

PRIVATE INVESTIGATORS LICENSING BOARD

MINUTES

AUGUST 13, 2008

BOARD MEMBERS PRESENT:

DAVID SPENCER / CHAIRMAN

DAN CRATE (LAS VEGAS)

JAMES NADEAU

RICHARD PUTNAM

LOIS WILLIS (LAS VEGAS) (LEFT AFTER A&D ENTERTAINMENT APPEAL)

OTHERS:

MECHELE RAY – EXECUTIVE DIRECTOR

JEFF MENICUCCI – BOARD COUNSEL

BRIAN FERNLEY-GONZALES (LAS VEGAS)

RENE BOTELLO – SENIOR INVESTIGATOR

KRISTINE MAUTNER – INVESTIGATOR (LAS VEGAS)

COLIN MURPHY – COMPLIANCE INVESTIGATOR (LAS VEGAS)

BRANDI KING – ASSISTANT (CARSON CITY)

ROLL CALL:

Chairman Spencer opened the meeting. Executive Director Ray called roll.

SWEARING IN:

Chairman Spencer asked Board Counsel Menicucci to swear in all those present in Carson City and Las Vegas.

Board Counsel Menicucci explained that the agenda was not posted on the Board's website and asked Director Ray to explain the circumstances. Director Ray explained to the Board that she sent an e-mail to the software company that manages their data and website on August 7, 2008 and assumed that it had been taken care of. The agenda did not get posted due to technical and human error. She explained that in the future, staff would always check to ensure that the agenda was posted on the website from this point forward. She did say that the agenda had been properly posted at seven other locations. Board Member Willis moved to proceed with the meeting. Board Member Putnam seconded and the motion carried.

OLD BUSINESS:

Red Rock Security, Inc. from Las Vegas, Nevada requested licensure and qualifying agent status for Blair Ludwig. Mr. Abbott was asked to tell the Board about his security experience. Board Member Nadeau moved to approve a corporate license in the category of private patrolman for Red Rock Security, Inc, qualifying agent status for Blair Abbott and corporate officer status for Blair and Adam Ludwig. Board Member Willis seconded the motion. The Board voted, and Board Member Crate was opposed. Board Member Nadeau moved to reconsider his motion which carried unanimously. Board Member Crate asked investigator Mautner to explain how she arrived at the amount of hours she had. He also asked Mr. Ludwig for clarification. Board Member Nadeau restated his original motion and that the license be placed into abeyance. Board Member Putnam seconded the motion. Board member Crate was opposed. The motion carried.

Anthony Davis with AD Entertainment Services was issued unlicensed activity citation number C-103-07 pursuant to Nevada Revised Statute 648.165(1)(2)(3)(4). Mr. Davis is requesting an appeal hearing on the issuance of the citation. NRS 648.165(5).

Mr. Davis was represented by Mr. Hal Hartley who was present in Carson City. Board Counsel Menicucci asked if exhibits A-D could be stipulated. Mr. Hartley objected to the stipulation of the citation. Board Counsel Menicucci explained that it was only the authenticity of the citation, and not the citation itself. Mr. Hartley was in agreement.

Board Counsel Menicucci called Investigator Mautner as his first witness. He asked her how she was in contact with Mr. Davis. She explained that she had received an anonymous telephone call. At that point she said she researched web site and found that it mentioned Las Vegas and that he was not licensed. She spoke to Mr. Davis and informed him that he could not do any security work in Nevada without a license. She said that conversation occurred on January 29, 2008.

Board Counsel Menicucci asked if she was given information about his working for MTV or Viacom. She said yes she spoke to Mr. Egan around February 7, 2007 and that she did not recall what event it was for. She said that Mr. Davis told her that he had worked in Las Vegas in the past and that he would cease and desist.

Mr. Davis asked Investigator Mautner if she recalled his sending an agreement to her that stated they were not providing security, but provided ushers only. She said yes she recalled that. Mr. Taylor asked Investigator Mautner if the Board regulated cashiers, parking attendants, janitors, etc. Investigator Mautner said that we would regulate parking attendants if they were controlling traffic. He asked her if his website had other things listed that did not fall within the Board's jurisdiction. She said yes there were.

