



GANGMASTERS APPEAL TRIBUNALS

Appellant: SVC Technical Limited

Respondent: The Gangmasters & Labour Abuse Authority

Heard at: Manchester

On: 18 May 2021

Before: Employment Judge McDonald

REPRESENTATION:

None (case decided on the papers)

JUDGMENT

The Appellant's appeal against the respondent's refusal to grant it a licence (under reference SVCT0001) fails.

REASONS

1. The Appellant appealed against the Respondent's decision to refuse to grant it a Gangmasters' licence. The parties had agreed that the appeal could be dealt with on the papers without an oral hearing. I decided that the case was one where it was appropriate to decide the case on the papers. I had before me a copy of the Appellant's appeal document together with a bundle ("the Bundle") consisting of the Respondent's Reply to the appeal and supporting documents 1-26.

Findings of Fact

2. The Appellant submitted an application for a Gangmasters licence under application number SVCT0001 on 23 July 2020. The nominated Principal Authority ("PA") in that application was Mrs Amanda Simpson.

3. Mrs Simpson was also the PA for licence SVCG0002, held by SVC Group Limited. On 17 June 2020 SVC Group Limited passed a winding up resolution. Mrs Simpson, as the PA for SVC Group, did not notify the Respondent at that point that SVC Group was in liquidation.
4. On 22 July 2020 Mrs Simpson phoned the Respondent to ask about transferring SVC Group's licence to the Appellant. She explained that SVS Group had been undergoing a restructure but did not mention the fact that it had gone into liquidation.
5. There had been a prior call between SVC Group and the Respondent on 25 June 2020. Liquidation was not mentioned during that conversation, which was between Melanie Carpenter, another director of SVC Group, and the Respondent.
6. In her Principal Authority resumé form submitted on 25 August 2020 by Mrs Simpson in support of the application for a licence for the Appellant (Doc 20) she refers to previous experience running a recruitment business but makes no mention of the fact that SVC Group Limited had entered into liquidation. The Respondent in its Reply (paragraph 7) refers to the fact that Mrs Simpson had also been a director of another company, Stour Valley Group Limited, which had entered into liquidation. That is not mentioned in the resumé. The resumé form (page 1) stresses the need to complete the document accurately and that the Respondent will "consider inaccurate or deliberately misleading information as a potential failure of the fit and proper persons test". At page 2 (box 4) of the resumé form, it asks for details of the PA's previous experience in managing a relevant business, and states that "where any example resulted in the business failing with associated Crown or other debts, or an adverse sanction of any kind, please provide relevant information". At page 4, the form includes a declaration and consent which includes a statement that "the information given in this form and any supporting material is correct to the best of my knowledge and belief and I have not deliberately omitted any necessary material or make an incorrect statement".
7. On 21 October 2020 Inspector Martin Lowe of the Respondent conducted an interview with Mrs Simpson. This was the first time that the liquidation of SVC Group was mentioned. That was despite the fact that there had been numerous contacts between Mrs Simpson and Mr Lowe by email prior to that date setting up the interview. The liquidation of SVC Group was therefore disclosed for the first time more than four months after the liquidation had taken place.
8. During the interview, Mrs Simpson told Inspector Lowe that SVC Group had paid up its VAT and there was a small amount of PAYE owing. The report for creditors relating to that company (document 25) prepared by CVR Global LLP showed in fact that £104,397 of the unsecured claims in relation to SVC Group was money owed to HMRC. That company's statement of affairs (document 1) showed £65,503 owed to HMRC for PAYE and £30,233 for VAT.
9. As I say, the interview on 21 October 2020 was the first time that Mrs Simpson had informed the Respondent of the liquidation of SVC Group. She subsequently confirmed that in an email to the Respondent dated 23 October 2020 (document 23).

10. On 18 February 2021 the Respondent decided to revoke the licence for SVC Group (SVCG0002) with immediate effect (Licence Decision Report at document 8). The reason for that was that it had decided that Mrs Simpson no longer complied with the fit and proper person test in Licensing Standard 1.1. That was because it concluded that although SVC Group was in liquidation it had not been notified of that despite Mrs Simpson contacting the Authority on at least two separate occasions during the winding up process, and therefore Mrs Simpson had not been candid and truthful with the Respondent and she was not deemed a fit and proper person.

11. There is a factual error in Doc 8. It refers to Mrs Simpson having contacted the Respondent by telephone on two occasions. One of those is a reference to the telephone call made by Melanie Carpenter to the Respondent on 25 June 2020.

