

CASE NUMBER: 38/E/RIN THE MATTER OF THE GANGMASTERS(APPEALS) REGULATIONS 2006BETWEEN:

Greenforce (Midlands) Limited

AppellantAnd

The Gangmasters Licensing Authority

RespondentDECISION

The appeal against the refusal of a licence is dismissed.

REASONS

1. I have been appointed to determine this appeal pursuant to regulation 3 of the Gangmasters (Appeals) Regulations 2006.
2. With the consent of the parties, the appeal was determined without an oral hearing.
3. I have had regard to a bundle of documents submitted by the parties and in particular to:
 - (a) The appellant's licence application form dated 15 June 2009;
 - (b) The respondent's inspection report prepared by Linda Boyle and dated 4 September 2009;
 - (c) The respondent's letter of refusal dated 19 April 2010;
 - (d) The Notice of Appeal dated 30 April 2010;
 - (e) The respondent's response to the Notice of Appeal dated 7 June 2010.

In addition I have had regard to the provisions of The Gangmasters (Licensing) Act 2004 ("the Act"), The Gangmasters (Licensing Authority) Regulations 2005 ("the Regulations") and the Licensing Standards published by the respondent under those regulations.

4. I bear in mind that the purpose of the Act is the protection of workers in agriculture and other industries. The Act provides that the Licensing Authority established under the Regulations may make such rules as it think fit in connection with the licensing of persons acting as gangmasters (section 8) and that, in particular, those rules may prescribe the requirement to be met before a licence is granted.
5. The Licensing Standards published by the Authority and applicable to this application are those issued in April 2009.
6. By its application dated 15 June 2009 the appellant sought a licence under the Act to operate as a labour provider, stating that workers would be supplied to labour users on the basis that they would be employees. An inspection was carried out by Linda

Boyle on 4 September 2009 and, as a result of that inspection, a decision was made to refuse the application. That decision was communicated by letter dated 19 April 2010.

7. The Licensing Standards state that the Authority adopts a proportionate approach when applying the standards and that the Authority is concerned with identifying the more persistent and systematic exploitation of workers rather than concentrating on isolated non-compliances *unless the non-compliance is "critical" in its own right* (emphasis added). There are eight licensing standards and compliance with those standards is assessed through inspections. A failure to meet a particular standard attracts a score and the fail score for an inspection is 30 points. Standards which are designated as "critical" attract a failure score of 30 points.

8. The standards which the Authority determined to have been failed in this case were:
(a) Standard 1.1 – Fit and Proper

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

This standard goes on to state that the Authority will assess all relevant factors in considering whether a licence holder acts in a fit and proper manner and that the factors to be considered will include, but are not limited to, whether the Principal Authority.....has been influenced by a third party who the Authority considers not fit and proper. In the addition, this standard states that the Authority will also consider refusing an applicationonce an applicant is found to have been connected to someone who has been deemed to be not fit and proper for two years from the date of the fit and proper decision.

(b) Standard 1.2 – Principal Authority Competency Test

This states that the Authority will consider the Principal Authority's competence and capability to hold a licence in deciding whether the Principal Authority is fit and proper. In making this decision regard will be given to matters including whether the Principal Authority has an understanding of the Licensing Standards and/or has sufficient management processes, including being able to provide.....a draft worker contract and a draft example of how a worker file will be compiled. Each of the above standards is designated as critical, attracting a score of 30 points.

9. The Principal Authority for these purposes is the person responsible for the day to day running of the business. In this case that person was named on the application form as being Mr Mohammed Arif Dad.

10. In refusing the application for a licence the Authority stated that the appellant failed to meet each of the above standards. With reference to standard 1.1 the letter of refusal stated:

"The company accountant at the time of your application was a Mr Gurpreet Roewal. Mr Roewal previously held a GLA licence which was revoked and he is not considered to be a fit and proper person, not was he so considered when your application commenced and when the inspection took place. Your connection with Mr Roewal is demonstrated by the fact that the e-mail address submitted as your personal e-mail address was given as roewal@hotmail.com. In addition, the documents supplied in support of your application were supplied by Mr Roewal. You admitted to inspectors that Mr Roewal had assured you he could provide you with a contract and workers. The Authority's position is that you have been influenced by Mr Roewal."