Board Member Crate asked for the reason the citation was issued. Investigator Mautner said that she did not issue the citation and that was Mr. Botello's case. She was present for the benefit of putting Mr. Davis on notice that if he was going to provide security he would need a license.

Board Counsel Menicucci called Investigator Botello as his next witness. He asked Investigator Botello if he had a reason to issue a citation to Mr. Davis. Investigator Botello said yes he did and the reason was specific to his checking on the security contractors providing security for the MTV video awards. He said he received a call from one of our licensees, Cynthia Bazin, and that Mr. Davis contacted her to ask if he could rent her license. He then called Mr. Davis and had a conversation with him regarding the work he was going to provide at the MTV Video Music Awards. He told Investigator Botello that he had been hired by Mr. Egan as a security consultant to oversee the executive protection (red carpet) security. Board Counsel Menicucci asked if Investigator Botello contacted Mr. Egan. He said he had several conversations with Mr. Egan, who identified Mr. Davis as one of his security providers.

Board Counsel Menicucci asked Investigator Botello if he witnessed anything that Mr. Davis was doing that would require a license. Investigator Botello said he had done an audit at the Palms, on the 25th floor and encountered a Mr. Burrson (sp) who said he was an employee of A&D. Investigator Botello said he had several conversations with Mr. Davis and Mr. Egan. The conversations were specific to unlicensed activity, and Mr. Davis was not licensed in Nevada to provide security services (executive protection). One of his options was to subcontract to SOS Security (Flanagan). Board Counsel Menicucci asked him to identify a description of registered employee form (DRE). Board Counsel Menicucci asked if this was the form used by a licensee to inform the board when an employee was hired. Investigator Botello said that it was.

Board Member Crate asked if he spoke to Mr. Flanagan about the relationship between SOS and A&D. Investigator Botello said to the best of his recollection SOS agreed to take on the work that was given to A&D and that they would register, pay and take on all of the liability. Board Counsel Menicucci asked if he received a letter from Mr., Flanagan, referring to Exhibit F. Investigator Botello said yes he had. Board Counsel Menicucci asked if SOS or A&D had billed MTV directly. Investigator Botello said that based on the information received from Viacom, MTV paid A&D directly for services rendered. Board Counsel Menicucci asked Investigator Botello if he made a decision to issue a citation, and clarified that the citation did not include anything from the Thomas and Mack event. Investigator Botello said that was correct. Board Counsel Menicucci asked Investigator Botello if there was anything else he would like the board to know. Investigator Botello explained to the Board that this event was red carpet security (executive protection) for celebrities. Mr. Davis was on the red carpet and did provide executive

protection services. Investigator Botello relieved three employees from their post and notified Mr. Galante that they could not work, he then went to the west side of the center and approximately 10 – 15 minutes later two of the three individuals that had been relieved were back to work. He proceeded to go back to the red carpet area, but Mr. Davis blocked him and did not allow him to do his job. Board Counsel Menicucci asked if Mr. Davis had a work card. Investigator Botello said yes he had a work card but could not be certain if it identified SOS as the employer.

Mr. Hal Taylor asked if Investigator Botello issued the citation after Mr. Davis filed a complaint against Investigator Botello. He said that he did not recall. Mr. Taylor asked if Mr. Davis provided the same services in other state for Viacom. Investigator Botello said he thought he did, but could not be certain.

Mr. Taylor asked what services Mr. Davis was providing. He asked that Investigator Botello provide the explanation to the question and not a speech. Investigator Botello said that Mr. Davis was providing security services. Mr. Taylor asked what specifically Mr. Davis was doing. Investigator Botello said Mr. Davis was directing other security companies where to be, what to be doing, and things of that nature. Mr. Taylor asked if he personally witnessed this or did someone tell him that Mr. Davis was doing this. Investigator Botello said he observed this first-hand. Mr. Taylor asked if the subcontracting agreement was in place. Investigator Botello said that on that day, he did not have the agreement. Mr. Taylor asked Investigator Botello a few more questions.

Chairman Spencer asked Mr. Davis if, while working for SOS, who was going to pay him. Mr. Davis said he was not sure of the accounting of it, but had a long standing relationship with MTV. Chairman Spencer asked who employed Mr. Davis. He said he was employed by SOS. Chairman Spencer then asked him if taxes had been removed from his paycheck and Mr. Davis said he believed it was a subcontractor. Mr. Davis said he was not aware that he could not be a subcontractor without a license in Nevada.

