

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF AGRICULTURE AND)
CONSUMER SERVICES, DIVISION OF)
LICENSING,)
)
Petitioner,)
)
vs.) Case No. 02-4241
)
INTERNATIONAL INVESTIGATORS,)
INC. AND JORGE L. BARO,)
)
Respondents.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was conducted on March 17, 2003, by video teleconference at sites in West Palm Beach and Tallahassee, Florida by Florence Snyder Rivas, the duly-appointed Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Steve Bensko, Esquire
Department of Agriculture and
Consumer Services
Division of Licensing
Post Office Box 6687
Tallahassee, Florida 32314

For Respondent: Thomas V. Close, Esquire
Lake Wellington Professional Centre
12230 Forest Hill Boulevard, Suite 122
Wellington, Florida 33414-5799
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ISSUE

At issue is whether Respondent committed the violations set forth in the Third Amended Administrative Complaint dated August 28, 2002, and if so, what penalty should be imposed.

PRELIMINARY STATEMENT

By Third Amended Administrative Complaint dated August 28, 2002, Petitioner, Department of Agriculture and Consumer Services, Division of Licensing (Petitioner) charged Respondent, International Investigations, Inc., Jorge L. Baro, Owner, (Respondent or Baro) with violating provisions of Chapter 493 of the Florida Statutes. Respondent timely requested a formal hearing.

At the hearing, Petitioner presented the testimony of Andrew Gluck, Fredrick W. Rustmann, Jorge Baro, and John A. Perret-Gentil. Petitioner's Exhibits numbered 1, 2, 4, 7, 8, 9, 11, 12, 14, and 16 were received into evidence. The Respondent testified on his own behalf but presented no exhibits.

A transcript of the hearing was filed on April 7, 2003. Following the hearing, an appearance of counsel was entered on behalf of Respondent, and the parties requested an enlargement of time to April 25, 2003, to file proposed recommended orders, which motion was granted. The proposed recommended orders have been carefully considered.

FINDINGS OF FACT

1. At all times material to this case Respondent held a Class "C" Private Investigator License, number C87-00343, as well as a Class "E" Recovery Agent License, number E87-00046.

2. By Final Order dated January 22, 2002 (Final Order) Petitioner determined that Respondent had conducted or advertised the business of a private investigative agency without a valid Class A license, and had performed the services of a private investigator after his Class C private investigator license had been suspended. Baro was fined for this conduct, and ordered to cease and desist from such activities until such time as he was properly licensed. Baro did not appeal the Final Order.

3. Baro subsequently violated the Final Order by advertising his availability to serve as a private investigator in Palm Beach County, Florida, without first obtaining the requisite licensure.

4. On or about January 14, 2002, in Palm Beach County, Florida, Respondent subcontracted investigative work to CTC International Group, a licensed Florida investigative agency. At that time, Baro did not have a Florida private investigative agency license.

5. In July, 2001, in Palm Beach County, Florida, Baro was working for Mrs. William LeNeve, who was embroiled in a

contentious divorce. Baro's services to Mrs. LeNeve included concealing her whereabouts from her husband. Desperate for money, Baro approached Mr. LeNeve and offered to switch sides and help locate Mr. LeNeve's wife and children for a price to be agreed upon.

6. By way of defense, Baro contends that Petitioner is conducting a "vendetta" because, "[O]pposing Counsel did not appreciate my telling him years ago that I thought what they did to me then amounted to nothing short of extortion." See Baro's letter to the Division of Administrative Hearings, dated April 8, 2003. In a letter to the Division of Administrative Hearings, dated March 14, 2002, Baro asserted, "I know that we can clearly show that the states(sic)case is unjust and that Mr. Bensko's only motivation is a personal vendetta. I would very much like the opportunity to prove that."

7. Baro made no attempt to back up the claim of improper motivation. To be clear, the record--both before and after Baro was represented by counsel--is completely devoid of any evidence that the Petitioner has acted improperly, or is improperly motivated with respect to Baro.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this cause pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

9. It is Petitioner's burden to prove the violations alleged by clear and convincing evidence. Dept. of Banking and Finance v. Osborne Stern, 670 So. 2d 932 (Fla. 1996), Pic n' Save Central Florida, Inc. v. Dept. of Business Regulation, Div. of Alcoholic Beverages & Tobacco, 601 So. 2d 245 at 249 (Fla. 1st DCA 1992), Ferris v. Turlington, 510 So. 2d 292 at 294 (Fla. 1987).

