

**IN THE DISTRICT COURT
AT ROTORUA**

**I TE KŌTI-Ā-ROHE
KI TE ROTORUA-NUI-A-KAHUMATAMOMOE**

**CIV-2019-063-000152
[2019] NZDC 15103**

IN THE MATTER OF THE PRIVATE SECURITY
PERSONNEL AND PRIVATE
INVESTIGATORS ACT 2010

AND

IN THE MATTER of an appeal by ATELI TAUPALE against
the refusal of a certificate of approval

BETWEEN ATELI TAUPALE
Appellant

AND PRIVATE SECURITY PERSONNEL
LICENSING AUTHORITY
Respondent

Hearing: 25 July 2019

Appearances: W Te Are for the Appellant
C Harvey for the Authority

Judgment: 6 August 2019

RESERVED JUDGMENT OF JUDGE P G MABEY QC

[1] The appellant Ateli Taupale applied to the respondent authority for a certificate of approval and a temporary certificate of approval as a crowd controller, property guard and personal guard. His application was declined and he now appeals to this Court against that decision.

[2] Property Guard, personal guard and crowd controller are defined in ss 9 – 11 of The Private Security Personnel and Private Investigators Act 2010 (the Act).

9 Meaning of property guard

- (1) In this Act, property guard means a person who for valuable consideration, either by himself or herself or in partnership with any other person, carries on a business—
- (a) guarding, elsewhere than on premises owned or occupied by himself or herself or his or her firm or any of his or her partners, any real or personal property belonging to another person; or
 - (b) monitoring in real time, elsewhere than on premises owned or occupied by himself or herself or his or her firm or any of his or her partners, any of the following:
 - (i) a burglar alarm or similar warning device intended to immediately alert a person or persons to the presence of a person or persons in a particular place:
 - (ii) a camera or similar device; or
 - (c) responding to any device in paragraph (b)(i) or (ii) that has been activated and that is on any part of any premises that are not owned or occupied by himself or herself or his or her firm or any of his or her partners.
- (2) A person is not a property guard solely because he or she does the work described in section 8.

10 Meaning of personal guard

In this Act, personal guard means a person who for valuable consideration, either by himself or herself or in partnership with any other person, carries on a business—

- (a) guarding a specific person or persons; or
- (b) guarding a specific person or persons and keeping order at any place (not being premises or a conveyance licensed under the Sale and Supply of Alcohol Act 2012) where the person or persons being guarded may be. Paragraph (b) was amended, as from 18 December 2013, by s 417(1) Sale and Supply of Alcohol Act 2012 (2012 No 120) by substituting “Sale and

Supply of Alcohol Act 2012” for “Sale of Liquor Act 1989”. View the full text of the Historic version (1 April 2011 to 17 December 2013)

11 Meaning of crowd controller

- (1) In this Act, crowd controller means a person who for valuable consideration, either by himself or herself or in partnership with any other person, carries on a business doing all or any of the following:
- (a) screening entry to a place (other than simply ensuring that admission has been paid or that those entering have appropriate invitations or passes):
 - (b) keeping order in a place (more than merely being expected to draw the attention of others to behaviour that is inappropriate or threatens to become inappropriate):
 - (c) removing any person from a place.
- (2) A person is not a crowd controller solely because he or she does the work described in section 10.

[3] The hearing of an appeal is by way of rehearing. The Court has all of the powers of the original decision maker and may confirm the decision or make any other decision the Court thinks should have been made.

[4] Further relevant provisions of the Act are:

3 Purpose

The purpose of this Act is to ensure that persons offering specified private security and investigation services for hire, and personnel providing those services,—

- (a) are suitably qualified to carry out that work; and
- (b) do not behave in ways that are contrary to the public interest.

46 Application for certificate of approval

- (1) An application for a certificate of approval must be made to [a Licensing Authority] in the manner prescribed by regulations made under this Act and must—
- (a) be in [a form approved by the chief executive of the Ministry of Justice after consultation with all Licensing Authorities]; and

- (b) be accompanied by a photograph of the applicant, authenticated in accordance with any prescribed requirements; and
 - (c) be accompanied by the prescribed fee [(if any)].
- (2) The application must specify—
- (a) the applicant's full name, residential address, occupation, and date of birth; and
 - (b) the particular class or classes of responsible employee in relation to which a certificate of approval is sought by the applicant; and
 - (c) if the applicant is employed, the name of the applicant's current employer, or employers if more than 1; and
 - (d) whether or not any of the grounds of disqualification in section 62 apply to the applicant; and
 - (e) whether the applicant has ever—
 - (i) been convicted outside New Zealand of an offence; or
 - (ii) had an order imposed in relation to him or her by any court or tribunal outside New Zealand, instead of passing sentence, that he or she be treated or cared for in relation to his or her mental impairment; and
 - (f) any other prescribed information.

