

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF STATE, DIVISION)	
OF LICENSING,)	
)	
Petitioner,)	
)	
vs.)	Case No. 00-4749
)	
UNLIMITED CRIME PREVENTION, INC.,)	
and WILLIAM LARUE SCOTT,)	
PRESIDENT/MANAGER,)	
)	
Respondents.)	
-----)	
DEPARTMENT OF STATE, DIVISION)	
OF LICENSING,)	
)	
Petitioner,)	
)	
vs.)	Case No. 00-5131PL
)	
WILLIAM SHANE SCOTT,)	
)	
Respondent.)	
-----)	

RECOMMENDED ORDER

A hearing was held in this case in Tampa, Florida, on March 22, 2001, before Arnold H. Pollock, an Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Steve Bensko, Esquire
Department of State
The Capitol, Mail Station 4
Tallahassee, Florida 32399-0250

For Respondent: Louis Kwall, Esquire
Kwall, Showers & Coleman, P.A.
133 North Fort Harrison Avenue
Clearwater, Florida 33755

STATEMENT OF THE ISSUE

The issue for consideration in these cases is whether the licenses held by Respondents should be disciplined in some manner because of the matters alleged in the Administrative Complaints filed herein by the Department of State's Division of Licensing.

PRELIMINARY MATTERS

By Administrative Complaint dated September 15, 2000, John M. Russell, Director of the Department of State's Division of Licensing (Division) alleged that Unlimited Crime Prevention, Inc. (UCP) and William Larue Scott, its President/Manager, holders of a security agency and of a security officer, an organizational officer position, and a statewide firearms license, respectively, had violated various provisions of Subsection 493.6118(1), Florida Statutes, by carrying and allowing other employees to carry semi-automatic weapons, by impersonating a law enforcement officer, by failing to properly supervise those employees allowed to carry semi-automatic weapons, by failing to truthfully respond to questions asked by a state investigator in the conduct of his

duties, by making a false written report to the Division with intent to mislead and committing fraud thereby, and by refusing to cooperate with an investigator of the Division in the conduct of his duties.

In a separate Administrative Complaint dated August 29, 2000, Mr. Russi charged Respondent William Shane Scott with carrying an unauthorized semi-automatic weapon in the performance of regulated duties, in violation of Subsection 493.118(1) Florida Statutes. All Respondents requested a formal hearing, and this hearing ensued.

At the hearing, Petitioner presented the testimony of Garry Floyd, an investigator with the Division; Robert Shank, a bail bondsman and former employer of UCP; Boin Gerard Upton, a security officer employed by Excelsior Defense, a security company; Joshua T. Wilson and James Phelps, former employees of UCP; and Jason Routzahn, a police officer employed by Indian Shores, Florida. Petitioner also introduced Petitioner's Exhibits 1 through 9. Respondent called Mr. Floyd as a witness but did not introduce any documentary evidence.

A Transcript of the proceedings was furnished on April 2, 2001. Subsequent to the receipt thereof, counsel for Respondents filed an agreed-upon motion for an extension of time to file their Proposed Recommended Orders due to

counsel's ill health. A 30-day extension was granted and subsequent to the expiration thereof, counsel for Petitioner submitted matters in writing which were carefully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times pertinent to the issues herein, Unlimited Crime Prevention, Inc., was licensed in Florida as a "Class B" Security Agency holding license number B98-00127. Respondent William Larue Scott, was the President/Manager of UCP and held a "Class D" security officer license number D93-19846, a "Class G" statewide firearms license number G94-03199, and a "Class ZB" organizational officer position license number ZB98-00179. William Shane Scott, son of William Larue Scott and an employee of UCP, held a "Class D" security officer license number D96-07113, a "Class ZB" organizational officer position license number ZB98-00180, and a "Class G" statewide firearms license number G97-01150. The Department of State, Division of Licensing, was then and is the state agency responsible for the licensing of non-certified security personnel and agencies and for the regulation of the non-governmental security industry in Florida.

2. On June 7, 2000, Garry Floyd, an investigator with the Division since 1981, received a complaint that two

security officers from UCP had been observed by security officers from another security firm working at a site while carrying unauthorized weapons. Security officers are authorized to carry certain weapons but not nine-millimeter semi-automatic pistols. Upon receipt of the complaint, Mr. Floyd sent a telefax message to UCP's President/Manager, Mr. William L. Scott, asking for an explanation. The following day, an individual who identified himself as Mr. William L. Scott, called and said he had received Mr. Floyd's message and was looking into the matter. At this point, Mr. Scott said he was one of the two security officers involved but that he and his associate were carrying revolvers, not semi-automatic weapons. Thereafter, on June 11, 2000, Mr. Scott sent Mr. Floyd a telefaxed memorandum in which he reiterated his denial of the allegations as to the weapons carried, explained that the allegations occurred because of animosity toward his firm, and requested the investigation be terminated because of a lack of evidence.

