.

Philip Timney
Presiding Member

12 September 2012