

STATE OF NEW YORK
DEPARTMENT OF STATE

-----X

In the Matter of the Complaint of

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

Complainant,

DECISION

-against-

EVAN KENNER,

Respondent.

-----X

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 22, 1993 at the New York State Office Building, 65 Court Street, Buffalo, New York.

The respondent, of 4771 Tonowanda Creek, Pendelton, New York 14120, was represented by Lawrence J. Mattar, Esq., Mattar & D'Agostino, 17 Court Street, Suite 600, Buffalo, New York 14202.

The complainant was represented by Scott Nejame, Esq.

COMPLAINT

The complaint alleges that the respondent violated General Business Law (GBL) §81.1 when he employed Vincent Panzarella as an independent contractor to assist him in his work as a private investigator.

FINDINGS OF FACT

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

2) The respondent is, and at all times hereinafter mentioned was, duly licensed as a private investigator (Comp. Ex. 2). Since June 24, 1992 Vincent J. Panzarella has been licensed as private investigator (Comp. Ex. 3).

3) Panzarella is a certified paralegal. From time to time, during the period of October 1988 to October 1990, the respondent

retained and paid him as an independent contractor to search records on file with Erie County and with the City of Buffalo in connection with investigations being conducted by the respondent, and to serve legal process at addresses given to him by the respondent.

During the same period of time Panzarella was employed by Lascola Investigations, Inc. (Lascola), and was paid by Lascola as an employee, not as an independent contractor. The respondent would occasionally retain Lascola to assist him in investigations, and Lascola would, in turn, assign Panzarella to work on the investigations. In those instances Panzarella was paid for his work by Lascola.

OPINION

Pursuant to General Business Law §81.1 a licensed private investigator must supervise to activities of his/her/its employees. Accordingly, such a licensee may not hire an unlicensed independent contractor to act as a private investigator. Matter of the Application of Marsico, 16 DOS 93; Department of State v Bernstein, 58 DOS 87.

The service of process, when not accompanied by an investigation to locate the person to be served, does not require a license as a private investigator. Matter of the Application of Parker, 12 DOS 93. Therefore, a licensed private investigator may, as the respondent did, retain an unlicensed independent contractor to serve process at addresses provided by the licensee. Likewise, there is no provision in the law which would prevent a licensed private investigator from subcontracting investigative work to another licensee, as the respondent did when he retained and paid Lascola to assist him. What remains, then, is the question of whether Panzarella's work in searching government records falls within the scope of activities for which a license as a private investigator is required and, therefore, is the type of work for which a private investigator may not hire an unlicensed independent contractor.

GBL §71(1) defines "private investigator" to

"mean and include the business of private investigator and shall also mean and include, separately or collectively, the making for hire, reward or for any consideration whatsoever, of any investigation for the purpose of obtaining information with reference to any of the following matters...; crime or wrongs done or threatened against the government of the United States of America or any state or territory of the United States of America; the

identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation or character of any person, group of persons, association, organization, society, other groups of persons, firm or corporation; the credibility of witnesses or other persons; the whereabouts of missing persons; the location or recovery of lost or stolen property; the causes and origin of, or responsibility for fires, or libels, or losses, or accidents, or damage or injuries to real property; or the affiliation, connection or relation of any person, firm or corporation with any union, organization, society or association, or with any official, member or representative thereof; or with reference to any person or persons seeking employment in the place of any person or persons who have quit work by reason of any strike; or with reference to the conduct, honesty, efficiency, loyalty or activities of employees, agents, contractors, and sub-contractors; or the securing of evidence to be used before any authorized investigation committee, board of award, board of arbitration, or in the trial of civil or criminal cases."

A literal reading of that statute might lead to the conclusion that the searching of public records falls within the functions for which a license as a private investigator is required, as much of the type of information listed in the statute can be found in such records. Such an expansive reading in this case would, however, go well beyond the intent of the Legislature when it enacted the statute.

"It seems clear that Article 7 of the General Business Law, dealing with the licensing, bonding and regulation of detective agencies, is designed primarily for the protection of the public against 'wilful, malicious and wrongful' acts of private detectives who, in the absence of stringent controls and the requiring of a bond, would be in a position to cause irreparable harm to other members of the community because of the very nature of their work." Schauder v Weiss, 88 NYS2d 317, 321 (Supreme Court Kings County, 1949), aff'd 276 AD 967, 94 NYS2d 748, appeal denied 276 AD 1022, 95 NYS2d 914.

There is no evidence in the record of exactly what kind of records Panzarella searched on behalf of the respondent. It is difficult to conceive, however, of any harm to the public which could arise out of a search of records which are open to everyone. Perhaps that is why, so far as this tribunal is aware, no action has ever been taken to require that persons who engage in the business of searching title be licensed as private investigators.¹

CONCLUSIONS OF LAW

Inasmuch as the evidence establishes that the work which Panzarella did for the respondent in his capacity of independent contractor was not the type of work which requires licensure as a private investigator, the complainant has failed to establish by substantial evidence that by so employing Panzarella the respondent violated GBL §81.1. State Administrative Procedure Act §306(1).

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the charges herein against Evan Kenner are dismissed.

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

¹ "The searching of titles is open to all...." In re Co-operative Law Co., 198 NY 479, 485 (1910).