3. On June 27, 2000, Mr. Floyd met with Robert Shank, the other security officer alleged to have been carrying the unauthorized weapon and questioned him about the allegations. Shank vehemently denied the allegations and continued to do so even after Floyd said he did not believe him.

4. On July 3, 2000, Mr. Floyd went to Mr. Scott's home where Scott maintained UCP's home office. Though Floyd went there with the intention of speaking with Mr. Scott, he was unable to do so and spoke, instead, with Mrs. Scott, whom he asked to have Mr. Scott call him. Mr. Scott did not call as requested, however. Thereafter, on July 17, 2000, Mr. Floyd went to UCP's new office, but because so many other people were there, so as not to embarrass Mr. Scott, he made an appointment to come back on August 2, 2000.

5. When Mr. Floyd spoke with Mr. Scott on August 2, 2000, he gave Mr. Scott a list of questions he had written down. Scott said he was not ready to admit anything and would not answer any questions, orally or in writing. As of the hearing, Mr. Scott had not answered any of the questions posed by Mr. Floyd. The questions are simple. They ask, primarily, about the ownership of the company and the positions held therein by both Scott and his son, as well as whether he has ever allowed any employee to carry semi-automatic weapons.

6. Mr. Floyd also met with Eric Hege, an employee of UCP, and provided him with a list of eight questions, two of which concerned the type of firearms carried by Mr. Scott. However, Mr. Hege refused to answer the questionnaire. This stymied Mr. Floyd's investigation, and he could proceed no further with it. However, sometime during the first week of

July, 2000, Mr. Floyd received a complaint from a local police department that UCP was using an unlawful scheme of colored lights on its vehicles. When he went to various places where ICP's vehicles were located, he saw that they did have unlawfully colored lights which could give the impression they were official police vehicles. One vehicle had a green light on the seat, and another had a blue light. Blue lights are not allowed on civilian vehicles. Only amber-colored emergency lights are allowed on civilian vehicles.

7. Mr. Shank previously held a license to carry a semi-automatic weapon, but not during the period he was employed performing security duties for Respondent. He surrendered that license after he, too, was charged with carrying an unauthorized weapon. Though he was not licensed to do so, while he was on duty with UCP, he carried a semi-automatic weapon or, in the alternative, a revolver. He started carrying the revolver so that he would not violate the law. Mr. Shank is certain that William L. Scott knew he was carrying an unauthorized weapon because Scott purchased revolvers for himself and the others in July 2000, so they would not be in violation of the law. When Shank had pointed out that the semi-automatic weapons were against state law, William L. Scott replied, "Fuck the State. The statutes don't mean anything."

8. On June 2, 2000, Mr. Shank, with William L. Scott's son and several other employees of UCP, was working as a security officer at The Harbor Club in Pinellas County. At that time he was carrying a semi-automatic weapon, as was Mr. Scott's son. He was of the opinion at the time that William L. Scott's approach was to violate the law regarding weapons and deny it if caught.

9. In late July or early August 2000, William L. Scott held a meeting of his employees at which time he instructed them, among other things, that if Mr. Floyd were to contact them about the incident at The Harbor Club, they were not to give him any information. He also provided each security officer with a letter which instructed them, in the event they were contacted by any personnel from the Division of Licensing, to immediately notify their supervisor and to advise the state personnel that they could not be distracted from their duties. Employees were not to speak with a state employee until a supervisor had relieved him, nor were they ever to hand over their firearms to an inspector unless properly relieved. Investigators were to be referred to the company's attorney, and if the investigator refused to leave, the police were to be called.

10. Mr. Shank has also performed services for UCP using a vehicle with green and red flashing lights on the roof. So

have both Scotts and Mr. Hege. Mr. Shank was subsequently charged with driving a vehicle with improper lights as well as carrying a semi-automatic weapon.

11. William L. Scott and Mr. Shank had a falling out over money in early September 2000. Shank then called Mr. Floyd to tell him what he knew of the allegations because he felt it was the right thing to do.

12. When Boin Upton, at the time an employee of Excelsior Defense, also a security firm, came to work at The Harbor Club on June 2, 2000, he found representatives of UCP already were there. He thought this was unusual because he understood that his company had the contract to provide security for the club. He called his supervisor who came to the club and resolved the issue. At the time, however, he noticed that both Mr. Shank and William L. Scott, the two representatives of UCP, were carrying nine-millimeter semi-automatic weapons. When Mr. Upton asked about this, he was told by Mr. Shank that he had a "CC" waiver. A "CC" license is one which is issued to an apprentice private investigator and does not authorize the carrying of a semi-automatic weapon.