12. On 26 February 2021 the Respondent wrote to Mrs Simpson as PA and director of SVC Group to inform her that the licence for that company (SVCG0002) had been revoked (Doc.9). The decision letter confirmed that this was for non-compliance with Licensing Standard 1.1 which requires that, “the licence holder, Principal Authority, and any person named or specified in the licence, must at all times act in a fit and proper manner”. It pointed out that the factors the Respondent consider in deciding whether that standard is met include, “whether the Principal Authority...and/or any other person named or otherwise specified in the licence has not been candid and truthful in all their dealings with any regulatory body”. The letter stated that it was clear that Mrs Simpson had been a director of SVC Group when it went into liquidation, and that at no point during her conversation with the Respondent did she advise it that SVG Group was in the process of being wound up or had entered liquidation. It also noted that it was only during the Appellant’s application for a licence that the liquidation of SVC Group had come to light.

13. The decision not to grant a licence to the Appellant was also notified on 26 February 2021 (document 6). The reason for that decision was that under paragraph 5.8 of Part 1 of the licensing standards:

“The Respondent will usually automatically refuse applications where it is proportionate to do so in the following circumstances:

- If an applicant, Proposed Principal Authority and/or any person named or specified in the application has been found not to be fit and proper.

This applies for at least two years from the date of that decision.”

14. The decision letter went on to note that as the PA of SVC Group Limited Mrs Simpson had been deemed not to be fit and proper person leading to the revocation of licence SVCG0002, and that that was something that had to be taken into account in considering the licensing application for the Appellant. It concluded that as Mrs Simpson had been deemed not fit and proper for not being candid and truthful in relation to SVCG0002, the Respondent could not approve the Appellant’s application SVCT0001 for a licence while she was the nominated PA.

15. There was no appeal against the decision to revoke SVC Group’s licence SVCG0002.

16. The appeal against the decision not to grant a licence to the Appellant in application SVCT0001 was lodged on 8 March 2021. The grounds for the appeal were:

“We understand that we were in the wrong not to inform [the Respondent] of the SVC Group Limited liquidation and we apologise for this. Due to COVID-19 and the closing of the company, this was an extremely upsetting time and this was overlooked. Amanda Simpson had a telephone conversation with Martin Lowe on 21 October 2020 informing him of the liquidation of SVC Group Limited in June 2020. Information regarding the liquidation of SVC Group Limited was to [sic] Martin Lowe on 23 October 2020 and on 15 December 2020.”

Relevant Law

17. The provisions of the Gangmasters (Licensing) Act 2004 (“The Act”) sets out the requirement for those acting as a Gangmaster in the fields of agriculture and other certain sectors to hold a licence issued by the Respondent and that those who do not hold such a licence are prohibited from acting as a Gangmaster (see Section 6 of the Act).

18. The Act provides that the Respondent “may grant a licence if it thinks fit” (section 7(1) of the Act). A licence can be granted subject to such conditions as the Respondent thinks fit (section 7(5) of the Act).

19. Regulation 8 of the Gangmasters (Licensing Authority) Regulations 2015 provides that for the purposes of the exercise of the Respondent’s functions under Sections 1, 7, 8 and 9 of the 2004 Act and rules made under section 8, in determining —

“(1) (a) the criteria for assessing the fitness of an applicant for a licence or a specified person, and

(b) the conditions of a licence and any modification of those conditions, the Respondent shall have regard to the principle that a person should be authorised to act as a Gangmaster only if and in so far as his conduct, and the conduct of a specified person, comply with the requirements of paragraph (2).

(2) The requirements are:

(a) the avoidance of any exploitation of workers as respects their recruitment, use or supply; and

(b) compliance with any obligations imposed by or under any enactment in so far as they relate to, or affect the conduct of, the licence holder or a specified person as persons authorised to undertake certain activities.”

20. The Gangmasters (Licensing Conditions) Rules 2009 (“The Rules”) set out the procedure for licensing Gangmasters covered by the Act. Rule 4 and the Schedule to the Rules specify the licence conditions that apply to licence holders.

21. The Respondent has published Licensing Standards and the version relevant to the Appellant's appeal are those which were issued in January 2020 (Doc.3 of the Bundle).

22. There are eight Licensing Standards set out in the January 2020 version issued by the Respondent which are as follows:

- Licensing Standard One: Fit and proper test
- Licensing Standard Two: Pay and tax matters
- Licensing Standard Three: Forced Labour and mistreatment of workers
- Licensing Standard Four: Accommodation
- Licensing Standard Five: Working Conditions
- Licensing Standard Six: Health and safety
- Licensing Standard Seven: Recruiting Workers and contractual arrangements
- Licensing Standard Eight: Sub contracting and using other labour providers

23. The Respondent conducts inspections of licence holders intended to test against the eight relevant standards set out above. Each standard has an associated score and those which are deemed to be "critical" are worth 30 points. If an inspection score results in a score of 30 or above, the holders licence will usually be revoked or refused.

24. Licensing Standard One is the standard central to the appeal in this case. It is a "critical" standard and requires that:

"The licence holder, Principal Authority and any person named or specified in the licence must at all times act in a fit and proper manner."

