

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Complaint of

**DEPARTMENT OF STATE
DIVISION OF LICENSING SERVICES,**

Complainant,

DECISION

-against-

**STEVEN SCHENENDORF and
SENTRY PROTECTION INC.,**

Respondents.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on May 14, 2008 at the office of the Department of State located at 123 William Street, New York, New York.

The respondents were represented by Kenneth Kirchenbaum Esq., Kirchenbaum & Kirchenbaum P.C., 200 Garden City Plaza, Suite 500, Garden City, New York 11530.

The complainant was represented by Senior Attorney Robert Leslie, Esq.

COMPLAINT

The complaint alleges that Steven Schendorf has availed his license to install, service or maintain security or fire alarm systems to an unlicensed individual, a that the respondents transmitted abusive communications to a customer against whom they threatened to take frivolous legal action.

FINDINGS OF FACT

1) Notices of hearing together with copies of the complaint were served on the respondents by certified and regular mail (State's Ex. 1).

2) Since July 21, 2003 Steven Schendorf has been licensed to engage in the business of installing, servicing, or maintaining security or fire alarm systems as representative of Sentry Protection Inc. (hereinafter "Sentry"). Since January 8, 2001 Mr. Schendorf has also been licensed to engage in the business of installing, servicing, or maintaining security or fire alarm systems as representative of Central Police Alarms Inc. (State's Ex. 2). His family has been in the security business since 1923 and he has worked in the technical end of the business since 1972, and he owns Central Police Alarms Inc. with his father. He has no prior record of violations.

3) From September 5, 2003 until September 4, 2007 Peter Goldring was licensed as qualifying officer on Sentry's license as a Watch, Guard or Patrol Agency (State's Ex. 3). He was

previously licensed to install, service, or maintain security or fire alarm systems as representative of Goldring Protection, a company which he formed and which he sold to Holmes Protection in 1995. He worked for Holmes Protection as vice president for business development until 1999, when that company was sold to ADT Security Services. He then worked as a consultant/expert witness in the alarm business and then as chief operating officer of Sentry Detection, a security alarm business. He subsequently went to work for his father-in-law's financial printing business, which was experiencing financial difficulties in the wake of the attack on the World Trade Center. At that point he had a conversation with Mr. Schenendorf, his cousin, and they agreed to form Sentry, which they would run on a part time basis in the hope of building up the business in the future. Mr. Goldring, his wife, and Mr. Schenendorf are the stockholders of the corporation, the certificate of incorporation of which was filed on July 1, 2003, with Mr. Goldring serving as president and treasurer and Mr. Schenendorf serving as vice president (Resp. Ex. A, State's Ex. 13). It was agreed that Mr. Schenendorf would be the license qualifier as he had a current license while Mr. Goldring's license had expired and could not be renewed. Mr. Goldring deals with financial matters while Mr. Schenendorf is responsible for performing and supervising installations and technical operations while also being aware of all contracts for installations. Mr. Schenendorf relies on Mr. Goldring to assure that sub-contractors are licensed.

4) Since March 8, 2003 Keith Ryan has been registered as a Security Guard (State's Ex. 4).

5) From April 25, 2000 to April 24, 2002 Steven J. Turkington was individually licensed to engage in the business of installing, servicing or maintaining security or fire alarm systems (State's Ex. 5).

6) There is no record of Classic Security being licensed to engage in the business of installing, servicing, or maintaining security or fire alarm systems since at least June 30, 2003 (State's Ex. 6).

7) On March 26, 2004 Prashant Patel entered into a contract with Sentry under which Sentry was to install and maintain a burglar and fire alarm system, a telephone system, data and video wiring, a video security system, and audio system, and a central vacuum system in Mr. Patel's house, which was then under construction. The total cost of the installation work under the contract was \$20,579.66, to be paid in quarterly installments of \$2,500.00, a progress payment of \$10,000.00, and a final completion payment of \$8,079.66 (State's Ex. 7).

8) The contract was negotiated with Mr. Goldring, who then brought in Mr. Turkington to do the work as a sub-contractor under the supervision of Keith Ryan. Mr. Patel never spoke with Mr. Schenendorf. Mr. Schendorf never inspected the work in Mr. Patel's house.

9) In dealing with the complainant's investigator Mr. Goldring asserted that he was president of Sentry, that he ran the company, and that he, not Mr. Schenendorf would respond to all questions.

10) According to Mr. Patel the work under the contract by Mr. Turkington initially proceeded in a satisfactory manner, so that, although the wiring wasn't entirely completed, he made a partial progress payment of \$9,000.00 in the summer of 2004 to facilitate the purchase of equipment. However, at that point, according to Mr. Patel, with the installation of the vacuum system remaining, the work ceased and he was advised that Paul Krinsky of Classic Security would continue the installation.

11) On September 20, 2004 Mr. Patel requested a refund. In response, Mr. Goldring advised him that the work already paid for had been completed and that he still owed \$1,000.00. He went on to say that Sentry intended to complete the installation as planned, but that Mr. Patel could cancel

the agreement by paying the \$1,000.00. An exchange of faxes on October 6, 2004 resulted in more detail being provided and in an offer to cancel the contract upon payment of the \$1,000.00 plus either an additional payment of \$6,000.00 for equipment which had been delivered but not yet installed or the return of that equipment (State's Ex. 11).

12) On November 23, 2004 Mr. Goldring sent Mr. Patel an e-mail in which he demanded payment of the additional \$1,000.00 and stated "Steve Schendorf is our qualifier, which means he passed a test in Albany. Otherwise he is an installer for us." He went on to threaten to file a complaint with the District Attorney alleging that Mr. Patel had stolen the equipment which had been installed (State's Ex. 10).

