

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA PRIVATE DETECTIVE AND  
PROTECTIVE AGENT SERVICES BOARD

In Re Protective Agent License  
Application of F.R.M.A. Bodyguards,  
Inc., Jeffrey W. Stevenson, Qualified  
Representative.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Allen E. Giles pursuant to an Order for Hearing and Notice thereof which scheduled a hearing for August 21, 1995 at 9:30 a.m. at the Office of Administrative Hearings at 100 Washington Square, Suite 1700, Minneapolis, Minnesota.

Jeffrey F. Lebowski, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103-2106, appeared on behalf of the Administrative Unit of the Minnesota Private Detective and Protective Agent Services Board (hereinafter also referred to as "the Board"). Gregory J. Hellings, Babcock, Locher, Neilson, and Mannella, 118 East Main Street, Anoka, Minnesota 55303, appeared on behalf of F.R.M.A. Bodyguards, Jeffrey W. Stevenson, Qualified Representative.

The final reply brief in this matter was received on August 31, 1995. The Judge, sua sponte, raised the issue of whether jurisdiction was proper, in light of the Order for Hearing being signed by the Board's Executive Director. On October 3, 1995, the parties filed a stipulation agreeing that the Executive Director was authorized to issue the Notice of Hearing. The record closed in this matter on October 3, 1995.

This Report is a Recommendation, not a final decision. The Minnesota Private Detective and Protective Agent Services Board will make the final decision after a review of the record which may adopt, reject, or modify the Findings of Fact, Conclusions and Recommendation contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least 10 days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Ms. Marie Ohman, Executive Director, Minnesota Private Detective and Protective Agent Services Board, 1246 University Avenue, St. Paul, Minnesota 55104, to ascertain the procedure for filing exceptions or presenting argument.

## STATEMENT OF ISSUES

Whether F.R.M.A. Bodyguards' application for a Protective Agent license should be approved by the Board.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

### FINDINGS OF FACT

1. On April 14, 1995, the Board received an application for a Protective Agent license from F.R.M.A. Bodyguards along with payment of application fees of \$815.00. The anticipated primary business of the Applicant will be to provide lot security to Midwest Pawnbrokers and personal protection services to individuals.

2. The application identifies Jeffrey W. Stevenson as the Qualified Representative of F.R.M.A. Bodyguards. Mr. Stevenson is 25 years of age, having a birth date of October 16, 1967. He was born in Anoka, Minnesota. Mr. Stevenson's home address is 2535 Wingfield Avenue, Anoka, Minnesota 55303. Ex. 3.

3. Mr. Stevenson has worked for Midwest Pawnbrokers since March 1, 1990. Mr. Stevenson worked full-time approximately fifty hours per week. He was hired by Dale Wirz, owner of Midwest Pawnbrokers. For his first year, Mr. Stevenson worked solely as a broker. In approximately March, 1991, Mr. Stevenson became the person in charge of security for the pawnshop. One and a half years ago, he reduced his hours at Midwest Pawnbrokers to part-time, while operating a martial arts school. As a part-time employee for Midwest Pawnbrokers, Mr. Stevenson's duties include checking the security system, including cameras, checking lot security, and conducting classes for Midwest Pawnbroker employees on conflict resolution and self-defense. While working full-time, Mr. Stevenson wrote loans for persons pawning items and provided on-site security for the pawnshop. In that capacity, Mr. Stevenson wore a sidearm, carried a badge identifying him as a protection officer, and a T-shirt emblazoned with a badge and the word "SECURITY." His responsibilities included preventing theft, ensuring that no arguments between customers and staff continue, and advising staff on security issues.

4. Mr. Stevenson is responsible for maintaining the motion detector and video camera security systems at Midwest Pawnbroker. The videocamera system is used to prevent shoplifting. While working in the store full-time, Mr. Stevenson would use the system to observe persons to apprehend shoplifters.