10. Florida law defines "private investigative agency" as "any person who, for consideration, advertises as providing or is engaged in the business of furnishing private investigations." Section 493.6101(15), Florida Statutes.

11. "[A]dvertising means the submission of bids, contracting, or making known by any public notice or solicitation of business, directly or indirectly, that services regulated under this chapter are available for consideration." Section 493.6101(6), Florida Statutes.

12. Section 493.6201(1), Florida Statutes, requires that "[a]ny person, firm, company, partnership, or corporation which engages in business as a private investigative agency shall have a Class A license."

13. Pursuant to Section 493.6118(2), Florida Statutes, Petitioner has authority to impose disciplinary sanctions against a licensee or unlicensed person, upon determination that a licensee or unlicensed person has violated any of the provisions of Section 493.6118(1), Florida Statutes.

14. Section 493.6118(1), Florida Statutes, provides, in pertinent part that:

(1) The following constitute grounds for which disciplinary action specified in subsection (2) may be taken by the department against any licensee, agency, or applicant regulated by this chapter, or any unlicensed person engaged in activities regulated under this chapter.

* * *

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

* * *

(g) Conducting activities regulated under this chapter without a license or with a revoked or suspended license.

* * *

(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.

* * *

15. The evidence in this case is clear and convincing that Respondent advertised private investigative services in West Palm Beach, Florida, at a time when he did not possess the requisite license and in violation of the Final Order.

16. There is also clear and convincing evidence that Baro

offered to work for his client's adversary in the LeNeve case. This betrayal of trust, standing alone, would warrant revocation of the licenses Baro holds.

17. Respondent has failed to demonstrate the existence of circumstances which would warrant leniency for his decision to sell out Mrs. LeNeve to her estranged husband. By putting his personal interests--in this case his "despera[tion] for money" ahead of Mrs. LeNeve's well-being, Baro demonstrated that he lacks the requisite fitness and trustworthiness to perform investigative services. Specifically, his conduct amounted to fraud, deceit, and misconduct while performing the duties of a private investigator.

18. Petitioner also contends that Respondent's action in subcontracting investigative work without himself possessing a private investigative agency license provides an independent basis to revoke Baro's licenses. In support of this argument, Petitioner relies upon a "legal policy" in effect since 1993 and more fully set forth in Division Legal Opinion number 93-37. Petitioner has cited no authority for the proposition that a legal opinion rendered by agency counsel carries the force of statute or rule; therefore, Petitioner has failed to demonstrate by clear and convincing evidence that discipline should be imposed upon Respondent for subcontracting with CTC International Group.

19. Section 493.6118(2), Florida Statutes, provides, in pertinent part:

(2) When the department finds any violation of subsection (1), it may do one or more of the following:

* * *

(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.

* * *

20. Pursuant to Rule 5N-1.113(1)(o), Florida Administrative Code, Petitioner's guideline penalty for an agency's violation of Section 493.6118(1)(g), Florida Statutes, for conducting or advertising the business of an agency without a valid license ranges from an administrative fine of \$250 to \$750 to revocation or denial of license.¹

21. Pursuant to Rule 5N-1.113(1)(u), Florida Administrative Code, the Petitioner's guideline penalty for a violation of Section 493.6118(1)(k), Florida Statutes, for violation of a cease and desist order ranges from an administrative fine of \$500 - \$1,000 to revocation or denial of license.

22. No guideline penalty exists for the violation of Section 493.6118(1)(f) which Baro committed when he offered to disclose Mrs. LeNeve's whereabouts to her estranged husband.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Class "C" Private Investigator License and the Class "E" Recovery Agent License, held by Respondent be revoked and that he be fined \$1,500.

DONE AND ENTERED this 6th day of May, 2003, in Tallahassee, Leon County, Florida.

FLORENCE SNYDER RIVAS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of May, 2003.

ENDNOTE

1/ Effective January 3, 2003, rule chapter 1C-3, Florida Administrative Code, was transferred to the rule chapter 5N-1.

COPIES FURNISHED:

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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.