13) At some point Mr. Patel had the work completed by Paul Krinsky.

14) Mr. Patel sued Sentry in the Small Claims Part of Nassau County District Court for \$4,838.75 in damages for what it cost him to complete the job and on November 1, 2006 he and Mr. Goldring, acting as President of Sentry, entered into a stipulation of settlement providing for the payment to Mr. Patel of \$2,400.00 on or before November 15, 2006 (State's Ex. 9). In accordance with the terms of that settlement on November 2, 2006 Mr. Patel, who was subpoenaed to testify in this proceeding, withdrew the complaint which he had filed with the Department of State on June 1, 2006 (State's Ex. 8 and 12).

OPINION AND CONCLUSIONS OF LAW

I- Being an artificial entity created by law, Sentry can only act through its officers, agents, and employees, and it is, therefore, bound by the knowledge acquired by and is responsible for the acts committed by its qualifying officer, within the actual or apparent scope of his authority. *Roberts Real Estate, Inc. v Department of State*, 80 NY2d 116, 589 NYS2d 392 (1992); *A-1 Realty Corporation v State Division of Human Rights*, 35 A.D.2d 843, 318 N.Y.S.2d 120 (1970); *Division of Licensing Services v First Atlantic Realty Inc.*, 64 DOS 88; RPL § 442-c.

II- The complaint contains two basic allegations: That Mr. Schendorf availed his license to Mr. Goldring, and that he failed to supervise the general business of Sentry.

The evidence establishes that Mr. Schendorf was, and is, primarily responsible for the technical operation of Sentry and that Mr. Goldring was and is responsible for what would commonly be referred to as the "business end" of the corporation's operations. However, it also establishes that Mr. Schendorf has a general awareness of what Mr. Goldring does with regards to contracts with customers.

Pursuant to 19 NYCRR 195.9 Mr. Schendorf

"has an affirmative duty to provide supervision to employees and for all business activities. Such supervision shall consist of regular, frequent and consistent personal guidance, instruction, oversight and superintendence...with respect to the general business conducted by the firm and all matters relating thereto."

In his testimony Mr. Schendorf made it clear that he really doesn't care for the financial and administrative functions of the alarm business and likes to concentrate on technical matters. He has a general knowledge of the contracts being entered into. While there was testimony indicating that he is not involved in personnel matters, it appears that there are actually no employees (the secretary with whom Mr. Patel dealt was actually employed by Mr. Goldring's printing business),

and that installation work is contracted out, although that does not explain how Sentry maintains its alarm monitoring business, which Mr. Goldring testified currently has about 100 customers.

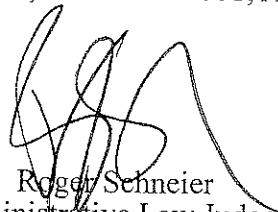
As the complainant has instituted very few disciplinary proceedings against security alarm firm cases, the issue of license availing is one of first impression. It is instructive, therefore, to refer to how the matter has been dealt with in the related business of Watch, Guard or Patrol Agencies. In *Dept. of State v IB Security Conscious, Inc.*, 1020 DOS 06, the Tribunal found that the qualifying officer of a Watch, Guard or Patrol Agency may be found liable for availing his license to another person who would actually be in total charge of running the agency. Mr. Schenendorf's actions herein are not that extreme. Unlike the respondent in *IB Security*, Mr. Schenendorf is directly and constantly involved in the operation of Sentry. I find, therefore, that his conduct did not amount to availing.

The finding that there was no license availing does not resolve the question of supervision. It appears that Mr. Schenendorf keeps himself informed with regards to the general operation of Sentry. However, in at least one regard his supervision has been wanting. He testified that he relies on Mr. Goldring to make sure that subcontractors are licensed, yet in the matter of the Patel contract two unlicensed sub-contractors were used: Steven J. Turkington and Classic Security. That Mr. Patel had no complaints about the quality of the work done by those two sub-contractors does not excuse the respondent's delegation of their installation obligations to unlicensed firms, and Mr. Schenendorf, in his capacity of qualifying officer of Sentry, is responsible for that delegation. The hiring of those unlicensed firms as subcontractors was the direct result of Mr. Schenendorf's delegation to Mr. Goldring of the duty to assure that only licensed sub-contractors are used. By failing to fulfill that duty Mr. Schenendorf did not properly supervise the operation of Sentry, a violation of 19 NYCRR 195.9. His conduct, a first offense in a long career, while not warranting revocation of his license does warrant the imposition of a fine.

There is no doubt that Mr. Schenendorf is sincerely interested in operating Sentry in a lawful manner that will benefit its customers. However, he is admonished that regardless of his perhaps understandable distaste for financial and legal matters he must assure that all aspects of the business are conducted in accordance with the requirements of General Business Law Article 6-D.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Steven Schenendorf and Sentry Protection Inc. have violated 19 NYCRR 195.9, and accordingly, pursuant to General Business Law §69-s, they shall pay a fine of \$1,000.00 to the Department of State on or before July 31, 2008, and should they fail to pay the fine their license to engage in the business of installing, servicing, or maintaining a security alarm system, and Mr. Schenendorf's such license as qualifying officer of Central Police Alarms Inc., shall be suspended for a period commencing on August 1, 2008 and terminating two months after the receipt by the Department of State of their license certificates. They are directed to send a certified check or money order for the fine payable to "Secretary of State," or their license certificates, to Kathy Scarcella, Customer Service Unit, Department of State, Division of Licensing Services, 80 South Swan Street, P.O. Box 22001, Albany, New York 12201-2201.


Roger Schneier
Administrative Law Judge

Dated: June 5, 2008