

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-

ALLEN S. HERTZ, INDIVIDUALLY AND AS
QUALIFYING PARTNER OF ACME
INVESTIGATION BUREAU,

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on November 10, 1997 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of 2950 Union Street, P.O. Box 1541, Flushing, New York 11354, did not appear.

The complainant was represented by Litigation Counsel Laurence Soronen, Esq.

COMPLAINT

The complaint alleges that the respondent: Operated a private investigation business under an unlicensed name; failed to satisfy a judgement arising in the course of a regulated transaction; failed to provide an advance statement of services; failed to provide a report; failed to maintain a principal place of business; and demonstrated incompetence and untrustworthiness.

FINDINGS OF FACT

1) On August 25, 1997 notice of hearing together with a copy of the complaint was sent to the respondent by certified mail addressed to the last business address appearing in the records of the Department of State. It was returned by the United States Postal Services marked "unclaimed" (State's Ex. 1 and 2).

2) At all times hereinafter mentioned the respondent was duly licensed as qualifying partner of Acme Investigating Bureau (hereinafter "Acme"), a licensed private investigator. That license expired on September 30, 1997 (State's Ex. 3).

3) On August 14, 1996 Mabel Asconeguy retained the respondent, who was operating out an office located at 41-36 Main Street, Flushing, New York 11355, to conduct an investigation on her behalf. She paid him \$150.00, but did not receive an advance statement of services, and she was never provided with a report of the results of the investigation (State's Ex. 5 and 6).

4) At the time of the Asconeguy transaction the respondent was also operating under the unlicensed name of "Active Investigation Bureau" at the name address and telephone number as that of Acme (State's Ex. 4 and 7).

5) Ms. Asconeguy sued Active Investigation Bureau for the return of the \$150.00, and on January 22, 1997, after an inquest, was granted a judgement, including disbursements, of \$160.00 (State's Ex. 8). That judgement has not been satisfied.

6) The respondent no longer maintains a place of business.

OPINION

I- Pursuant to General Business Law (GBL) §79[2], notice of hearing in a proceeding in which the complainant seeks the revocation or suspension of a license as a private investigator must be served on the respondent at least fifteen days prior to the date set for the hearing. Such notice may be served by mailing same by registered mail to the last known business address of the respondent.¹ Since, pursuant to GBL §77, a licensed private investigator must notify the complainant when he moves his office to a new location, it was appropriate for the complainant to mail the notice in this proceeding to the respondent at the most recent address appearing for him in its records. Therefore, inasmuch as there is evidence that notice of the place, time and purpose of the hearing was properly served, the holding of an ex parte quasi-judicial administrative hearing was permissible. *Patterson v Department of State*, 36 AD2d 616, 312 NYS2d 300 (1970); *Matter of the Application of Rose Ann Weis*, 118 DOS 93.

II- In discussing the licensing of private investigators, GBL Article 7 makes numerous references to licenses issued to persons,

¹ While the statute uses the term "registered mail," certified mail is also acceptable inasmuch as the only difference between the two is that registered mail is insured, while certified mail is not.

firms, companies, partnerships and corporations, and establishes a scheme for the licensure of such. Pursuant to that scheme the respondent was licensed solely to operate Acme, a partnership, as a private investigator. He was not licensed to operate under any other name or in any other capacity. Thus, by doing business under the name "Active Investigation Bureau" the respondent operated outside the scope of his license. While there is no evidence that he did so with any base intent, and, therefore, that his operating under an unlicensed name was an act of untrustworthiness, his conduct was a clear demonstration of incompetence.

III- The respondent has failed to satisfy a lawfully obtained judgement. That failure evidences an attitude of disregard for the lawful mandate of a court and a disrespect for the law which cannot be countenanced. It is a demonstration of untrustworthiness, which, in view of the quasi law enforcement nature of the business of private investigator, is particularly egregious. *Division of Licensing Services v Montemorano*, 42 DOS 88.

IV- 19 NYCRR 173.1 states:

"(a) No licensed private investigator...shall undertake to perform any services on behalf of a client unless such licensee shall have delivered to the client a written statement, signed by the licensee, which shall set forth the specific service or services to be performed and the charge or fee therefore...."

The purpose of the regulation is to establish the legal right of a client to clearly understand the work scope and costs of the employment of the licensee. *Division of Licensing Services v Recovery Investigations, Ltd.*, 44 DOS 89. That understanding should be exact, and without the required statement of services the client may not be aware of and/or able to hold the licensee to the performance of all of the licensee's obligations. *Division of Licensing Services v Aranzullo*, 54 DOS 87. The failure to provide the statement is a demonstration of untrustworthiness and incompetency. *Division of Licensing Services v E.M.H. Investigation Service, Inc.*, 8 DOS 92; *Division of Licensing Services by Greenberg*, 32 DOS 87, conf'd. *sub nom Greenberg v Shaffer*, 139 AD2d 1988, 527 NYS 2d 287 (1988).

V- Pursuant to 19 NYCRR 173.2, a licensed private investigator is required to deliver the client a written report setting forth the services performed on the client's behalf. The respondent violated that regulation, and thereby also demonstrated untrustworthiness and incompetence.

VI- Pursuant to 19 NYCRR 170.5 a licensed private investigator is required to maintain a principal place of business in the State

of New York. The respondent no longer maintains such a place of business and, therefore, has violated that regulation.

VII- The Department of State retains jurisdiction over the instant matter, which was commenced while the respondent was still licensed, even though the license has expired of its own terms. *Albert Mendel & Sons, Inc. v N.Y. State Department of Agriculture and Markets*, 90 AD2d 567, 455 NYS2d 867 (1982); *Main Sugar of Montezuma, Inc. v Wickham*, 37 AD2d 381, 325 NYS2d 858 (1971).

CONCLUSIONS OF LAW

- 1) The holding of a ex parte hearing was proper.
- 2) By operating a private investigation business under an unlicensed name the respondent demonstrated incompetence.
- 3) By failing to satisfy a lawfully obtained judgement the respondent demonstrated untrustworthiness.
- 4) By failing to give Mabel Asconeguy an advance statement of services the respondent violated 19 NYCRR 173.1 and demonstrated untrustworthiness and incompetence.
- 5) By failing to provide Mabel Asconeguy with a report setting forth the services performed on her behalf, the respondent violated 19 NYCRR 173.2 and demonstrated untrustworthiness and incompetence.
- 6) By failing to continue to maintain a principal place of business in the State of New York the respondent violated 19 NYCRR 170.5.
- 7) The expiration of the respondent's license does not deprive this tribunal of jurisdiction over the matter.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Allen S. Hertz has violated 19 NYCRR 170.5, 173.1, and 173.2, and has demonstrated untrustworthiness and incompetence as a private investigator, and accordingly, pursuant to General Business Law §79, his license as a private investigator is revoked, effective immediately. Should he ever re-apply for licensure as a private investigator no action shall be taken on such application until he shall have produced proof satisfactory to the Department of State that he has fully satisfied the judgement obtained against Active Investigation

Bureau by Mabel Asconeguy in Civil Court, Kings County, Index. No. S.C. K 10674/96. The respondent is directed to immediately send his license and pocket card to Diane Ramundo, Customer Service Unit, Department of State, Division of Licensing Services, 84 Holland Avenue, Albany, NY 12208.

Roger Schneier
Administrative Law Judge

Dated: November 12, 1997