

IN THE MATTER OF AN APPEAL BY RAJA AND SONS (STOURBRIDGE) LTD.

PURSUANT TO THE GANGMASTERS (APPEALS) REGULATIONS 2006

BETWEEN

Raja and Sons (Stourbridge) Ltd.

Appellant

and

GANGMASTERS AND LABOUR ABUSE AUTHORITY

Respondent

Decision and Statement of Reasons of the Appointed Person in relation to the above matter

The appointed person in relation to the above matter.

1. Upon consideration of the Appeal and accompanying papers lodged by the Appellant and upon reading the reply to the Appeal and accompanying papers lodged in response by the Respondent, it is the decision of the appointed person Employment Judge Dean that the Appeal lodged by the Appellant is dismissed.

Statement of Reasons

Background

1. The Principle Authority ("PA") of the Appellant is Miss Lobina Azeem. The Appellant submitted an application to the Gangmasters & Labour Abuse Authority on the 31 January 2018 for licence to be granted for Raja & Sons (Stourbridge) Limited and, on 26 February 2018 an application inspection in relation to the Appellant was undertaken. The detailed inspection report was submitted to the GLAA Licensing Team on the 20 March 2018 and as a consequence on the 3 May 2018, a decision was taken to refuse the grant for licence because of non-compliance with Licensing Standard 1.1 Critical Fit & Proper (30 points) and non-compliance with Licensing Standard 1.2 Critical: Principle Authority Competency Test (30 points). The Appellant submitted an appeal on the 5 May 2018.
2. I am the appointed person to consider this Appeal pursuant to Regulation 3 of The Gangmasters (Appeals) Regulations 2006 (S/2006 No. 662) ("The Gangmasters Appeal Regulations").

The Issues

3. The sole issue to be determined by me in considering the Appeal is whether the Respondent was entitled to refuse the Appellant's application for a licence on the evidence before them (pursuant to Regulation 5(1)(A) of The Gangmasters Appeals Regulations 2006).

Evidence

4. In considering the Appeal raised by Raja & Sons (Stourbridge) Limited, I have considered the documents contained within the bundles that have been submitted to me by the Appellant and the Respondent to the Secretariat. Both parties in this Appeal have invited me to consider the merits of the Appeal on the basis of papers alone and, having had regard to the nature of the Appeal, I consider it appropriate to determine the Appeal on the papers having regard to any submissions made to me by the parties. Directions have been given to the parties and I have considered the submissions and documentary evidence before me that has been presented.
5. For the avoidance of doubt, having issued directions that were sent to the parties and were dated the 17 August 2018, the Respondent has submitted a bundle that is made up entirely of documents provided by the GLAA. I've been provided also with copy email correspondence from the Respondent to the Appellant inviting the PA to submit any additional documents that she wished to have included in the bundle and none were provided. Subsequently, the PA for the Appellant has confirmed to the Secretariat that she did not wish to submit any additional documents to support the Appeal other than the letter setting out the basis upon which she wished the refusal decision to be reviewed and appealed.
6. In addition to the Respondent's bundle of documents, which extends over some 215 pages, I have been provided with witness statements on behalf of the Respondents from Mr Geoffrey William Tompkins, a Compliance Officer for the Gangmasters & Labour Abuse Authority ("GLAA") who conducted the application inspection in respect of the Appellant's application to consider and assess the applicant's level of compliance with the GLAA's licensing standard and to submit it to the Authority the Inspection Report, and a witness statement from Nicole Baughan who was employed by the GLAA in the capacity of an Appeals Officer who considered the inspection report and made the Licence Decision to refuse the application.

The Law

7. Section One of the Gangmasters (Licensing) Act 2004 ("2004 Act") establishes the Gangmasters Licensing Authority subsequently referred to as the Gangmasters & Labour Abuse Authority ("GLAA"). Section Four provides a person acts as a Gangmaster if he supplies a worker to do work, to which the 2004 Act applies for another person.
8. Section Six provides: -

“A person shall not act as a Gangmaster except under the authority of licence and to act as a Gangmaster without the authority of the licence is an offence under Section 12”.

9. Section Seven provides: -

“The GLAA may grant a licence if it thinks fit. A licence granted to a body corporate authorises activities carried on by the body through such person representing or acting on behalf of the body as a named or otherwise specified in the licence. The Licence Authority authorises activities by the holder of the licence and that persons employed or engaged by the holder of the licence for a named or otherwise specified in the licence”.

10. In the present case, the GLAA determined not to grant a licence to the Appellant because it was not satisfied the Appellant would (if granted a licence) comply with the following licensing standards as detailed in the Gangmasters (Licensing Conditions Rule) Rules 209 (“2009 Rules”) and the GLAA’s Licensing Standard 2012 which provide: -

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

Standard 1.2: “Critical: Principle Authority Competency Test The GLAA will consider the Principle Authority Competency & Capability to hold a GLAA licence in deciding whether the Principle Authority is “fit and proper” in making this decision regard will be given to matters including, but not limited to whether the Principle Authority has an understanding of the GLAA Licensing Standard and/or has sufficient management processes”.

