

STATE OF NEW YORK  
DEPARTMENT OF STATE

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In the Matter of the Complaint of

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

Complainant,

**DECISION**

-against-

**MICHAEL A. RAGO d/b/a MAR,**

Respondent.

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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 March 29, 1993 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of 258 W. Post Road, Suite 3C, White Plains, New York 10606, was represented by Leonard Hecker, Esq., Hecker & Hecker, 199 Main Street, White Plains, New York 10601.

The complainant was represented by Timothy Mahar, Esq.

**COMPLAINT**

The complaint in the matter alleges that the respondent, a licensed watch, guard or patrol agency: failed to properly maintain and/or file certain employee records; had in his possession a forged and/or altered pocket card identifying him as a licensed private investigator and an unapproved badge bearing his license number and the words "Private Investigator"; and conducted business as a watch, guard or patrol agency under various unlicensed trade names.

**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) From some time prior to November 16, 1984 until December 28, 1989 the respondent was licensed to engage in the business of watch, guard or patrol agency in his individual name. That license was changed to bear the trade name "M.A.R." on December 28, 1989, and is currently in effect with an expiration date of November 15, 1994 (Comp. Ex. 2 and 14).

3) On March 16, 1990 License Investigator Scott Amaral conducted an inspection at the respondent's office. The inspection disclosed the following:

a) The respondent did not have on file fingerprint cards for 15 employees (Comp. Ex. 3 and 4);

b) 5 fingerprint cards in the respondent's files were incomplete, in that they were missing either the date that the fingerprints were taken or the complete name of the employee. (Comp. Ex. 4);

c) The fingerprint cards of 25 employees had not been transmitted to the Department of State within 24 hours after the employment of the persons to whom the fingerprints belonged (Comp. Ex. 4 and 7) (15 of those fingerprint cards were for the same employees as in (3)(a), above, and were submitted after Amaral's inspection);

d) 13 employee statements were incomplete in that they failed to state the employee's employment history for the preceding 3 years and/or did not answer one or more of the questions relating to the employee's record of criminal convictions and/or failed to indicate whether the employee had ever been dismissed from work for any reason other than lack of work; and

e) Employee statements had not been prepared for 15 employees (the same employees as for whom there were no fingerprint cards) (Comp. Ex. 3 and 4).

4) On December 15, 1981 the respondent, acting under the unlicensed trade name "Michael Rago Security Services", entered into a contract to provide the White Plains, New York Y.W.C.A. with security guard services (Comp. Ex. 9).

5) On August 5, 1986 the respondent entered into an agreement to sell his security guard service, which he had been operating under the unlicensed name "P.I. Security" (Comp. Ex. 8).

6) In addition to the names in (4) and (5), the respondent also operated his watch, guard or patrol business under the names "M.A.R. Detective Group" and "M.A.R. Group" (Comp. Ex. 10).

7) At a date not appearing in the record the respondent purchased a specially produced badge, in the shape of that of a police detective's badge, bearing the seal of the State of New York, the word's "DEPARTMENT OF STATE LICENSED INVESTIGATOR", and the number "4397", which is the number of the respondent's watch, guard or patrol license (Comp. Ex. 12). Also at a date not appearing in the record the respondent produced a color photo copy of his watch, guard, or patrol license pocket card which he altered to indicate that he was a licensed private investigator (Comp. Ex. 11). The respondent had the badge and card in his possession until he surrendered them to the White Plains Police Department as the result of an inquiry arising out of an investigation of a friend of the respondent. There is no evidence (or allegation) that the respondent ever actually displayed or otherwise used the badge and pocket card.

OPINION

I- General Business Law (GBL) §81 contains various provisions regarding the right of a licensed watch, guard or patrol agency to employ persons to assist in the work of the agency. The statute establishes a procedure which is designed to fully identify those employees, establish their background, and weed out those who are legally disqualified from such employment. The system thus established is designed to protect the public welfare and safety, Department of State v Irene Greenberg, 32 DOS 87, conf'd. 139 AD2d 648, 527 NYS2d 287 (1988), in furtherance of the underlying purpose of GBL Article 7 to prevent disreputable persons from preying on the public. Shorten v Milbank, 170 Misc. 905, 11 NYS2d 387 (1939), aff'd. 256 AD 1069, 12 NYS2d 583.

The respondent, whether as a result of carelessness or because of a lack of concern, has failed to abide by several of the statutory requirements. Perhaps most serious was his failure to fingerprint 15 employees until after confronted with the fact by the complainant's investigator, thereby preventing the timely submission of those fingerprints for examination by the Division of Criminal Justice Services, as is required (GBL §§81(5) and (6)). That created the potential that the respondent would retain in his employ a person or persons who were disqualified from such employment by reason of a history of criminal convictions (GBL §81(1)). That such an occurrence is a real possibility is demonstrated in the case of employee Edward Harla (not one of the late submissions). As is established by the evidence (Comp. Ex. 4), an examination of Harla's fingerprints disclosed that he had previously been convicted of grand larceny in the second degree, and the respondent was notified by the complainant that he had to terminate the employment.

Also of particular concern is the respondent's failure to submit to the complainant an additional 10 fingerprint within 24 hours of the commencement of employment (GBL §81(5)). That resulted in the potential delay of disclosure of any disqualifications.

Additional violations involve the respondent's failure to obtain employee statements from the same 15 employees that were not fingerprinted (GBL §81(2)), his maintaining incomplete fingerprint cards for 5 employees (GBL §81(3)), and his failing to obtain complete employee statements from an additional 13 employees (GBL §81(2)). Such disregard for the statute at least interferes with, and perhaps makes impossible, the respondent's statutory duty to see to the proper and lawful operation of his business by, among other things, making certain that he employs only those persons who are reliable and competent, and who are not statutorily disqualified from such employment. Division of Licensing Services v Task Force Security, Inc.. 63 DOS 89.

