

STATE OF NEW YORK
DEPARTMENT OF STATE

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In the Matter of the Complaint of

**DEPARTMENT OF STATE
DIVISION OF LICENSING SERVICES,**

Complainant,

DECISION

-against-

**CHRIS DUNLEAVY and TRI CITY AUTO
RECOVERY, INC.,**

Respondents.

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Pursuant to the designation duly made by the Hon. Gail S. Shaffer, Secretary of State, the above noted matter came on for hearing before the undersigned, Roger Schneier, on April 8, 1993 at the office of the Department of State located at 162 Washington Avenue, Albany, New York.

The respondents, of 309 Union Street, P.O. Box 992, Schenectady, New York 12301, having been advised of their right to be represented by counsel, appeared pro se.

The complainant was represented by Compliance Officer William Schmitz.

COMPLAINT

The complaint in the matter alleges that the respondents operated an unlicensed private investigator's branch office.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondents by certified mail (Comp. Ex. 1).

2) Tri City Auto Recovery, Inc. is duly licensed as a private investigator, with Chris Dunleavy and Ed Dunleavy as its qualifying officers, and with an office at 309 Union Street, Schenectady, New York (Comp. Ex. 4).

3) Since 1985 the respondents, who engage in the business of automobile repossession, have operated a storage depot at 6014

Drott Drive, East Syracuse, New York, for which no branch office license has been applied for or obtained (Comp. Ex. 3). The respondents employ two persons at that location whose duties are to repossess automobiles. In carrying out those duties those employees must interview neighbors and credit references of the debtors and consult postal records in order to locate those debtors and their automobiles. They receive their assignments in the form of telefaxes sent from the Schenectady office to the East Syracuse depot, and upon completion of an assignment telefax their reports from East Syracuse to Schenectady. Copies of records relating to the repossessions are maintained in the East Syracuse office. All other administrative functions, including personnel matters are handled in Schenectady.

4) In June, 1986, the respondents inquired of Patrick J. Cea, Esq., Special Counsel in the Department of State, as to whether a private investigator's license is required to engage in the business of repossession. Mr. Cea replied that no such license was needed, but with the caveat that "if it is necessary for you to ascertain the whereabouts of the debtor or the auto vehicle to be repossessed, then a license may be required as a private investigator." (Resp. Ex. A, emphasis added).

OPINION

General Business Law (GBL) §72 provides that any person or corporation who or which intends to conduct the business of private investigator must first obtain a license to do so for each office and branch office to be owned, conducted, managed or maintained by such person or corporation. The "business of private investigator" includes, among other things, the making of investigations with the purpose of obtaining information with regards to the movements and whereabouts of any person (GBL §71(1)).

The respondents argue that a branch office license is not required for their East Syracuse location because it is merely a facility for the storage of repossessed vehicles. However, the evidence establishes that in addition to that storage function, the facility also serves as a base of operations for two employees who conduct investigations to locate the whereabouts of debtors. Those employees receive their job assignments in East Syracuse, and file their reports, copies of which are maintained at that location, from East Syracuse. Such activities make the facility a branch office for which a license must be obtained.

As an additional defense, the respondents argue that it has never been made clear that a license as a private investigator is required to engage in the business of automobile repossession. In support of that defense they presented Mr. Cea's letter which, they rightly contend, was less than definitive when it said that if the whereabouts of the vehicle or debtor had to be ascertained then a

license "may" be required. They contend that other inquiries made verbally over the years produced equally less than emphatic responses. Further, in an attempt to show that the business of automobile repossession in New York is generally conducted by unlicensed individuals and companies, they offered in evidence a copy of the Syracuse telephone Yellow Pages, which lists eight repossession services (including the respondents'), seven of which the respondents claim are not licensed private investigators.¹ While not excusing or justifying the respondent's failure to obtain a license for the East Syracuse facility, their apparently honest confusion as to what a branch office is and, what is more, as to whether they needed a license as a private investigator to begin with², is mitigating with regards to the seriousness of the violation.

Also to be considered in mitigation is the fact that the investigation which disclosed the unlicensed activity was not the result of a complaint. Rather, it arose from information contained in a preliminary license application submitted by one of the respondents' East Syracuse employees. There is no evidence that anyone was in anyway harmed as a result of the lack of a branch license. The respondents are admonished, however, that they must obtain a branch office license for the East Syracuse facility, and for any other such facilities which they maintain or operate in the State of New York.³

¹ A copy of those listings is being supplied to the Director of Licensing with the recommendation that an investigation be conducted to determine if there is unlawful investigative activity being engaged in by the listed repossession services, and that, should the investigation disclose such violations of law, the Attorney General be requested to prosecute criminal actions pursuant to GBL §85.

² The respondents' license was originally obtained when respondent Dunleavy's father, Ed Dunleavy, was operating the business and also engaged in investigations other than those required for repossessions.

³ While not at issue in the present matter, I would be remiss if I did not comment on one other aspect of the testimony offered by the respondents. In addition to the repossession business, the respondents operate a credit bureau under the same corporation. The respondents are under the impression, apparently gained from a conversation with an unidentified employee of the complainant, that the persons working in the credit bureau do not need to complete employee statements or be fingerprinted. That is incorrect, as GBL §81 requires that all employees of a licensee, regardless of the capacity in which they work, submit employee statements and be fingerprinted.

CONCLUSIONS OF LAW

Where an automobile reposessor conducts any type of investigation to locate a debtor, that reposessor is required to first obtain a license as a private investigator. Such licenses must be obtained for all offices in or out of which the licensee and/or his/her/it's employees conduct investigative operations. GBL §§71(1) and 72. By failing to obtain such a license for their East Syracuse facility where two of their employees obtain their instructions, from which those employees file their reports, and at which copies of those reports are maintained, the respondents violated GBL §72.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Chris Dunleavy and Tri City Auto Recovery, Inc. have violated General Business Law section 72, and accordingly, pursuant to General Business Law section 79, they are reprimanded therefore.

These are my findings of fact together with my opinion and conclusions of law. I recommend the approval of this determination.

Roger Schneier
Administrative Law Judge

Concur and So Ordered on:

GAIL S. SHAFFER
Secretary of State
By:

James N. Baldwin
Executive Deputy Secretary of State