11. The licence decision policy August 2016 confirms that in respect of all critical licensing standards, a failure to meet critical standards are designated 30 points each and in making a decision where the inspection score is of 30 points or more the application for a licence will usually be refused or revoked.

12. I remind myself that the purpose of the Act is to protect workers in agriculture and certain other industries and that the rules and regulations which provided for the purpose of exercising the functions of the Gangmasters of the GLAA are to avoid any exploitation of workers and respect their recruitment, use or supply and in compliance with the obligations imposed by or under any enactments.

13. Compliance with the Licensing Standards is assessed through inspections and there are four categories of Licensing Standards, each associated with a score, the most serious category being critical being associated with 30 points, if a company scores 30 or more, the licence is refused.

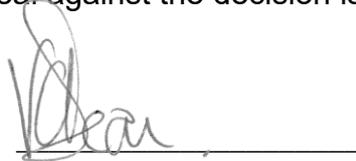
Findings of Fact

14. The Appellant was subject to an inspection undertaken on the 26 February 2018. A copy of the Inspector's report compiled by Mr Tompkins is included in the bundle pages [159-180] it is based upon the notes taken at the inspection [142-158]. The Inspection Report records the history of the incorporation of Raja & Sons (Stourbridge) Limited, Company No. 10242735 which was incorporated on the 21 June 2016. The company had been set up by the PA's Father Mohammed Azeem, also known as "Raja" who was himself the PA of Foxw0001-Foxwell Limited a business that had had its GLA Licence revoked on the 6 March 2013. (Foxwell Limited Decision Report [64-83] and Foxwell Limited Decision Letter 06 March 2013 [84-97]). Foxwell's GLAA Licence had been revoked on the 6 March 2013 with 214 points and Mr Azeem had been found to not be "fit and proper". Since the revocation of the Foxwell GLA Licence, Mr Azeem had been in contact with the GLAA on a number of occasions making enquiries about the prospects of making a fresh application for a licence with him as PA and the likelihood of such licence being granted including note of phone call with Mr Azeem on the 7 October 2013 [98]. Correspondence between Mr Azeem and the Respondents 30 September 2015 [99] Note of correspondence Mr Azeem and Respondents 2 October 2015 [100]. Most recently on the 6 June 2017, Mr Azeem had written to the Respondents to which a response had been sent on the 9 June 2017 [109-113] in which Mr Azeem had enquired whether, if he had wanted to apply for another GLAA licence, the licensing team were able to give him a clear indication as to whether he would be able to obtain a licence if he did apply. The response indicated that a decision could not be taken without an application being submitted and Mr Azeem's attention was drawn to paragraphs 5.8 and 5.11 of part one of the Licensing Standards. No application was received from Mr Azeem in light of that correspondence.
15. On the 24 July 2017, Miss Azeem the PA in respect of the current application was appointed as a Director of the Appellant business [114-115] and she was registered as a person with significant control of the Appellant [116-117].
16. Following the Appellant's application for a licence on the 23 January 2018, the application was initially considered under paragraph 5.9 of Part 1 of the Licensing Standards, however the decision was made not to refuse the application automatically, but to conduct an application inspection of the Appellant as an automatic refusal was considered not to be proportionate in the circumstances [141].
17. The PA of the Appellant, Miss Lobina Azeem, confirmed her date of birth to be 26 April 1997 [122] and her place of residence, she describes herself as Managing Director of the business living at 16 Carlton Avenue, Stourbridge.
18. Following the inspection undertaken at the business address, a room in a house belonging to the PA's cousin, an Inspection Report was provided.

