

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Complaint of

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

Complainant,

DECISION

-against-

FRANK MONTE,

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on February 25, 1999 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent did not appear.

The complainant was represented by Legal Assistant II Thomas Napierski.

COMPLAINT

The complaint alleges that the respondent, a licensed private investigator: Used a statement of services which did not include either a fixed number of hours of services to be performed or a statement that no additional services were to be performed without the written authorization of the client; operated as a private investigator using a name under which he is not licensed; failed to provide a written report to a client in a timely manner; and failed to cooperate with the complainant's investigation by failing to provide it with a copy of his report to, and of receipts for payments received from, a client.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served by certified mail addressed to the respondent, and delivered on January 11, 1999, at his last known business address (State's Ex. 1).

2) The respondent is, and at all times hereinafter mentioned was, duly licensed as qualifying officer under a corporate private investigator's license issued to Frank Monte P.I., Inc., with a business address of 630 Fifth Avenue, Level 20, New York, New York 10111. He is not licensed under any other name (State's Ex. 2 and 3).

3) In or about October, 1997, Julio Abrante contacted the respondent in order to have the respondent help him locate his missing daughter. He met with the respondent at the respondent's office and was given a brochure explaining the services which the respondent provides, and the respondent's business card (State's Ex. 5). On the brochure the respondent's firm was referred to under the names "Monte Investigation Group", " Frank Monte P.I., Inc.", and "Monte's Investigations Pty/Ltd." On the business card it was referred to only as "Monte Investigation Group."

Mr. Abrante spoke with the respondent and told him what he needed. The respondent quoted Mr. Abrante a price, and Mr. Abrante paid the respondent \$750.00 in cash. No written agreement for services was provided to him, and he did not receive a receipt.

The respondent subsequently telephoned Mr. Abrante, told him that more work was required, and that he needed an additional payment. In response, Mr. Abrante met the respondent outside the Drake Hotel and gave him an additional payment of \$750.00 in cash. In response to a subsequent request Mr. Abrante gave the respondent an additional \$2,000.00 in cash, again outside the Drake Hotel.

4) After the payments had been made Mr. Abrante asked the respondent to provide him with a written report, which was needed for proceedings in court. The respondent failed to comply, and no written report was provided to Mr. Abrante until after he had complained to the complainant (State's Ex. 7 and 8).

5) Although the complainant's investigator asked the respondent to provide him with copies of the receipts which the respondent told the investigator he had provided Mr. Abrante, and although the respondent promised to comply with that request, no copies of receipts were provided. The respondent did, however, provide a copy of the report which he claimed to have sent to Mr. Abrante.

6) After he was contacted by the complainant's investigator the respondent provided to the complainant and to Mr. Abrante several copies of reports. Those reports, and the letters accompanying them, were all on stationary bearing the letterhead of "Monte Investigation Group" and containing on the bottom, in extremely small type, the legend "Frank Monte P.I., Inc. is licensed by the New York State Department of State and by the

California Dept. of Consumer Affairs CA P.I. 16743 and by the Sydney courts" (State's Ex. 7 and 8).

OPINION AND CONCLUSIONS OF LAW

I- The holding of an ex parte quasi-judicial administrative hearing was permissible, inasmuch as there is evidence that notice of the place, time and purpose of the hearing was properly served. GBL §79[2]; *Patterson v Department of State*, 36 AD2d 616, 312 NYS2d 300 (1970); *Matter of the Application of Rose Ann Weis*, 118 DOS 93.

II- The complaint alleges that the respondent provided Mr. Abrante with an improper statement of services. Although the respondent supplied the complainant's investigator with a copy of statement of services which he claimed to have provided to Mr. Abrante, and although that statement of services is in violation of 19 NYCRR 173.1, the unrefuted sworn testimony of Mr. Abrante establishes that the purported statement is not authentic. Accordingly, the complainant having failed to prove that Mr. Abrante was provided with an improper statement of services, and, in the absence of the respondent, the issue of the failure to provide any statement of services not having been fully litigated, the charge regarding the statement of services must be, and is, dismissed.

III- A license as a private investigator issued to a corporation, and enabling the qualifying officer thereof to act as a private investigator on its behalf, is issued in response to an application which is required to contain, among other things, the name of the corporation. GBL §72. Thus, the license is issued in a particular name, and it is unlawful for a licensed private investigator to conduct business under any name other than that appearing on his/her/its license, *Division of Licensing Services v Scott Bernstein*, 165 DOS 98, inasmuch as in doing so the investigator is acting on behalf of an unlicensed entity in violation of GBL §70.

The respondent did business under the name "Monte Investigation Group." While his letterhead and brochure (but not his business card) contained secondary, and in the case of the letterhead minuscule, references to "Frank Monte P.I., Inc.," those references do not excuse the fact that the respondent was operating under, *inter alia*, an unlicensed name.

IV- Pursuant to 19 NYCRR 173.2 a licensed private investigator is required to provide his/her/its client with a written report of services performed at the time of billing, unless the client has otherwise agreed in writing. The respondent failed to provide Mr. Abrante with a written report when one was requested, and did not

do so until after Mr. Abrante had complained to the complainant. That delay was in violation of the regulation.

V- Pursuant to GBL §73[1] a licensed private investigator is required to cooperate with investigations conducted by the complainant, and failure to comply with a lawful request made during such an investigation is grounds for the imposition of disciplinary sanctions against the licensee. In failing to provide to the complainant's investigator copies of the receipts which he claimed to have provided to Mr. Abrante the respondent violated that statute.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Frank Monte has violated General Business Law §§70 and 73[1] and 19 NYCRR 173.2, and accordingly, pursuant to General Business Law §79, the respondent shall pay a fine of \$1000.00 to the Department of State on or before March 31, 1999, and the license as a private investigator issued to him as qualifying officer of Frank Monte P.I., Inc. shall be suspended effective April 1, 1999 until such fine has been paid.

Roger Schneier
Administrative Law Judge

Dated: March 11, 1999