25. Section 10 of the Act and the provisions of the Gangmasters (Appeal) Regulations 2006 ("the Appeal Regs") govern the process by which an affected licence holder may seek to challenge the decision of the Respondent to refuse to issue or to modify or revoke a licence. The Appeal Regs provide for an Appointed Person to be appointed to hear and determine each appeal. The Appointed Person can either allow or dismiss the appeal (reg.21(1) of the Appeal Regs).

26. The Appeal Regs do not set out the nature of the appeal and there is no higher court authority on the approach to be adopted. I agree with and adopt the approach taken by the **Appointed Person in Gary Cook trading as Gary's Labour Agency v the Respondent (198/E/R)**, which is that:

- a. An appeal under the Appeal Regs is a re-hearing;
- b. I should have regard to the intentions underpinning the regulatory regime under the Act;
- c. I should pay careful attention to the reasons given in this case by the Respondent's decision maker for refusing the application for the Licence;

- d. I should apply the regulatory regime as if I was standing in the shoes of the Respondent's decision maker;
- e. Whether the Appellant was compliant with the relevant Licensing Standard(s) has to be determined at the date of the decision (in this case to refuse the application for a Licence); and
- f. Evidence after that decision date will usually be inadmissible (unless it falls within **Ladd v Marshall [1954] EWCA Civ 1**).

27. It is clear that the purpose of the Act and the role of the Respondent is to protect workers in agriculture, shellfish gathering and associated processing and packaging sectors from potential exploitation; to ensure that they are able to work within a safe environment and that they are appropriately remunerated and engaged under fair terms and conditions. The licensing conditions applied and enforced by the Respondent are designed to achieve that end and to protect against exploitation or the potential for exploitation within the aforementioned sectors.

Discussion and Conclusion

28. This is the appeal against the granting of a licence in application SVCT0001. There is no appeal against the revoking of the licence in SVCG0002. There is therefore no appeal against the basis for the revocation of licence SVCG0002 i.e. that Mrs Simpson is not a fit and proper person to be a Principal Authority because she had not been candid and truthful in her dealings with the Respondent as a regulatory body. Indeed, the appeal in this case accepts that the Appellant was in the wrong not to inform the Respondent of the liquidation.

29. Since there is no challenge to the finding that Mrs Simpson was not a fit and proper person to be a PA in SVCG0002, I find that the Respondent was entitled to decide that an application for a licence which nominated her as the PA should not be granted. As paragraph 5.8 in Part 1 of the licensing standards (document 3) makes clear, an application will usually automatically be refused if a proposed PA has been found not to be fit and proper. That applied in this case and therefore justified a decision to refuse the licence. Put another way, there was an unchallenged finding that the proposed Principal Authority in SVCT0001 was a person who had not at all times acted in a fit and proper manner, and that was therefore a breach of licensing standard 1.1.

30. To the extent that it is necessary to do so, I find that the Respondent was entitled to conclude that Mrs Simpson had not been candid and truthful in her dealings with the Respondent. It is clear that she was fully aware that SVC Group had entered into liquidation and there were a number of opportunities for her to disclose that to the Respondent before she did so on 21 October 2020. The requirement of candour and truthfulness in Licensing Standard 1.1. is supplemented by Licensing standard 1.4 which makes it clear that a licence holder must notify the Respondent within 20 working days if the business enters into liquidation. It is clear, therefore, that there is a duty on a PA to be proactive in informing the Respondent if a licence holding business has entered into liquidation.

31. The grounds for appeal suggests that notifying the Respondent of SVC Group's liquidation was "overlooked" due to COVID and the closing of the company. I find that that does not provide a reasonable explanation for the failure to notify the Respondent. Even though the decision report relating to the revoking of SVCG0002 is wrong that Mrs Simpson had contacted the Respondent twice (on 25 June 2020 and 22 July 2020), the transcript of the conversation between Mrs Simpson and the Respondent on 22 July 2020 (document 12) involves a discussion of the restructuring of the company (i.e. SVC Group) and a discussion about the transfer of the licence. I do not find it plausible that when discussing the restructuring the failure to mention that that company was in liquidation was a matter of it being "overlooked". I find that the Respondent was fully entitled to conclude that Mrs Simpson was not being candid and truthful in her dealings with the Respondent by not disclosing the liquidation.

32. If it had been necessary to do so I would have decided that the Respondent was fully entitled to conclude that that requirement of candour and truthfulness had been breached, and that Mrs Simpson had therefore failed the fit and proper test in licensing standard 1.1.

33. I acknowledge that Mrs Simpson did disclose the liquidation of SVC Group to Inspector Lowe on 21 October 2020, but that was in the context of being specifically asked about it. She had made no such disclosure in the resumé for the Principal Authority filed on 25 August 2020 despite the wording of the form making it absolutely clear that previous company failures should be disclosed.

34. In those circumstances the appeal against the refusal of the licence for the Appellant (application SVCT0001) fails.



Employment Judge McDonald

Date 19 May 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON

24 May 2021



FOR THE TRIBUNAL OFFICE