

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-

**BURTON S. BORKAN and CORT INVESTIGATION
BUREAU INC.,**

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on July 8, 1997 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondents, of 150 Nassau Street, New York, New York 10038, were represented by Howard Borkan, Esq., Borkan and Tobak, 150 Nassau Street, Suite 1609, New York, New York 10038.

The complainant was represented by Supervising License Investigator Bernard Friend.

COMPLAINT

The complaint in the matter, as amended by stipulation at the hearing, alleges that at some time the respondents employed ten security guards who either were unregistered or were not registered with the respondent.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondents by certified mail delivered on April 14, 1997 (State's Ex. 1).

2) Cort Investigation Bureau Inc. (hereinafter "Cort") is, and at all times hereinafter mentioned was, a duly licensed private investigator with Burton S. Borkan as its it qualifying officer (State's Ex. 2).

3) Examination of records prepared by the respondents (State's Ex. 14 & 15) discloses the following with regards to persons employed by Cort as security guards:

Angel Rivera--Employed since at least 6/30/96, registered with another corporation from 6/13/94 to 11/10/94, not registered with Cort (State's Ex. 4);

Steven C. Riley--Employed since 11/14/95, not registered, his application for registration having been rejected (State's Ex. 5 & 17);

Cesar Aviles--Employed since July, 1996, not registered (State's Ex. 6), his application for registration having been rejected (State's Ex. 3);¹

Joseph Giannone--Employed since 2/14/96, not registered (State's Ex. 7), his application for registration having been rejected (State's Ex. 3);

George N. Sommerfield--Employed since at least 6/30/96, not registered (State's Ex. 8);²

Stephen Leroy Frederick--Employed since at least 6/30/96, not registered (State's Ex. 9);

John Frederick--Employed since 12/11/96, not registered (State's Ex. 10);

Hernando Rendon--Employed since 11/7/96, registered with another corporation, not with Cort (State's Ex. 11), his application for registration with Cort having been rejected (State's Ex. 3);

¹ The respondents assert that they were not initially required to register Mr. Aviles because he was a police officer at the time of hiring. While that is correct, General Business Law (GBL) §89-f[6], Mr. Aviles has since retired but, as of 2/27/97 (the date of the complainant's license status certifications), contrary to the respondents' assertions, he was still not registered.

² The respondents claim that at the times Mr. Giannone and Mr. Sommerfield were hired the complainant did not require their registration as they were officers of a society for the prevention of cruelty to children and, therefore, peace officers. However, although Mr. Borkan admits that such registration was subsequently required, contrary to the respondents' assertions as of 2/21/97 no registrations had been filed.

Yaw Anokye--Employed since at least 6/30/96, registered with another corporation, not with Cort (State's Ex. 12);

Julio DeCastro--Employed at 6/30/96, registered 1/27/97 (State's Ex. 13).

OPINION

Pursuant to GBL §89-g, any company which employs security guards must first register that those guards with the complainant. *Division of Licensing Services v Gemini Investigations Inc.*, 228 DOS 97. The evidence establishes that ten guards employed by Cort were not so registered.

The respondents contend that proper registration forms were submitted for all of their guards, and that any lack of registrations were the fault of errors or non-feasance by the complainant. That claim is not, however, supported by any documentary evidence other than two uncashed money orders dated November 11, 1994. Those money orders, purportedly sent to the complainant with registration forms and returned without explanation, contain no indication as what employees they are for, and there is no proof, such as a certified mail receipt, that they were ever actually mailed.

There is a presumption of regularity with regards to the acts of the complainant in processing security guard registrations. Cf. *Matter of Marcellus*, 165 NY 70 (1900). The evidence presented by the respondents is not sufficient to rebut that presumption. Thus, while the tribunal can readily believe that the complainant may have made the mistakes in the processing of one, or perhaps several, guard registrations submitted by the respondents, it cannot, on the basis of the evidence before it, find that it made such mistakes in the processing of ten such registrations which were submitted over an extended period of time. Having observed the testimony of Mr. Borkan and Mr. Sommerfield on the issue, and their demeanor while testifying, I do not find that testimony credible.

As the qualifying officer of Cort, Mr. Borkan is personally responsible for its proper operation. *Division of Licensing Services v Starke*, 59 DOS 93; *Division of Licensing Services v Neville*, 32 DOS 89. Likewise, Cort is responsible for the failure of its officers and employees to abide by the statutory requirements established for the operation of its security guard business. *Division of Licensing Services v Gemini Investigations Inc.*, *supra*.

In determining what penalty to assess, I have considered the fact that there was no evidence that the respondents' violations were intentional, or that they resulted from anything more than

clerical error or a failure to understand the requirements of the statute.

CONCLUSIONS OF LAW

By failing to properly register ten security guards in the employ of Cort the respondents violated GBL §89-g and demonstrated incompetency on ten separate occasions.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Burton Borkan and Cort Investigation Bureau Inc. have demonstrated incompetency and, accordingly, pursuant to General Business Law §79, they shall pay a fine of \$2,500.00 to the Department of State on or before August 29, 1997, and should they fail to pay the fine, their license to engage in the business of private investigator shall be suspended for a period commencing on September 1, 1997 and terminating three months after the receipt by the Division of Licensing Services of their license certificates and pocket cards. The respondents are directed to submit the fine or their license certificates and pocket cards to Diane Ramundo, Customer Service Unit, Department of State, Division of Licensing Services, 84 Holland Avenue, Albany, New York 12208.

Roger Schneier
Administrative Law Judge

Dated: August 11, 1997