Board Counsel Menicucci Investigator Botello if he visited A&D's website, and if so, did he print the pages from the website. Investigator Botello said that he had.

Board Member Nadeau asked Investigator Botello if at anytime he received any record of payment (a W-4 or 1 099) from SOS on how Mr. Davis was paid by SOS. Investigator Botello said he had not. The Board Members asked a series of questions and Board Member Crate went through the exhibits with Investigator Botello for clarification.

Board Counsel Menicucci called Mr. Jim Flanagan as his next witness and asked that he review the subcontractor agreement. Board Counsel Menicucci asked if Mr. Flanagan had reviewed

the contents of the agreement and Mr. Flanagan said no, not until today. Board Counsel Menicucci asked Mr. Flanagan who was going to be paid. Mr. Flanagan said that SOS was to bill MTV/Viacom and referred to paragraph 4 on page 4. Mr. Flanagan said that it was not until September 10 that he became aware that Mr. Davis had billed MTV directly and that SOS did not receive any payment from MTV and that they did not receive the monies that they should have for services provided.

Board Counsel Menicucci asked if Mr. Davis was an employee of SOS or a subcontractor and if any taxes were withheld from their pay. The response was no.

Board Member Crate asked if MTV paid SOS. The answer was no.

Board Member Crate asked if it was the view of SOS that there was a breach of the agreement and had SOS taken any action. Mr. Flanagan said yes it was breach of the agreement, but they had not taken any action regarding the matter.

For purposes of clarification the Board wanted to know if the arrangement between A&D and SOS was that MTV would pay all monies to SOS, who would then pay A&D. Mr. Flanagan said that was correct, but in fact what happened was that A&D billed MTV directly, who paid A&D and not SOS. Were there any conversations of Mr. Davis' status as an employee.....not with me
Clarification for Mr. Flanagan—was the arrangement between Mr. Davis and SOS that MTV would pay SOS and then SOS would pay Mr. Davis/A & D...actually what happened was MTV paid Mr. Davis and not SOS.

Mr. Taylor had several questions for Mr. Flanagan. He asked if Mr. Flanagan was involved in the agreement. Mr. Flanagan said no. MTV has been a client of SOS for many years and MTV approached them and asked them to use A&D and that A&D was to be compliant. Mr. Taylor asked if SOS was to receive a commission from A&D. Mr. Flanagan said no. Mr. Taylor asked if the contract was signed on or about August 31, 2007. Mr. Flanagan said yes and the purpose of the contract was to protect SOS from third party claims, and ultimately to ensure that they were paid. Mr. Taylor asked if Mr. Flanagan was on site or were there other supervisors on site. Mr. Flanagan said he was not on site and that there was supervisory staff on site.

Chairman Spencer questioned Mr. Flanagan about whether or not he signed the registered employee forms. He also wanted to know who suggested the contract be written. Mr. Flanagan said that he did in fact sign the registered employee forms and that he guessed that the general counsel for SOS suggested the agreement to be written.

Chairman Spencer made the statement that no subcontracts were allowed. He asked Mr. Flanagan if he was aware that in the State of Nevada there are no subcontracts allowed except for those people licensed within the state. He quoted NAC 648.570. Chairman Spencer asked

him who approached him to go to work. Mr. Flanagan said MTV was a large client of theirs and that SOS does work for them everywhere. MTV asked them to use A&D. They operate in about 30 states, and it was their intent to abide by the law. Chairman Spencer asked Mr. Flanagan if he was aware that A&D was not licensed in Nevada. Mr. Flanagan said he was not aware at first and when he did become aware of this is when he read the contract for the first time.

Board Member Nadeau asked if the contract was specific for MTV. Mr. Flanagan said that was correct. Board Member Nadeau asked Mr. Flanagan where Exhibit 1 was which was the scope of work. Mr. Flanagan said he did not know. Board Member Nadeau asked if Mr. Flanagan could tell the board what the scope of work was. He said that the scope of work security work between August 31, 2007 and September 10, 2007. He said there were no W-2's or 1099's issued to either Mr. Davis or Mr. Burroughs.