5. In the event of a crime or observation of other suspicious activity, Mr. Stevenson contacts the police and reviews the videotape with the officer. Where stolen goods are identified, Mr. Stevenson contacts the police and evaluates the merchandise and prepares a stolen property incident form. Several years ago, Mr. Stevenson would contact the police once or twice a week on stolen property issues. When he worked full-time, Mr. Stevenson accompanied deposits being taken to the bank to provide security. Mr. Stevenson put in place a system of requiring driver's licenses as a

requirement of accepting checks. In addition, for assurance that the check will be paid, the drawee bank is contacted to ascertain an account balance. Losses from bad checks have been significantly reduced in recent years.

6. On a day-to-day basis, Mr. Stevenson pursues payment of checks returned by the bank for insufficient funds. In that capacity, Mr. Stevenson hand-delivers the required Notice of Dishonor. Where the drawer of the check has moved, Mr. Stevenson inquires of the current resident where the customer is currently residing. If the check remains unpaid, Mr. Stevenson contacts the police and pursues criminal action against the drawer of the returned check.

7. After a robbery of a nearby pawnshop by a customer carrying an uncased firearm, Mr. Stevenson proposed a policy of no uncased weapons in the shop. Mr. Wirz adopted that suggestion for Midwest Pawnbroker. Mr. Stevenson ensures that all employees comply with store policies and the applicable Bureau of Alcohol, Tobacco, and Firearms (BATF) regulations regarding the handling, sale, and pawning of firearms.

8. On weekends, Mr. Stevenson provided security to the Midwest Pawnbroker premises by checking the security measures of the equipment yard and patrolling the parking lot to prevent persons, primarily teenagers, from loitering and damaging property. Where such conduct is occurring, Mr. Stevenson gives the person a "Trespass Notice" revoking the person's permission to be on the property and advising of the possibility of arrest for failure to leave. Exhibit 2. In the event that these persons do not leave, the police are contacted. Mr. Stevenson does not make an arrest in such circumstances. The "Trespass Notice" is prepared by the local police for use by businesses.

9. Mr. Stevenson coordinates the "lockout" system to prevent doing business with persons who have pawned stolen property in the past. Midwest Pawnbroker's computerized property identification system identifies persons who have previously pawned stolen property. When such a person is identified, the customer is asked to explain the earlier problem with stolen property. In extreme incidents, the policy is to lock the customer in the store while the police are summoned.

10. Mr. Stevenson has taken courses on the use of firearms, including the proper use of deadly force. The course is not certified by the Peace Officer Standards and Training Board (POST). The course was taught by his partner in the martial arts school, Jason Ross. Mr. Stevenson teaches firearms safety to employees of Midwest Pawnbrokers. All the male employees of Midwest Pawnbrokers carry sidearms. Mr. Wirz is responsible for supervision of all employees of Midwest Pawnbrokers. Mr. Stevenson did not supervise anyone working for Midwest Pawnbrokers.

11. Mr. Stevenson has had no training as a peace officer or federal agent. Mr. Stevenson has never apprehended a shoplifter or testified in court. Mr. Wirz has no experience or training in security matters and provided no training to Mr. Stevenson in security matters. Mr. Wirz estimated that Mr. Stevenson spent "50%" of his time in security functions, but could not describe what those functions were.

12. Mr. Stevenson lacks any experience or formal training in citizen's arrest, the legal parameters of use of force in self-defense, or the civil liability potential created by the functions authorized under a license from the Board. Mr. Stevenson indicated that he intended to rely upon the experience and training of Jason Ross to handle such issues.

13. Jason Ross is 24 years old. He is the other partner in F.R.M.A. Bodyguards and a partner with Mr. Stevenson in the martial arts school. Mr. Ross has trained Mr. Stevenson on self defense in situations involving guns, knives, and takedown techniques. The training has also included use of handcuffs, citizens arrest, and false arrest.

14. Mr. Ross has taken law enforcement classes for all aspects of police work and tests for police training from Northern Hennepin Community College and Anoka Vocational Technical College. Mr. Ross does not hold either a two-year or four-year degree. He took a first responder class from Normandale Community College. Mr. Ross has not taken the first responder test to become qualified as an emergency medical technician. Mr. Ross has experience in crowd control and traffic control as a member of the Minneapolis Police Reserve.