60 Temporary certificates of approval

- (1) A person who has applied for a certificate of approval under section 46 may also apply in writing for a temporary certificate of approval.
- (2) [A Licensing Authority] may issue a temporary certificate of approval at any time after receiving a correct application for a certificate of approval under section 46 if,—
 - (a) in the case of an applicant applying for a certificate as a responsible employee of a class in section 13, 14, [16A], 17, 18, or 19, the applicant is of or over the age of 18 years; and
 - (b) the prescribed fee (if any) is paid; and
 - (c) except as provided for in subsection (3)(b), the application does not disclose any ground on which the applicant is disqualified under section 62; and
 - (d) there is no reason to believe that the application contains statements that are incorrect; and

- (e) in the opinion of the Licensing Authority there are no other reasons disclosed by the application why the applicant may be unsuitable to be a responsible employee of the class or classes to which the application relates.
- (3) [A Licensing Authority] may issue a temporary certificate of approval under this section even if—
 - (a) the time for the Police to file an objection under section 49 has not expired; or
 - (b) the applicant has not met the requirements prescribed in regulations made under section 114(1)(h).
- (4) A temporary certificate of approval issued under subsection (2) gives the holder all the rights and duties of a certificate of approval issued under section 54 to be a responsible employee of the class or classes to which the application relates.
- (5) A temporary certificate of approval is in force for a period of 3 months after the date of its issue, or until a certificate of approval is issued to the applicant under section 54, whichever comes first.

62 Grounds of disqualification for individual applicant

The grounds of disqualification for an individual applicant for a licence, or an applicant for a certificate of approval, are that the individual—

- (a) has been ordered by a court to be detained in a hospital owing to his or her mental condition and is currently subject to such an order; or
- (b) has ever had an order made in relation to him or her under section 34(1)(b) of the Criminal Procedure (Mentally Impaired Persons) Act 2003, section 118 of the Criminal Justice Act 1985, or section 39J of the Criminal Justice Act 1954 (being an order imposed, instead of passing sentence, that the offender be treated or cared for in a manner that the offender's mental impairment requires, either in the offender's interest, or for the safety of the public, or for the safety of a person or class of person); or
- (c) has ever been ordered by a court to be detained in a penal institution following conviction for an offence and that conviction or order has not been quashed on appeal; or
- (d) has ever been convicted of a specified offence as defined in section 4 of the Criminal Records (Clean Slate) Act 2004; or
- (e) has ever been disqualified from driving under section 65 of the Land Transport Act 1998 or an earlier equivalent provision; or
- (f) has, within the preceding 7 years, been convicted of any—

- (i) offence under the Arms Act 1983; or
 - (ii) offence under any of sections 216H to 216J of the Crimes Act 1961; or
 - (iii) offence under section 10, 11, [12A], 13, 16, 19, 21, 24, 47E, or 47J of the Fair Trading Act 1986; or
 - [(iiia) offence under section 103(1) of the Credit Contracts and Consumer Finance Act 2003 that involves a breach of any provision of Part 3A of that Act; or]
 - (iv) offence under section 8 or 25 of the Harassment Act 1997; or
 - (v) offence against section 6 of the Misuse of Drugs Act 1975 in relation to a Class A controlled drug, a Class B controlled drug, or a Class C controlled drug, in relation to which the amount, level, or quantity at and over which the drug is presumed to be for supply is specified in Schedule 5 of that Act; or
 - (vi) offence of dishonesty; or
 - (vii) offence of violence; or
 - (viii) offence under this Act of working while not holding a licence or relevant certificate of approval or employing or engaging a person without a relevant certificate of approval, or an offence under section 16, 34, or 52 of the Private Investigators and Security Guards Act 1974; or
- (fa) *Not in force.*

102 Appeals to District Court

- (1) The following persons have a right of appeal to [the District Court] against a decision of [a Licensing Authority] under this Act:
- (a) if an application is refused (whether in whole or in part), the applicant; and
 - (b) if an applicant is dissatisfied with a condition imposed by [an Authority] under section 33(7) or 53(7), the applicant; and
 - (c) if an application is granted (in whole or in part), a person who objected to the granting of the application; and
 - (d) if a licence is suspended or cancelled, the licensee; and
 - (e) if a certificate of approval is suspended or cancelled, the person whose certificate of approval is suspended or cancelled; and

- (f) if the employment of an officer of a company that is a licensee is terminated, the officer; and
 - (g) if a licensee or person holding a certificate of approval is fined, the licensee or person; and
 - (h) if there was a complaint made by a constable under Part 4 but the licence or certificate of approval in relation to which the complaint was made was not suspended or cancelled, the Commissioner of Police.
- (2) An appeal under this section must be brought within [20 working days] after the date on which the appellant was notified in writing by [a Licensing Authority] of the decision appealed against, or within any further period that the court may allow.
- (3) The appeal—
- (a) must be made by way of originating application in accordance with the [District Court Rules 2014]; and
 - (b) must be filed in the office of the District Court nearest to the registered office of the licensee (if a company) or principal place of business of the licensee (if not a company), or to the place of employment or engagement of the certificate holder, as the case may require.
- (4) On hearing the appeal, the court may—
- (a) confirm, vary, or reverse the decision appealed against; or
 - (b) in the case of an order suspending a licence or certificate of approval, vary the period of the suspension; or
 - (c) refer the matter back to the Licensing Authority with directions to him or her to reconsider the whole or any specified part of the matter.
- (5) Subject to any order of the court, every decision of [a Licensing Authority] against which an appeal is made continues in force and has effect according to its tenor pending the determination of the appeal.