II- GBL §70(2) requires that any person wishing to engage in the business of watch, guard or patrol agency first obtain a license to do so. GBL §72 provides that before obtaining such a license an applicant must submit an application on forms provided by the Department of State. The application form for a license as a watch, guard or patrol agency requires that the applicant give a business name (Comp. Ex. 14). Therefore, it follows that a licensee must conduct business only under

the name appearing on his/her/its license, and that the respondent violated that requirement by doing business under 4 unlicensed names.

The reason for the requirement is not difficult to divine. If licensees were to be permitted to engage in business under unlicensed names the ability of the complainant to fulfill its statutory duty to supervise the operations of such licensees (GBL §88) would be greatly compromised. It would become exceedingly difficult, if not impossible, to identify possible violators of the statute and regulations if it were not possible to reference a name against the complainant's records of licensees.

III- GBL §80 provides that it is unlawful for a licensed watch, guard or patrol agency to possess a license pocket card or badge except as set forth in GBL Article 7. That same section provides for the issuance by the Department of State to licensees of license pocket cards. It also sets out standards for insignia, with the proviso that no insignia may be distributed without the prior approval of the Secretary of State, a requirement which is implemented by 19 NYCRR 171.1 and 171.2.

While the respondent testified that he altered his pocket card and had an unauthorized badge indicating that he is a licensed investigator made up to make himself feel important, and that he never actually displayed either the card or the badge, the acts of procuring the badge and altering the card were certainly demonstrations of incompetence.

The fact that the complaint alleges that the badge contained the words "Private Investigator" and the evidence establishes that the words were actually "Licensed Investigator" does not mean that this aspect of the complaint must be dismissed. So long as an issue has been fully litigated by the parties and is closely enough related to the stated charges that there is no surprise or prejudice to the respondent, the pleadings may be amended to conform to the proof and encompass a charge which was not stated in the complaint. This may be done even without a formal motion being made by the complainant. Helman v Dixon, 71 Misc.2d 1057, 338 NYS2d 139 (Civil Ct. N.Y. County, 1972). In ruling on the motion, the tribunal must determine that had the charge in question been stated in the complaint no additional evidence would have been forthcoming. Tollin v Elleby, 77 Misc.2d 708, 354 NYS2d 856 (Civil Ct. N.Y. County, 1974). What is essential is that the "matters were raised in the proof, were actually litigated by the parties and were within the broad framework of the original pleadings." Cooper v Morin, 91 Misc.2d 302, 398 NYS2d 36, 46 (Supreme Ct. Monroe County, 1977), mod. on other grounds 64 AD2d 130, 409 NYS2d 30 (1978), aff'd. 49 NY2d 69, 424 NYS2d 168 (1979). I find that the standards for the granting of such a motion have been met and, therefore, on the tribunal's own motion amend the pleadings with regard to the wording on the badge to conform to the proof.

IV- The respondent's violations as discussed herein are serious in nature. Contrary to counsel for the respondent's assertion, we are not dealing with mere clerical errors, but, rather, with specific failures to comply with statutory mandates designed with the protection of the public in mind. Such violations, when viewed in the light of the

respondent's apparent readiness to misrepresent his licensed status for whatever reason, cannot be ignored. In order to discourage this licensee and others from such future violations it is necessary that more than just a minimal penalty be imposed.

GBL §79(1) provides for the imposition of a license suspension or revocation, or of a penalty of \$1,000.00 for each violation of the statute or demonstration of untrustworthiness or incompetence. Department of State v Neville, 32 DOS 89. In mitigation, however, I have considered the absence of any history of prior complaints against the respondent in the approximately 20 years that he has been licensed, his cooperation with the complainant in correcting his violations (although correcting violations after their disclosure does not, as counsel seems to argue, excuse those violations), and the fact that the seizure of the unauthorized badge and altered pocket card by the White Plains police was brought to the complainant's attention by the respondent (although it can be reasonably assumed that he had not done so the complainant would have been contacted by the police).

**CONCLUSIONS OF LAW**

1) By failing to have on file the fingerprint cards for 15 employees, the respondent violated GBL §81(4) 15 times and demonstrated untrustworthiness and incompetence.

2) By failing to obtain complete fingerprint cards for 5 employees, the respondent violated GBL §81(3) 5 times and demonstrated untrustworthiness and incompetence.

3) By failing to submit to the Department of State the fingerprint cards of 25 employees within 24 hours of their employment, the respondent violated GBL §81(5) 25 times and demonstrated untrustworthiness and incompetence.

4) By employing 13 persons whose employee statements were incomplete, and 15 persons who did not complete employee statements, the respondent violated GBL §81(2) 28 times and demonstrated untrustworthiness and incompetence.

5) By doing business under 4 unlicensed trade names, the respondent violated GBL §§70 and 72 4 times and demonstrated untrustworthiness and incompetence.

6) By possessing an unauthorized badge and an altered license pocket card, the respondent violated GBL §80 twice, and demonstrated untrustworthiness and incompetence.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Michael A. Rago has violated General Business Law §§70 and 72 (two times), §80 (two times), §81(2) (twenty eight times), §81(3) (five times), §81(4) (fifteen times), and §81(5) (twenty five times), and has demonstrated untrustworthiness and incompetence, and accordingly, pursuant to General

Business Law §79(1), he shall pay a fine of \$5,000.00 to the Department of State on or before May 31, 1993, and should he fail to pay the fine then his license as a watch, guard or patrol agency shall be suspended for a period of four months commencing on June 1, 1993 and terminating on September 30, 1993.

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