13. Joshua Wilson also was a security guard who worked for UCP from July 7 through the end of August 2000, and whose duty stations were at the Lutz Apartment complex and at The

Harbor Club. His job was to observe and report and to keep the peace, and he was not armed. However, he observed William S. Scott, William L. Scott's son carrying a nine-millimeter semi-automatic weapon at The Harbor Club during this period.

14. Mr. Wilson recalls a staff meeting held by Mr. Scott during this period at which Mr. Scott discussed the investigation being conducted by the Division. At this meeting, he gave each employee a copy of the memorandum which advised employees not to talk with anyone from the Division but to refer them to a UCP supervisor. Scott indicated his opinion that Mr. Floyd had declared war on UCP and him, and he would not help him.

15. Another former employee of UCP, Mr. Phelps, also recalls being told directly by Mr. Scott that if an investigator from the Division contacted him with questions about the company, he was not to answer them.

16. In mid-June 2000, Officer Jim Routzahn of the Indian Shore Police Department conducted a routine traffic stop of William L. Scott. Mr. Scott got out of his vehicle wearing a uniform and badge and carrying a semi-automatic weapon. Scott's badge was in the form of a shield and not a star. Mr. Scott advised Officer Routzhan that he was the owner of a security company and was on official duty dropping off and

picking up security officers. At the time, because Officer Routzahn received a high-priority call to go elsewhere, he gave Mr. Scott a warning and let him go.

17. According to Mr. Floyd, a search of the records of the Division of Licensing fails to show any prior complaints against either UCP or either Mr. Scott. However, the records reflect William L. Scott was previously denied a license based on a conviction in Indiana. Mr. Floyd has known William L. Scott from when he, Mr. Floyd, was an investigator for another agency. During that former investigation, he found Mr. Scott to be very personable, helpful, and cooperative.

18. Mr. Floyd, a retired Captain of Police from Tampa, considers this case to be serious because it involves the impersonation of a policeman. Based on his experience, "wanna-be's" constitute one of the biggest problems facing law enforcement, and even if the only issue here were related to the inappropriate use of colored lights on UCP's vehicles, he would still have filed an Administrative Complaint in this case.

CONCLUSIONS OF LAW

19. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. Subsection 120.57(1), Florida Statutes.

20. Section 493.6118, Florida Statutes, authorizes the Division to discipline the license of a license holder for specified misconduct. Included in those activities which support discipline, as outlined in Subsection 493.6118(1), Florida Statutes, are:

(f) Proof that the . . . licensee is guilty of fraud or deceit, or of negligence, incompetency, or misconduct in the practice of the activities regulated . . .

(i) Impersonating, or permitting or aiding and abetting an employee to impersonate, a law enforcement officer or an employee of the state, the United States, or any political subdivision thereof by identifying himself . . . as a . . . law enforcement officer, . . . by wearing a uniform or presenting or displaying a badge or credentials that would cause a reasonable person to believe that he or she is a law enforcement officer, or that he or she has official authority, by displaying any flashing or warning vehicular lights other than amber colored, . . .

(k) Knowingly violating, advising, encouraging, or assisting the violation of any statute, court order, capias, warrant, injunction, or cease and desist order, in the course of business regulated under this chapter.

* * *

(t) Violating any provision of this chapter.

21. The burden of proof in this case rests with the Division to establish by clear and convincing evidence that

Respondents committed the misconduct alleged. Department of Banking and Finance v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996).

22. In the instant case, the Division alleged that Respondent William L. Scott wrongfully carried and permitted his employees to carry unauthorized semi-automatic weapons while performing security guard duties; failed to respond truthfully to questions asked by a state investigator in the course of an investigation into Respondent's activities; made a false report to the Division with the intent to mislead; and refused to cooperate with an investigator of the Division in the course of his duties by directing his employees to refuse to answer questions posed by the investigator. Respondent William S. Scott is charged with carrying an unauthorized semi-automatic weapon in the performance of his regulated duties. The allegations against both Respondents, if proven, would constitute violations of Subsection 493.6118(1), Florida Statutes.

23. The evidence of record is clear and convincing that both Scotts, repeatedly carried unauthorized semi-automatic weapons while engaged in the performance of regulated security guard duties and that William L. Scott knew that at least one of his employees, Mr. Shank, did so as well. Carrying an unauthorized weapon in the performance of security duties

constitutes a violation of Section 493.6118, Florida Statutes. The personal misconduct of William L. Scott, as President and Manager of UCP, is attributable to the corporate licensee as well.

24. The evidence of record also clearly and convincingly establishes that William L. Scott used green and red lights on his UCP vehicle. This action is improper and prohibited by Sections 316.2397 and 316.2398, Florida Statutes. As such it is a violation of Subsections 493.6118(f), (i), and (k), Florida Statutes.

