

**IN THE DISTRICT COURT
AT HASTINGS**

**CIV-2016-041-000225
[2016] NZDC 22237**

In Re: GRACE HADEN
Appellant

IN THE MATTER: Of an Appeal against a decision of the
Private Security Personnel Licencing
Authority to refuse to renew a Certificate
of Approval in the Class of Private
Investigator

Hearing: 2 November 2016

Appearances: Appellant appears in Person
C Stuart for the Authority

Judgment: 2 November 2016

ORAL JUDGMENT OF JUDGE G A REA

[1] Verisure Investigations Limited holds a license under the Private Security Personnel and Private Investigators Act 2010, “the Act”. The appellant, Ms Haden, is an employee of that company. As far as I know she may be an officer of it as well. She was the recipient of a certificate of approval under the Act allowing her to act as a private investigator.

[2] It has to be said that over the last few years there has been what can only be described as a rocky relationship between Ms Haden and the Licensing Authority. A number of complaints, as recently as August of this year, have been dealt with by the Authority and at least one relatively major investigation has been undertaken. In addition a harassment order has been made against Ms Haden in relation to other civil proceedings and Ms Haden is the author or originator of one or more blog sites that have a justice focus.

[3] As far as I am aware, from the material available to me, any complaints that have been brought against Ms Haden have not been found proven by the Authority or those making the decision on those complaints. The harassment order does not fall to be considered under specific provisions of the Act although clearly it may come into consideration on good character aspects.

[4] There was a complaint against Ms Haden in relation to a blog site. That was heard by the Authority or the other appropriate adjudicating body, on or about 3 August 2016. That complaint was dismissed largely on the grounds that it was unrelated to the appellant's professional position. It seems that there was an informal discussion between the Authority and the appellant either during or after the complaint was heard and there seems to have been some discussion about the website or websites. Five days later the Authority issued a decision declining to renew Ms Haden's certificate of approval under the Act. It is my understanding that the structure of the business is such that by that approval being declined she essentially becomes unemployed and does not have the ability to earn a living.

[5] The Authority issued a written reasons in support of his decision to decline the renewal. I do not intend to go into any detail at all about the matters that he took into account in determining that the renewal should not be granted. He has set them out in his decision. It is fair to say that some of them are disputed by Ms Haden and the emphasis that should be given to other matters is strongly challenged by her. Included in the decision making process, quite clearly, are the blog or blogs that I have previously referred to.

[6] The Police have the right under s 49 of the Act to object to a renewal. They did not do so. There is no evidence before me that the appellant was ever made aware that her renewal was at risk. I accept that in the discussion she had with the Authority she must have left with the awareness that the authority was most unhappy about the way she was behaving on the blog sites but there is nothing particular before me to indicate that the Authority intended to use any of that information to decline the renewal.

[7] Section 50 of the Act sets out how the Authority is to go about dealing with a renewal. Pursuant to s 50(2)(a) the Licensing Authority must determine the application on the papers unless it thinks an oral hearing is required. Under s 50(2)(b) in determining the application on the papers the Authority may request that the applicant file a written response to any objection made by the Police within a period of time specified by the Authority. While there is no objection by the Police in this case s 50(2) provides the facility for an oral hearing should the Licensing Authority consider it appropriate.

[8] One of the issues that has caused me concern on this appeal is what is meant by making a decision "on the papers". Commonsense would indicate that it would include the application itself and any material in support of it filed by the applicant but how far beyond that the Authority is able to go to determine a matter "on the papers" is left open. It is not defined, as far as I am aware, under the Act and no authority has been referred to me as to how it should be interpreted in the context of circumstances such as this.

[9] It gives rise to issues some of which are significant and some of which are trivial. Does, "on the papers" also include electronic searching of the internet? Does it include conversations that the Authority may have had with other persons, either as complainants, investigators or in any other role? Or is it, written material supplied to the Authority to deal specifically with the particular application? I have not heard sufficient argument on the point to make any determination about it but in a case such as this, when it is not completely clear as to what material the Authority has taken into account in arriving at his decision, it does play some prominence.

[10] Under s 83 of the Act the Authority has a discretion to cancel an approval on a variety of grounds. One of those is if the certificate holder has been guilty of misconduct or gross negligence in the course of carrying out the work to which the certificate relates. In this case there has not now or ever been, as far as I am aware, any action taken by the Authority under that section to cancel the licence. Presumably there is insufficient proof of misconduct or gross negligence in carrying out the work to which the licence relates that could properly found such a cancellation. That would include, of course, the blog sites because they have been

held not to relate to carrying out work to which the certificate relates, the very reason why that complaint was dismissed in August.