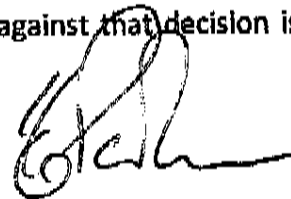
With reference to standard 1.2 the letter stated:

".....You could not demonstrate an understanding of the GLA Licensing Standards April 2009. In particular you could not demonstrate that you had any knowledge as to the content of those documents. You had not prepared a draft example of a worker file nor could you describe what documents might be contained within a worker file, such as a contract of employment etc. You were unable to demonstrate and understanding of Greenforce's management procedures such as Health and Safety and Transport."

11. The inspection report shows that Mr Dad stated that Mr Roewal was his accountant and that he had known him for ten years. The e-mail address referred to is indeed given on the application form as Mr Dad's e-mail address. I accept for present purposes the Authority's statement that Mr Roewal held a licence which was revoked and that the authority regards Mr Roewal as a person who is not fit and proper. That is a matter peculiarly within the authority's knowledge and it does not appear to be challenged. I have no evidence as to the date of revocation. Mr Dad stated to the inspector that he had been advised by Mr Roewal, that Mr Roewal provided the paperwork to the Authority on the appellant's behalf. Mr Dad asked questions about Mr Roewal's failings and said that Mr Roewal had stated that he could provide workers. Mr Roewal had telephoned Mr Dad on a number of occasions to find out if the licence had been granted.
12. In his Appeal Notice Mr Dad states that he has no connection with Mr Roewal. He was a local accountant to whom he went to obtain a Government Gateway to fill in the application form. Mr Dad states that he used Mr Roewal's computer at that time. The authority should therefore not assume that he was influenced by Mr Roewal.
13. In response, the authority points to what Mr Dad is recorded as having said to the inspector at the time of the inspection. Plainly Mr Dad does have a connection with Mr Roewal. I have no evidence as to when Mr Roewal's licence was revoked and so cannot find that, at the date of the inspection (which is the material date for these purposes) Mr Dad or his company was connected to someone whose licence had been revoked in the preceding two years. However, there was ample evidence that Mr Dad had been influenced by Mr Roewal in making his application for a licence. Mr

Roewal had provided the paperwork to the authority and had indicated that he would provide workers to Mr Dad if the application for a licence was successful. The authority was entitled to conclude on the basis of what Mr Dad himself stated that Mr Roewal was Mr Dad's accountant and so providing "influence" upon his business affairs.

14. Accordingly I conclude that the respondent was entitled to refuse the licence on the basis of standard 1.1 since the matters relied upon represented non-compliance that was critical in its own right.
15. Turning then to standard 1.2, the inspection report shows that a draft employment contract was provided to the Authority by Mr Roewal, along with a copy of a payslip. Mr Dad indicated that he intended to leave the handling of the payroll to Mr Roewal. Mr Dad himself was not conversant with the contents of the contract, nor apparently with the obligation to pay the National Minimum Wage. He was unaware of the legal obligation to provide annual leave. Mr Roewal did not have a draft worker's file prepared and available and did not know what had to be included in such a file.
16. In relation to this standard, the appellant's Notice of Appeal states that Mr Dad attended a Birmingham Chamber of Commerce seminar to learn about business and approached certain named local firms who advised him to seek a licence. No information is provided about when Mr Dad took these steps nor is it specifically suggested that taking these steps has enabled Mr Dad to fill the gaps in his knowledge that existed at the time of the inspection.
17. Compliance with the licensing standards is to be determined at the date of the inspection. The clear evidence derived from the inspection demonstrated that Mr Dad lacked the competence and capability to hold a licence and was therefore not to be regarded as a fit and proper person to perform the role of Principal Authority. The respondent was entirely justified in regarding these failing as a critical non-compliance with the standard.
18. I therefore determine that the respondent's decision to refuse a licence to the appellant was correct and the appellant's appeal against that decision is therefore dismissed.



H. C. Parker
Appointed Person
18 July 2010