

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-

ELITE PROTECTION INC., MICHAEL J.  
O'NEILL, QUALIFYING OFFICER

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on April 20, 1998 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondents, of 555 Broad Hollow Road, Melville, New York 11747, did not appear.

The complainant was represented by Legal Assistant Thomas Napierski.

#### COMPLAINT

The complaint in the matter alleges that on or about June 21, 1997 the respondents employed nineteen security guards who either were unregistered or were not registered as employees of the respondent.

#### FINDINGS OF FACT

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

2) Elite Protection Inc. (hereinafter "Elite") is, and at all times hereinafter mentioned was, a duly licensed private investigator with Michael O'Neill as its it qualifying officer (State's Ex. 1).

3) Examination of the respondents' payroll records (State's Ex. 3), of the complainant's record of the registration with it by

the respondents of security guards employed by the respondents (State's Ex. 4), and of the complainant's records as to registration or lack thereof of individual security guards (State's Ex. 2) disclose the following with regards to persons employed by Elite as security guards:

Charles (Charlie) Speller: Registered with the complainant as a security guard commencing on February 15, 1997, and as an employee of Elite commencing on August 18, 1997. Employed by Elite commencing on or before June 21, 1997.

George R. Tyndale: Registered with the complainant as a security guard commencing on January 4, 1995, and as an employee of Elite commencing on July 9, 1997. Employed by Elite commencing on or before June 21, 1997.

Richard A. Mann: Registered with the complainant as a security guard commencing on July 28, 1995, and as an employee of Elite commencing on August 18, 1997. Employed by Elite commencing on or before June 21, 1997.

Nicholas Mermigas: Registered with the complainant as a security guard commencing on December 2, 1994. Never registered as an employee of Elite. Employed by Elite commencing on or before June 21, 1997.

John N. Bendo: Registered with the complainant as a security guard commencing on November 29, 1995, and as an employee of Elite commencing on August 18, 1997. Employed by Elite commencing on or before June 21, 1997.

Adolph H. Arne: Registered with the complainant as a security guard commencing on November 22, 1996, and as an employee of Elite commencing on July 9, 1997. Employed by Elite commencing on or before June 21, 1997.

Norman Rolle: Never registered with the complainant as a security guard. Employed by Elite commencing on or before June 21, 1997.

Kurt DeCarlo: Registered with the complainant as a security guard commencing on February 20, 1996. Registered with the complainant as an employee of Elite twice: from April 20, 1995 until at least April 17, 1998, and from January 12, 1996 to January 30, 1997. Employed by Elite commencing on or before June 21, 1997.

John Long: Registered with the complainant as a security guard commencing on February 6, 1998, but as an employee of Elite commencing on October 16, 1997. Employed by Elite commencing on or before June 21, 1997.

Edward Ramagnoli: Never registered with the complainant as a security guard. Employed by Elite commencing on or before June 21, 1997.

David Burg: Registered with the complainant as a security guard commencing on August 29, 1997, but as an employee of Elite commencing on July 4, 1997. Employed by Elite commencing on or before June 21, 1997.

Harry Buckley: Registered with the complainant as a security guard commencing on October 17, 1997, and as an employee of Elite commencing on January 5, 1998. Employed by Elite commencing on or before June 21, 1997.

Indu Vats: Never registered with the complainant as a security guard. Employed by Elite commencing on or before June 21, 1997.

Brian Burke: Registered with the complainant as a security guard commencing on October 17, 1997, and as an employee of Elite commencing on January 5, 1998. Employed by Elite commencing on or before June 21, 1997.

Aric Dees: Never registered with the complainant as a security guard. Employed by Elite commencing on or before June 21, 1997.

Alfred Bennett: Registered with the complainant as a security guard commencing on September 19, 1997, and as an employee of Elite commencing on September 26, 1997. Employed by Elite commencing on or before June 21, 1997.

Matt Turel: Registered with the complainant as a security guard commencing on July 18, 1997, but as an employee of Elite commencing on May 12, 1997. Employed by Elite commencing on or before June 21, 1997.

Donald Moguel: Employed by Elite commencing on or before June 21, 1997. The registration search was done under the name "Donald Moquel." Therefore, there is no evidence as to whether Mr. Moguel was properly registered.

Pete Schmidt: Registered with the complainant as a security guard commencing on October 17, 1997, and as an employee of Elite commencing on January 5, 1998. Employed by Elite commencing on or before June 21, 1997.

#### **OPINION**

Pursuant to GBL §89-g, a company which employs security guards may not do so without first assuring that the guard is registered

with the Department of State and without notifying the Department of State within fifteen days of that employment. The evidence establishes that eleven guards employed by Elite were not registered at the time of their initial employment, and that an additional six guards, while individually registered with the Department of State at the time of their initial employment by Elite, did not have their employment registered on time.

As the qualifying officer of Elite, Mr. O'Neill 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, Elite 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 Burton S. Borkan et al*, 206 DOS 97, conf'd. 5 DOS 98; *Division of Licensing Services v Gemini Investigations Inc.*, *supra*.

#### **CONCLUSIONS OF LAW**

By failing to properly register six security guards in the employ of Elite, and by employing eleven security guards who were not registered with the Department of State, the respondents violated GBL §89-g and demonstrated incompetency on seventeen separate occasions.

#### **DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Elite Protection Inc. and Michael O'Neill have demonstrated incompetency and, accordingly, pursuant to General Business Law §79, they shall pay a fine of \$3,000.00 to the Department of State on or before May 29, 1998, 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 June 1, 1998 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: April 22, 1998