

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-

RICHARD STARKE and ITS NEW YORK
SECURITY, INC.,

Respondents.

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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 April 22, 1993 at the New York State Office Building located at 65 Court Street, Buffalo, New York.

The respondents, of 4245 Union Road, Suite 202, Buffalo, New York 14225, were represented by their District Manager, Sean McCabe.

The complainant was represented by Scott Nejame, Esq.

COMPLAINT

The complaint in the matter alleges that the respondents, licensed to engage in the business of watch, guard or patrol agency, failed to file six employee fingerprint cards within 24 hours and failed to obtain completed employee statements for nine employees, in violation of General Business Law (GBL) §§81(5) and 81(2).

FINDINGS OF FACT

1) Notice of hearing, together with a copy of the complaint was served on the respondents by certified mail delivered on October 26, 1992 (Comp. Ex. 1). Notices of adjournment were subsequently served on the respondents by regular mail (Comp. Ex. 2).

2) ITS New York Security, Inc. (ITS) is, and at all times hereinafter mentioned was, duly licensed as a watch, guard, or patrol agency, with Richard P. Starke as its sole qualifying officer (Comp. Ex. 3).

3) An examination of the respondents' personnel records by a Department of State Senior Investigator disclosed that the fingerprint cards of six of their employees who commenced work on various dates between March 2 and July 4, 1991 were not submitted to the Department of State until July 8, 1991. In addition, the employee's statements of five of those employees were incomplete in that they: did not contain the employees' numbers; did not contain the name of the employer (3 employees); were not signed and dated by the employer (1 employee); did not contain the employees' full employment history for the prior three years (4 employees); did not contain an answer to the question "Have you ever been dismissed from any employment for any reason other than lack of work?" (1 employee); or did not contain a second page (2 employees) (Comp. Ex. 4 and 5).

OPINION AND CONCLUSIONS OF LAW

GBL §81(5) provides that within twenty-four hours of the commencement of employment, a licensed watch, guard or patrol agency must mail to the Department of State a copy of the fingerprints of any employee. The respondents violated that statute when they delayed anywhere from four days to four months before submitting the fingerprints for six employees. Their explanation that two of the employees were not guards but, rather airport "meeter/greeters" does not excuse the violations with regards to those employees, inasmuch as the provisions regarding fingerprints apply to all employees. Likewise, it is no excuse that one of the employees was a guard who never finished his probation or that another of the filings was delayed by the need to obtain a check for the filing fee. (The respondents state that with regards to the remaining two employees they have no excuse). By failing to submit the fingerprints in a timely manner, the respondents prevented the proper functioning of a system which is designed to protect the public welfare and safety. Division of Licensing Services v Greenberg, 32 DOS 87, conf'd. 139 AD2d 648, 527 NYS2d 287 (1988); Division of Licensing Services v Task Force Security, Inc., 63 DOS 89.

I have taken into consideration, in mitigation of the seriousness of the late filing of the fingerprints, that in spite of a thorough examination of the respondents' records, this is the only instance of late filing which the complainant has discovered (all six sets of finger prints were submitted at the same time), and that the employee responsible for the two late filings for which no excuse was offered has been terminated.

GBL §81(2) provides that prior to hiring any person a licensed watch, guard or patrol agency shall have the prospective employee complete an employee's statement in the form required by the Department of State. By reason of their obtaining incomplete statements from five employees the respondents are guilty of five separate violations of the statute. Division of Licensing Services v Greenberg, *supra*; Division of Licensing Services v Task Force Security, Inc., *supra*.

The respondents argue that they are unable to defend against the charge of obtaining incomplete employee's statements because, in spite of requests to the complainant, apparently made prior to the service of the notice of hearing, they were never advised of the names of the employees in question and, therefore, were unable to search the records in their branch offices for more complete employee's statements. That argument is of no avail, however, inasmuch as the respondents never made application for a more definite statement (State Administrative Procedure Act §301(2)), and offered nothing to support their contention that it is possible that the employees might have completed multiple employee's statements. However, in mitigation, I have taken into consideration the fact that the problem with the employee's statements appears to be restricted to the same limited group of employees as was involved in the late filing of fingerprints.

As the sole qualifying officer of ITS, Starke is responsible to see to its proper compliance with the requirements of the licensing law. Therefore, even though there was no evidence presented that he was personally involved in the hiring of the employees in question, he can and should be held liable for the violations. Division of Licensing Services v Neville, 32 DOS 89.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT ITS New York Security, Inc. and Richard P. Starke have violated General Business Law §§81(2) (five times) and 81(5)(six times), and accordingly, pursuant to General Business Law §79, they shall pay a fine of \$2,000 to the Department of State on or before June 30, 1993, and should they fail to pay the fine their license as a watch, guard or patrol agency shall be suspended for a period of two months, commencing on July 1, 1993 and terminating on August 31, 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