19. The Inspection Report identified non compliances had been discovered and a licensing score of 60 points was accrued as measured against Licensing Standards [31-63] and a record of the decision and in accordance with the Licensing Decision Policy, [24-30] a Notice of Licence Refusal was sent to the Appellant on the 3 May 2018 [1-7].
20. I have been referred to Case No. 22/E/R Solid Gold Services Limited - v- Gangmaster Licensing Authority and the decision of the appointed person R.F. Ashton. That decision reminds me that the question of whether the Appellant was compliant with the Licensing Standard has to be determined at the date of the inspection and not at some later date.
21. Following the Inspection at its close, the PA on behalf of the Appellant was required to provide to the GLAA further information including a copy of the agreement with her Accountant and a copy of the bank statement showing the transfer of the licence fee from the PA's savings account to her business or current account for the business of the Appellant [158]. Notwithstanding, the request made at the Inspection Meeting, Mr Tompkins emailed the PA on the 28 February and subsequently repeated the request for the additional information to be provided. Mr Tompkins identified to the PA those areas in reference to the Licensing Standards which caused concern and invited her comment on any matters raised, or anything additional to be included within the Report [182-184]. The Appellant did not provide the information requested or respond.
22. The Licensing Application Decision [1-7] detailed in respect of each area of the non-compliance with the Licensing Standards Critical 1.1 and 1.2. The Respondent considered that the Appellant had failed to comply and that the GLA considered that the Appellant had been and would be influenced by a third party (Mr Azeem) who the GLA considered was not fit and proper and the provided the reasons for reaching that conclusion [1-3].
23. I find that based upon the notes of the Inspection and the Report that the conclusions reached by the GLA detailed at paragraphs 5-20 provide a detailed and objective account of the reasons why the Respondent considered that the Appellant and the PA had been and would be influenced by the third party who the GLA considered not fit and proper. The Appellant's principle ground for appeal in relation to Licensing Standard 1.1: that the PA was able to act in a fit and proper manner at all times and had not and would not be influenced by a third party who was considered to be not fit and proper is not accepted by the Respondent. Other than the bare assertion that the Appellant and PA were not influenced by a third party and that the PA had been candid and truthful in all her dealings with the GLAA and had demonstrated a readiness and willingness to comply with the requirements and standards of the regulatory system, the Appellant has provided no supporting evidence. Moreover the Appellant has failed to provide the additional information that the GLA requested following the inspection and indeed has provided no additional information to be included within the bundle of documents that I am invited to consider.

24. I have considered the refusal decision and conclude that the reasons for the refusal, detailed at paragraphs 4-17 clearly describe and articulate the reasons why the Respondent reached the decision that they did.
25. In considering the appeal, I look to the information available to the Respondent at the time of the application, the inspection and any additional information provided at the time that the refusal decision was taken. Based upon the information available to the Inspector, I prefer the account supported by the contemporary note in the Inspectors Notes that the Appellant had indicated that if the business went well, she would consider taking a gap year from her studies. In contrast, in her letter of appeal, the Appellant suggests that she would definitely leave her studies and concentrate fully on the business. The decision was made on the basis that the PA would continue as a full-time student which in turn evidenced that she would have only limited time in which to run a business. The PA's statement at the inspection together with her other replies, establishes an objective view that the PA had not been candid and truthful regarding her role at the Appellant.
26. The PA failed to demonstrate that she had a full understanding of the important financial aspects of the business and notwithstanding that, she suggested she had a written agreement in place with AKA the Accountants who would manage the Appellant's payroll sadly that agreement was not produced to the Respondent prior to the time of which the refusal decision was taken, nor has it been provided in support of the Appeal.
27. The PA asserted that her father Mohammed Azeem had no involvement in her company. However, notwithstanding the requirement that the PA should produce evidence of her having made payment of the inspection fee herself under the terms of an initial request and then Production Notice, the PA has failed to do so. Based upon the information available to the Respondent, they continue to assert that the Appellant's grounds of appeal have failed to address concerns raised by the GLAA in relation to Standard 1.1. Failure to comply with a Licensing Standard 1.1 is a critical failure attracting 30 points. I concur with the respondents assessment which I find was one reasonably made at the time of the inspection and no additional information has since been produced.
28. In relation to the Appellant's failure to comply with critical Licensing Standard 1.2, the Principle Authority Competency Test, the Respondent in their reply to the notice and grounds of appeal at paragraphs 22-24 detail the reasons why, relying upon the Licence Decision Report [186-193] and [190-192] the Appeal should not succeed.
29. The question of whether the Appellant was compliant with the Licensing Standards is to be determined at the date of inspection and not at some later date. The Appellant failed to provide information to the Respondent prior to the licensing refusal decision and the Appellant's application for notice of appeal and the accompanying correspondence, has not since provided sufficient information to objectively demonstrate that compliance would be demonstrated.

30. Having reviewed the papers as requested by the parties, I reach the conclusion that the Appellant was not sufficiently advanced in its preparations at the time of the Inspector's visit.
31. Notwithstanding the assertions made by the Appellant and the PA in the appeal and the Appellant's failure to provide the documentation required, following the inspection, I conclude that the scoring system set out in the Licensing Standards was properly applied by the Inspector and the Respondent acted appropriately in rejecting the Licence Application.
32. In accordance with my findings, the decision by the Respondent to refuse the Appellant's licence was taken on a valid ground and the Appellant's appeal against the decision is therefore dismissed.



Employment Judge Dean

2 November 2018

Person appointed by the Secretary of State to determine
Appeals under the Gangmasters (Appeals) Regulations 2006.

Order sent to Parties on 5 November 2018

Lisa Ashworth

FOR THE TRIBUNAL OFFICE