

BEFORE THE BOARD OF PRIVATE SECURITY
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-08-0500-PSP REGARDING:

THE APPLICATION FOR LICENSURE) Case No. 1793-2008
OF DONALD BRANDA, Private Investigator)
License Pending.)
)
)

**PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW;
AND RECOMMENDED ORDER**

I. INTRODUCTION

Donald Branda (applicant) appeals from the Montana Board of Private Security's denial of his request to be licensed as a private investigator in Montana. Hearing Examiner Gregory L. Hanchett convened a contested case hearing in this matter on July 9, 2008. Michael Fanning, agency legal counsel, represented the Department of Labor and Industry Business Standards Division (BSD). Branda represented himself. Michael and Gloria Weggoner, Missoula City Police Officer Jim Pontrelli, BSD investigator Casey Gilder, and BSD compliance specialist Terri Rae testified under oath. The parties stipulated to the admission of BSD's Exhibits 1 through 15 and applicant's Exhibits A through D. Based on the evidence and argument adduced at hearing, the hearing examiner makes the following findings of fact, conclusions of law, and recommended order.

II. FINDINGS OF FACT

1. The applicant is not nor has he ever been licensed to act as a private investigator in the State of Montana. He has been licensed as a private investigator in the State of Kansas since 1983.

2. The applicant's Kansas license was sanctioned in 1998 for permitting unlicensed persons to conduct private detective business for Branda without being supervised by a licensed private investigator. Exhibit 3, page 4.

3. In February 2007, the applicant took out an advertisement in the Missoula, Montana, Yellow Pages phone book. The advertisement indicated that the applicant was available for hire in Montana. The advertisement also gives a website for the applicant's detective agency, the Branda Detective Agency. At all times pertinent to this case, the website has indicated that the applicant has offices in the State of Kansas and in Missoula, Montana.

4. On March 27, 2007, the applicant applied for licensure as a private investigator in the State of Montana.

5. On April 5, 2007, the applicant asked the Board of Private Investigators to place his license application on hold. The Board acquiesced in this request. In late July 2007, the applicant notified the Board that he wished to reactivate his application.

6. As part of his application, the applicant identified that he had previously been charged with a misdemeanor and that his Kansas private investigator license had been sanctioned by the Kansas licensing authority responsible for licensing private investigators. Despite the instructions contained in the application, however, the applicant did not produce or obtain any documentation to explain the charges or the Kansas license sanction.

7. Because the applicant did not provide any supporting documentation, the Board at its September 2007 meeting voted to table the application until the Board's next meeting in December 2007. The application was tabled in order to permit the Business Standards Division to complete further investigation of the charges and license sanction that the applicant had mentioned in his application.

8. The applicant's Missoula Yellow Book advertisement lead Helmut Weggoner to contact him sometime prior to October 2007. Weggoner then hired the applicant to conduct surveillance of Helmut's son and daughter in law, Michael and Gloria Weggoner. Michael and Gloria and their daughters live in a home in Missoula and also own a ranch just south of Missoula. In 1998, Helmut and Michael had a falling out which resulted in Michael and Gloria moving to Montana and having no further contact with Helmut.

9. On October 3, 2007, pursuant to his agreement with Helmut, the applicant began surveilling Michael and Gloria and their daughters. He surveilled them at various times both at their home in Missoula and at their ranch. He also surveilled the daughters at their school. His methods of surveillance included both watching them at their home and ranch and by following them as they were driving.

10. It did not take long for Michael and Gloria to figure out that Branda was surveilling them and that he had been hired by Helmut to do so. Gloria discovered that the applicant was not licensed in Montana. In November 2007, Michael and Gloria contacted the Board of Private Investigators in order to file a complaint of unlicensed practice against the applicant.

11. Michael and Gloria attended the December 10, 2007 meeting of the Board. At the time of the meeting, Michael and Gloria filed a formal complaint against the applicant for engaging in unlicensed practice in Montana. Because the complaint had been leveled at the time of the meeting, the Board decided to table the applicant's license request until the next meeting of the Board in March 2008.

12. At the March 2008 Board meeting, the Board voted to deny the applicant's application because Branda engaged in unlicensed practice in Montana in investigating Michael and Gloria and the previous sanctioning of the applicant's license in Kansas. The Board

further provided that Branda could reapply for licensure in Montana after January 1, 2009. See Paragraph 7, Board Complaint dated April 3, 2009.

13. On April 1, 2008, the Board of Private Investigators issued a cease and desist order to the applicant advising him that he must cease performing the functions of acting as a private detective in the State of Montana without first being licensed.

14. At the contested case hearing in this matter, the applicant admitted that he engaged in unlicensed private investigation practice in Montana.

15. Despite being apprised at the hearing that he carried the burden of proof to demonstrate that the Board's denial of his license was in error, the applicant declined to put on any evidence on his own behalf.

III. CONCLUSIONS OF LAW¹

1. The applicant seeks to have the denial of his application for licensure overturned. As such, he bears the burden of proof to demonstrate that the Board's denial of his license was erroneous either in fact or law. *See generally*, 2 Am. Jur. 2d *Administrative Law* §251.

2. A professional licensing board may grant or deny a license. Mont. Code Ann. § 39-1-307(1)(e). Grounds for disciplinary action against a licensee may also serve as a basis for denying a license to an applicant. Mont. Code Ann. § 39-1-137(1). The purpose of the chapter regulating licensing of private investigators is "to increase levels of integrity, competency, and performance of security companies and their employees . . . to safeguard the public health, safety, and welfare against illegal, improper, or incompetent actions committed by security companies and their licensed employees" Mont. Code Ann. § 37-60-103.

3. Mont. Code Ann. § 37-1-316 provides in pertinent part that the following is unprofessional conduct (and, therefore sanctionable conduct) for a licensee or license applicant:

* * *

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state . . . if the action is not on appeal, under judicial review, or has been satisfied;

* * *

(16) Assisting in the unlicensed practice of a profession or occupation. . .

* * *

(18) conduct that does not meet the generally accepted standards of practice.

¹Statements of fact in the conclusions of laws are incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

4. The applicant's failure to put on any evidence is alone a sufficient basis to reject his contention that the license denial was erroneous. By failing to put on evidence, the applicant has failed to carry his burden of proof to show that the license denial was in error either in fact or law. Aside from this, however, it is readily apparent that the Board's determination was proper. The applicant admitted at hearing and the evidence shows that he engaged in unlicensed practice in Montana in violation of Mont. Code Ann. § 37-1-316(16). He had previously utilized unlicensed persons in the private security business in Kansas, violating not only Kansas law but also violating Mont. Code Ann. § 37-1-316(7) and Mont. Code Ann. § 37-1-316(16). Moreover, by engaging in unlicensed practice, the applicant committed unprofessional conduct in violation of Mont. Code Ann. § 37-1-316(18). The violations are an adequate and appropriate basis to deny the applicant's request for licensure in Montana.

IV. RECOMMENDED ORDER

Based upon the foregoing, the hearing examiner recommends that the Board affirm the denial of Donald Branda's application for licensure as a private investigator.

DATED this 25th day of July, 2008.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
Hearing Examiner

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.