[11] In this case, however, as he was entitled to do, the Authority has gone back to s 53(3) of the Act which states that the Authority must grant the application in respect of a particular class of responsible employee to which it relates unless the Authority is satisfied, based on any other evidence provided to the Authority relating to the character, circumstances or background of the applicant, that the person is not suitable to be a responsible employee of that class. In short, that is a good character provision. If the Authority forms the view, based upon any other evidence, that the applicant is of insufficiently good character then the application should be declined.

[12] In this case the appellant, as I understand it, has operated the certificate for some five years and while there have been complaints that have been dismissed and while there have been concerns about the way she operates, no steps have been taken to try and cancel either her license or that of Verisure.

[13] As I have said, it would be unlikely that such a cancellation could survive a review or an appeal because the disciplinary process set up in the Act has never found the appellant guilty, if that is the right word, of any misconduct.

[14] While I accept that the Authority is entitled on a renewal to look at character issues it seems harsh to look at that in the context of an accumulation of matters which individually have been disposed of to the advantage of the appellant and to rely on the character exception when there does not seem to have been sufficient proof that would warrant cancellation of the certificate under s 83.

[15] There is a more fundamental point as far as this case is concerned. Under s 6 New Zealand Bill of Rights Act 1990 wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in the Bill of Rights that meaning shall be preferred to any other meaning. In other words there should be a general application of the Bill of Rights to all legislation and in fact s 7 goes on to require the Attorney General to report to Parliament where any bill

appears to be inconsistent with rights contained in the New Zealand Bill of Rights Act.

[16] The starting point therefore must be that unless the provisions of the Bill of Rights Act are excluded by the legislation then the principles founding that legislation must be taken into account in determining matters such as this. Under s 27 there is a right to justice for all of us. Under ss (1) every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations or interests, protected or recognised by law. In this case a decision is being made by a tribunal or a public authority, namely the Licensing Authority, under the Act and quite clearly it has the power to affect the rights, obligations and interests of the appellant in this case.

[17] The real concern I have here is that the decision of the Authority to decline the renewal has come as something of a bolt out of the blue to the appellant. I accept that she must have known there was a significant level of disquiet about the operation of her approval and the way that she conducts herself in the context of it. However, there is nothing before me to indicate that at any stage she was advised that the renewal was at risk.

[18] I would consider that under s 27 and the observance of the principles of natural justice it was incumbent on the Authority to provide the full details of all of the material that he was taking into account in determining that he would decline to renew the approval. It is only on that basis that the appellant could have had the opportunity of either in writing, or at an oral hearing, answering any of the criticisms, obtaining counsel to assist her in doing so or challenging the accuracy of any of the information that the Authority has received.

[19] While the Authority spells out by a series of examples the things that he has taken into account it is any other material, particularly relating to blog sites or anything in the way of complaints or information that he has received, that needs to be disclosed to the appellant so that that can properly be addressed. An example of that is the allegation of a formal Police warning against her for an attempt to

blackmail somebody. The details of the information that the Authority has and the accuracy and validity of it would need to be made available to the appellant so that she has the opportunity of answering that allegation. That should not be a difficult issue. What may cause more difficulty is any additional information that the Authority has taken into account in concluding that the appellant is no longer a fit and proper person to continue as a private investigator.

[20] I cannot make any determination on that myself. It is strictly evidence based and what I propose to do is to allow this appeal and refer the matter back to the Licensing Authority with directions to him to re-consider the whole of the matter in light of this judgment and if it is his intention to pursue a refusal of renewal of the certificate to provide to the appellant the full details of all of the information that he is relying on to make that decision and providing the appellant with the opportunity to make a response either orally or in writing as the Authority sees fit and if the appellant instructs counsel, through such counsel.

[21] While it will be a matter for the Authority, and this is not part of the directions to him, it would seem sensible in this case to provide the appellant with the opportunity of an oral hearing so that matters can be dealt with in some depth and to avoid any situation that an allegation is later made that despite the directions given in this decision material that was not made available to the appellant has somehow featured in the decision making process. As I have said that will be a matter for the Authority in the context of this decision.

[22] For clarity, under s 102(4)(a), the decision given by the Authority is also varied to enable the current approval to continue in force until such time as a final determination on the application for renewal has been made by the Authority.

[23] One of the grounds of appeal that the appellant has pursued is that the Authority is not qualified under the statute to be in the position that he holds. That is around a debate as to whether he can describe himself as a barrister and solicitor of five years or more standing. I consider that the submissions made by Mr Stuart are a complete answer to that. There is no requirement in this legislation that the

Authority hold a practising certificate, only that he has five years post admission experience.

[24] I am making no final determination about that because it is not necessary in the context of this decision but I do suggest that for that to intrude in what will clearly be a more elaborate decision making process into the future would be something of a red herring and may not be of considerable assistance to the appellant. However, that will be a matter for her in the long term.

G A Rea
District Court Judge