15. Mr. Ross has never made an arrest as part of the Minneapolis Police Reserve. Mr. Ross has made citizen's arrests.

16. Mr. Ross worked for Leadens in 1989 for a period of less than six months and spent a few days actually providing security services. Mr. Ross worked for ACSI as a security guard for only a few days in the same general period of time. Neither employment is listed on the F.R.M.A. Bodyguards application.

17. The Board considered the application for licensure by F.R.M.A. Bodyguards at a meeting on June 26, 1995. Mr. Stevenson was present and responded to questions by the Board. The Board had before it the Applicant Background Memorandum prepared by the Executive Director. The Board determined that the scope of Mr. Stevenson's experience, exclusively providing on-site security at one pawn shop, was not extensive enough to meet the requirements of Minn. Stat. § 326.3382, subd. 2(c). In addition, the Board determined that Mr. Stevenson lacked the supervisory skills required of a licensee's Qualified Representative by Minn. Stat. § 326.32, subd. 12.

18. At the Board meeting on June 26, 1995, the Applicant was informed that the application was being denied for the reasons being discussed at the meeting. The Board advised the Applicant of the right to a contested case hearing under the Administrative Procedure Act.

19. A Notice and Order for Hearing was issued on July 13, 1995, and served upon Applicant. The hearing was scheduled for August 21, 1995 at 9:30 a.m. at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota. The hearing was held as scheduled.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### CONCLUSIONS

1. The parties stipulate that all relevant, substantive and procedural requirements of law and rule have been fulfilled so as to vest the Private Detective and Protective Agent Services Board (hereinafter "the Board") and the Administrative Law Judge with jurisdiction in this matter.

2. Minn. Stat. § 326.3311 (1994) authorizes the Board to receive, review, approve and deny applications for Protective Agent licenses according to standards and requirements contained in Minn. Stat. §§ 326.32 to 326.339 (1994) and applicable rules, Minn. Rules pt. 7506 (1993).

3. Minn. Stat. § 326.3382, subd. 2(c)(4) requires that the Qualified Representative of an applicant for a Protective Agent license have a minimum of 6,000 hours of experience in "an occupation that, the Board finds equivalent in scope, responsibility, and training to one of the specific occupations listed". The listed occupations are licensed protective agent, federal government investigative agent, a police officer, or a sheriff's deputy.

4. The primary responsibility of the qualified representative of F.R.M.A. Bodyguards is shoplifting or loss prevention surveillance. That occupation is not equivalent in scope, responsibility, or training to any of the occupations listed in Minn. Stat. § 326.3382, subd. 2(c).

5. Minn. Stat. § 326.32, subd. 12 identifies a "Qualified Representative" as the member of a partnership or corporation that meets the qualifications for licensing and requires that the Qualified Representative be capable of supervising and managing the day-to-day operations of the licensed activity.

6. As the Applicant for a license, F.R.M.A. Bodyguards has the burden of proving by a preponderance of the evidence that its Qualified Representative meets the requirement for licensure required by Minn. Stat. §§ 326.32 and 326.3382, subd. 2(c)(4).

7. F.R.M.A. Bodyguards has failed to prove by a preponderance of the evidence that its Qualified Representative, Jeffrey W. Stevenson has the background experience as an protective agent necessary for issuance of a protective agent license and has failed to prove by a preponderance of the evidence that Jeffrey W. Stevenson has the background experience for managing and supervising the licensed activity.

8. F.R.M.A. Bodyguards has failed to prove by a preponderance of the evidence that a protective agent license should be issued to it.

On the basis of the foregoing Conclusions and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

## RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Private Detective and Protective Agent Services Board issue an Order denying the application by F.R.M.A. Bodyguards for a license as a protective services agency.

Dated this 3rd day of November, 1995.

s/ Allen E. Giles

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ALLEN E. GILES

Administrative Law Judge

## NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Board is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape Recorded (3 cassette tapes)

## MEMORANDUM

### Burden of Proof

F.R.M.A. Bodyguards is proposing that the Board grant it a license and, therefore, F.R.M.A. Bodyguards "must prove the facts at issue by a preponderance of the evidence". Minn. Rules Pt. 1400.7300, subp. 5; In the Application of the City of White Bear Lake, 311 Minn. 145, 427 N.W.2d 901 (1976). Every element for licensure must be demonstrated by F.R.M.A. Bodyguards for it to prevail. Mr. Stevenson has not been employed in any of the identified experience categories (e.g. peace officer, federal agent). Therefore, F.R.M.A. Bodyguards must demonstrate that the experience of Mr. Stevenson is in an occupation equivalent to one of the identified categories.