25. Subsection 493.6121(2), Florida Statutes, provides in part:

(2) In any investigation by the department, each licensed or unlicensed person, applicant, agency, or employee shall, upon request of the department provide records and shall truthfully respond to questions concerning activities regulated under this chapter. Such records shall be maintained in this state for a period of 2 years at the principal place of business of the licensee, . . . Upon request by the department the records must be made available immediately to the department unless the department determines that an extension may be granted.

26. The evidence of record is clear that not only did William L. Scott refuse to answer the legitimate questions posed to him by Mr. Floyd, he also directed his employees to refuse to answer as well. Though the instructions given to the employees superficially appear legitimate, it is clear

from the other evidence of record, including the graphic comments regarding the Department's inquiry made by the elder Mr. Scott, that they were no more than a screen to cover this attempt to conceal his activities from legitimate investigation. It is also clear from the evidence of record that when he did agree to speak with Mr. Floyd, William L. Scott misrepresented the comments of his employees which confirmed his misconduct. Mr. Scott's actions fell within the parameters of Subsection 493.6121(2), Florida Statutes, and constitute grounds for discipline as a violation of Subsection 493.6118(t), Florida Statutes, which authorizes discipline for a violation of any provision of Chapter 493.

27. When the Department finds any violation has been committed by a licensee, pursuant to the provisions of Subsection 493.6118(2), Florida Statutes, it may take one or more of the following actions:

- (a) Deny an application for the issuance or renewal of a license.
- (b) Issue a reprimand.
- (c) Impose an administrative fine not to exceed \$1,000 for every count or separate offense.
- (d) Place the licensee on probation for a period of time and subject to such conditions as the department may specify.
- (e) Suspend or revoke a license.

29. The Department's guidelines for the imposition of discipline of licensed personnel shown to have committed actionable violations of the law are contained in

Rule 1C-3.113(1), Florida Administrative Code. For each incident of allowing an employee to carry an unauthorized firearm, as alleged in Counts I, II, and III of the Administrative Complaint, the Department may impose a penalty which ranges from an administrative fine of from \$300 to \$700 and place the licensee on probation.

30. For the offense of impersonating a law enforcement officer as alleged in Count IV of the Administrative complaint, William L. Scott is subject to a penalty ranging from an administrative fine of \$500 to \$1,000 to suspension or revocation of his license. For the offense of carrying an unauthorized firearm, both William L. Scott and William S. Scott each are subject to a penalty ranging from an administrative fine of from \$150 to \$300 to revocation or suspension of their licenses.

31. For the offense of failing to properly supervise armed employees, Mr. Shank and William S. Scott, Respondent William L. Scott is subject to a penalty ranging from an administrative fine of from \$250 to \$750 to probation or a suspension of his license for one month. The Departmental disciplinary guidelines are silent regarding a licensee's failure to respond truthfully to legitimate questions posed by a Department investigator engaged in the conduct of an official investigation, regarding a willful making of a false

written report, and regarding the licensee's instructions to his employees to refuse to cooperate with Department investigators.

32. There are, however, sufficient proven incidents of misconduct by each of Respondents to allow the tailoring of a penalty appropriate to the circumstances of this case. The Department suggests that all licenses held by William L. Scott be revoked and that he be administratively fined in the amount of \$1,000. This recommendation is made based upon the Department's determination that William L. Scott presents a danger to the public in his capacity as a security agency owner and a security officer, as well as a holder of a firearm license. This determination appears to have been made based on his attitude toward the Department's investigation and toward the investigator as well. The Department suggests that Mr. Scott has demonstrated an attitude of contempt toward authority and appeared willing to attempt to subvert the investigatory process, both of which demonstrate a lack of integrity which is inconsistent with the performance of security duties. Based on the evidence presented at hearing, this determination appears well founded. While it is obvious Mr. Scott should not be engaged in the security profession at this time, imposition of an administrative fine would serve no rehabilitary purpose.

33. As for William S. Scott, the Department suggests as an appropriate penalty the suspension of his firearms license for one year. Implementation of this penalty would not prevent him from performing the duties of an unarmed security officer and appears appropriate, but absent a showing of any prior discipline, imposition of probation rather than suspension would appear appropriate.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Department of State, Division of Licensing, enter a Final Order revoking the Class "B" Security Agency License number B98-00127, the Class "D" Security Officer License number D93-19846, the Class "G" Statewide Firearms License number G94-03199, and the Class "ZB" Organization Officer Position, number ZB98-00179, all licenses held by William Larue Scott as President/Manager of Unlimited Crime Prevention, Inc., be revoked. It is further recommended that the Class "G" Statewide Firearms License number G97-01150, held by William Shane Scott be placed on probation for a period of one year under such terms and conditions as the Department may specify.

DONE AND ENTERED this 24th day of May, 2001, in
Tallahassee, Leon County, Florida.

ARNOLD H. POLLOCK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 24th day of May, 2001.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.