[5] Mr Harvey's opening submission is that the Court does not have jurisdiction to hear the appeal as it is brought out of time and seeks to introduce fresh evidence.

[6] However there is no prejudice at all to the authority arising from both of those matters. I have the power to grant leave to appeal out of time and to admit fresh evidence if I consider it is just to do so.

[7] I do grant leave to bring the appeal out of time and give leave for the authority to be represented.

[8] As to the fresh evidence, I accept with due diligence it would have been available to place before the authority but the evidence is relevant and in my discretion I allow it to be admitted on this appeal notwithstanding that it is not fresh. The interests of justice require that.

[9] The interests of justice are not advanced by preventing the substance of the appeal being determined on technical grounds.

[10] When Mr Taupale made his application he did not disclose any of his criminal convictions. Those convictions should have been disclosed as they are directly relevant to the authority's assessment as to whether he is a suitable person to have the approvals sought.

[11] His convictions, and sentences are:

- (a) 2014 wilful trespass (family violence) – community work and supervision.
- (b) 2014 Crimes Act assault (family violence) – community work and supervision.
- (c) 2015 offensive use of a telephone – fine and costs.
- (d) 2015 wilful damage (family violence) – fine.
- (e) 2016 threatening act (family violence) – community work.
- (f) 2016 common assault (family violence) – community work.
- (g) 2018 failing to stop when being pursued by the police – fine and disqualification.

(h) 2018 driving with excess breath alcohol – fine and disqualification.

[12] In its decision of 13 March 2019 the authority gave the following reasons for declining Mr Taupale's application.

[3] Mr Taupale did not declare his convictions in his application form. In explanation he said that he did not understand what the word conviction meant and thought it only covered prison sentences. He accepts that his offending was unacceptable but says that since then he has been striving to push forward. Mr Taupale has also provided references that show that he is a hard worker and talented musician.

[4] However, Mr Taupale has not provided any evidence that he has attended any counselling or courses or taken other steps to deal with his violent offending or his alcohol issues. Being able to control your temper and respond non-violently when faced with conflict or under pressure is essential to be a responsible crowd controller or property guard. His conviction history shows that he has been unable to do this.

[13] In submissions Mr Taupale's counsel advises that English is his second language and that he thought "conviction" meant imprisonment and for that reason, as he has not been in prison, he made no disclosure.

[14] However, even if that is accepted, it is clear from the authority's decision that the principal difficulty faced by Mr Taupale is that he has not demonstrated that he has addressed his offending related characteristics. That factor is the principal basis for declining his application as is evident from the authority's decision.

[15] On appeal Mr Taupale introduces fresh evidence in the form of character references from his employer, pastor and friends together with a letter from a local trust which provides drug and alcohol counselling. In his affidavit Mr Taupale says:

I include a counselling report about issues I have worked to address.

[16] However, producing the letter from the counselling service is counterproductive and if anything supports the authority's conclusion.

[17] The letter is dated 13 March 2019 and advises that Mr Taupale attended alcohol counselling between 10 February 2014 and 16 June 2014.

[18] That is over five years ago. All of Mr Taupale's criminal convictions occurred after his counselling was completed. They include offences for domestic violence and most recently an alcohol related driving offence.

Decision

[19] The purpose of the Act is to ensure that people who receive certificates of approval are not only suitably qualified to carry out the work but do not behave in ways contrary to the public interest.

[20] The authority is correct that persons who are approved for crowd control and guard duties must have personal qualities that render them suitable for the occupation. Although the Act refers to "suitability" the reality is the test is one of good character to determine if someone is fit and proper to receive approval.

[21] In the context of the Act, its purpose and the occupations it regulates domestic violence and alcohol offending are contrary to suitability.

[22] To be suitable to fulfil the duties to which Mr Taupale seeks approval self-control is essential and a demonstrated propensity for violence of any form is inappropriate. Alcohol related offending is equally inappropriate.

[23] I am in no doubt that the authority was correct in assessing Mr Taupale as unsuitable for the approvals sought. As I have said, even giving him the benefit of the doubt on his failure to disclose his convictions, it is those very convictions that justify the authority's decision.

[24] Mr Taupale can of course reapply for approval in the future but unless and until he can demonstrate serious efforts to address his established propensity for violence and difficulties arising from his use of alcohol I expect he will continue to be regarded as unsuitable.

[25] I dismiss the appeal and confirm the authority's decision.

P G Mabey QC
District Court Judge