### Experience of Qualified Representative

The experience of Mr. Stevenson did not extend to supervision at any point in his employment. As noted in a prior license application proceeding: "The amount of managerial or supervisory experience required of a Qualified Representative is unclear from the statute. However, it is undisputed that this type of experience is required." In the Matter of the Application of Austreng, OAH Docket No. 3-2403-7617-2 (Recommendation issued April 20, 1993). In that matter, employment for two months as a Surveillance Manager at a casino did not affirmatively establish the required managerial or supervisory experience. Mr. Stevenson has less experience in

managerial and supervisory duties than was demonstrated in Austreng. F.R.M.A. Bodyguards does not meet the requirement of having a Qualified Representative with adequate managerial or supervisory experience.

Mr. Stevenson's knowledge of security systems operation and maintenance is minimal. Mr. Stevenson described the level of complexity of the security systems he has worked with as "simple." To qualify his experience as equivalent, Mr. Stevenson specifically cited policies he formulated concerning security at Midwest Pawnbroker. These policies concerned cased firearms, checking bags upon entry, age limits on pawning, limits on pawning and redeeming firearms, loan policies and no cash refunds. The policy Mr. Stevenson proposed to Mr. Wirz of casing firearms being brought onto the business premises of Midwest Pawnbrokers was not the result of a security audit, but a reaction to recent incident involving the armed robbery of another pawnshop by a person with an uncased weapon. The other policies identified as security-related are more closely related to normal business practices in pawnshops. None of these policies are supported by an evaluation or analysis by Mr. Stevenson. There is no evidence in the record to determine the extent to which any aspect relating to security beyond the policy on its face was considered in recommending that policy. A deeper level of analysis regarding alternatives, legal implications, and interrelation of other security measures is required to demonstrate experience in security to the level required of a Qualified Representative.

#### Hours of Experience

The Board's long-standing interpretation of qualifying experience does not extend to the tasks of passively monitoring videocamera security systems. Even if that time were to be considered, Mr. Stevenson would lack the 6,000 hours of experience required of a Qualified Representative. Mr. Stevenson's evidence on the hours he has worked has been limited and equivocal. Mr. Wirz advised the Board's Executive Director that Mr. Stevenson was engaged in security duties for about half of his employment time. Much of this was monitoring video cameras. The patrolling performed by Mr. Stevenson as part-time work was done off of the premises of Midwest Pawnbroker and therefore was required to be done by a licensed individual. Under Minn. Stat. § 326.3382, subd. 4, such experience cannot be considered. Mr. Stevenson started full-time work at Midwest Pawnbrokers in March, 1990, as a broker. After a year, he began doing security work. One and one-half years ago, Mr. Stevenson ceased full-time work to open a martial arts school. Accepting the testimony that Mr. Stevenson worked fifty hours per week and the statement by Mr. Wirz to the Board's Executive Director that Mr. Stevenson spent half his time on security matters, Mr. Stevenson would have about 4,000 hours of experience in the activity claimed as experience. This total falls short of the 6,000 hours of experience required by statute.

#### Order for Hearing

The Order for Hearing was signed by the Executive Director, Ms. Marie Ohman. As stated in the Austreng Recommendation, it is unclear that the Executive Director has the authority to issue the Order for Hearing. Given the process used by the Board to

advise applicants of their right to appeal, the Board may wish to consider a vote to authorize the Executive Director to issue the Order for Hearing, at the Board hearing on the application that is denied. The vote can then be memorialized in the minutes of the meeting and approved at the next scheduled meeting. Such a procedure could resolve the difficulties of meeting to authorized the Notice of Hearing within the time period required to initiate a contested case appeal.

A.E.G.