Board Member Putnam noted that the DRE submitted to our Board stating that he was an employee, which was in conflict with the subcontractor agreement that stated he would not be an agent or employee for SOS.

Board Member Crate asked Mr. Flanagan that if he was not directly involved in this agreement and did he sign off on the agreement would it have surprised him that MTV would have contracted with someone else. Mr. Flanagan said it would not surprise him for a special event. Mr. Taylor asked Mr. Davis if it was ever his intent to violate Nevada Law. Mr. Davis said no it was not and thought that because he had a sheriff's card and that the DRE has been submitted to the Board then he was able to provide security services in Nevada. Mr. Taylor asked him if Investigator Botello told him why he wanted to go to the other side of the room. Mr. Davis replied that he did not make any comment at all. Mr. Taylor then asked Mr. Davis to explain to the Board what he learned about Nevada law. Mr. Davis told the Board that he had not made any changes to his website since 2005 and that the majority of events and clients are very old. He said he learned that he cannot provide any types of services in the State of Nevada and that if Mr. Taylor told him he needed to pull his website, he would definitely pull the venue clients because that was the section specific to Nevada.

There were more board questions and discussions specific to the contractual issue and employee vs. independent contractor issues.

Board Member Crate moved to uphold. Board Member Putnam seconded the motion. There was more Board discussion. Motion carried.

Charles Freitag of American Armored Transport Systems LLC was issued unlicensed activity citation number C-010-08 pursuant to Nevada Revised Statute 648.165(1)(2)(3)(4). Mr. Freitag is requesting an appeal hearing on the issuance of the citation. NRS 648.165(5).

Board Counsel Menicucci presented the board with an agreement and provided the Board with a brief description of the citation. He told the Board that they did not need to make a decision as to whether or not the armored car company required a license in Nevada and that he would research this issue. The agreement would be that they had 60 days to pay the citation. Board Member Nadeau moved to approve what Board Counsel Menicucci stated. Board Member Crate seconded the motion and it carried unanimously.

Sir Heath Burkhalter was issued unlicensed activity citation number C-027-08 pursuant to Nevada Revised Statute 648.165(1)(2)(3)(4). Mr. Burkhalter is requesting an appeal hearing on the issuance of the citation. NRS 648.165(5).

Board Counsel Menicucci called investigator Mautner as his first witness. He asked her how she became aware of Mr. Burkhalter. She explained that she reviews Craig's list frequently and ran across Mr. Burkhalter's name. She went on-line with an alias and sent him an e-mail. Board counsel asked her if she knew if the services he was going to provide to her would be by him or someone else. She said that he would be providing the services and that he had several others to assist him. Board counsel asked if Investigator Mautner had contacted Mr. Burkhalter's employer to determine if they knew about or authorized the ad. She said she had and that his supervisor knew nothing about it. Mr. Burkhalter read a portion of the ad and then asked Investigator Mautner if the ad said anything specific to Las Vegas. She said that she put the location in her e-mail to him. He wanted to point to be made that he was looking for work in many locations. Board Counsel Menicucci then called Mr. Robert Nolan as his next witness. He asked Mr. Nolan if Securitas authorized Mr. Burkhalter to place the ad on Craig's list. Mr. Nolan replied not to his knowledge. Board Member Crate asked Mr. Nolan several other questions. The Board asked Mr. Nolan several questions. There was Board discussion. Board Counsel Menicucci provided the Board with his closing comments as did Mr. Burkhalter. There was more Board discussion. Board Member Crate moved to dismiss the citation issued to Mr. Burkhalter. Board Member Nadeau seconded the motion and it carried unanimously.

George Dorsey Jr. of Dorsey & Associates was issued unlicensed activity citation number C-081-07 pursuant to Nevada Revised Statute 648.165(1)(2)(3)(4). Mr. Dorsey is requesting an appeal hearing on the issuance of the citation. NRS 648.165(5).

Board Counsel Menicucci called Investigator Mautner as his first witness. He asked her if she personally served Mr. Dorsey the citation. She said yes she had. She said that she went to his office and served him the citation. Board Counsel Menicucci then called Director Ray to ask her if the proper notice of the appeal hearing was sent with return receipt requested. She said that yes the notice had been sent, and the return receipt had been received. Board Counsel

Menicucci then called Investigator Botello as his next witness. Board Counsel Menicucci asked Investigator Botello a series of questions about the citation issued to Mr. Dorsey. Board Member Crate asked Investigator Botello how this complaint had come to his attention. He said that he received a complaint from a licensee and that it was about someone doing unlicensed investigative work. Frank Morton was then called as a witness. Mr. Morton explained that when the employee was terminated as a result of the investigation done by Mr. Dorsey, IBEW 396, Union filed a grievance and that was how he became involved. He explained that Mr. Dorsey had been retained by Nevada Power. Board Counsel Menicucci asked if Mr. Dorsey was paid for his services, and asked if he interviewed several witnesses. Mr. Morton said that Mr. Dorsey was paid \$75 per hour and that he did interview witnesses. Board Member Crate asked if Mr. Morton knew this information first hand, or if it came to him from another source. Mr. Morton said that it was first hand. Board Counsel Menicucci called Jim Hannah as his next witness. Board Counsel Menicucci asked Mr. Hannah if he evaluated Mr. Dorsey's report. He said that he did. Board Member Crate asked Mr. Hannah who retained him. He said that the IBEW had. Board Member Nadeau had additional questions for Mr. Morton. He asked him if Mr. Dorsey had also done field investigation in this matter. Mr. Morton said that he took measurements, interviewed witnesses, etc. He found the page in the transcript where Mr. Dorsey talks about the fees paid to him for the investigation.

Board Counsel Menicucci provided closing arguments. He explained to the board that Mr. Dorsey was retained by Nevada Power to conduct an investigation and that it was clear he was hired as an outside investigator with regard to this investigation. Although in Mr. Dorsey's letter of appeal he states that the business was referred to him from Chrisin Bunden who worked for the Equal Rights Commission, Mr. Dorsey was not employed by them. He was hired to investigate a customer complaint of Joe Smith and as a result of that investigation Mr. Smith was terminated from Nevada Power. Mr. Dorsey said in his letter of appeal that he spoke with someone from the Board, but what he said he did is different than what he actually did. Board Counsel Menicucci told the Board that Mr. Dorsey had received adequate notice and that the Board could decide the outcome of this case. Board Member Crate asked if Nevada Power was aware of the citation. Investigator Botello said that he did not make contact with them, but that Investigator Mautner did. Board Member Nadeau moved to uphold the citation strictly for the unlicensed activity and nothing else. Board Member Putnam seconded the motion and it carried unanimously.

William Steele of Steele Guard Security was issued unlicensed activity citation number C-130-07 pursuant to Nevada Revised Statute 648.165(1)(2)(3)(4). Mr. Steele is requesting an appeal hearing on the issuance of the citation. NRS 648.165(5).

Board Counsel Menicucci made his presentation to the Board as to whether or not Mr. Steele could advertise for employees and then decide not to open up shop in Nevada. He explained to the Board that he seemed to be testing the waters. The question was if that was sufficient to uphold a citation or would something more be required. Board Member Crate asked Director Ray if Mr. Steele refused to attend the meeting. She said that he felt that his letter was his case and that it should be sufficient. Board Member Nadeau moved to uphold the unlicensed activity citation for unlicensed activity. Board Member Spencer seconded the motion. Board Member Nadeau said that ultimately he was advertising and generating business in Nevada. There was some Board discussion. The motion carried. Board Member Spencer asked for a copy of the management directives specific to unlicensed activity citations. Director Ray said she would provide one to him.

Approval of administrative fee schedule. Director Ray explained that this item had been continued from the previous meeting because it was not marked for action. Board Member Crate moved to approve the fee schedule. Board Member Spencer seconded the motion and it carried unanimously.

Review, discussion and possible action to proceed with changes to the Private Investigator and Polygraph Examiner exams. Director Ray explained to the Board that they had approved a new exam, but needed approval to have a select group of volunteers take the exam and provide feedback to the Board. Board Member Crate moved to proceed with having some licensed individuals take the exam and report back to the Board. Board Member Putnam seconded the motion and it carried unanimously.

There was no Board comment.

Future Agenda Items. Board Member Spencer said that he would like Todd Shipley to make a presentation to the Board at a future meeting regarding Computer Forensic Investigations versus Data Recovery. It was also suggested to put together a work shop on the subject.

The meeting was adjourned.