FILE COPY

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

In The Matter Of The Application For	:	
Renewal Of Private Detective License	:	ORDER DIRECTING THAT
#7082 And Application For Original	:	EXAMINER'S DECISION
Private Detective Agency License	:	BE THE FINAL
(Randall Detective Agency) For	:	AGENCY DECISION
MARIAN R. RANDALL,	:	CASE NO.LS9309171RAL
Applicant.	:	

The State of Wisconsin, Department of Regulation and Licensing, under the authority of sec. 227.46 (3) of the *Wisconsin Statutes*, hereby orders and directs, as follows:

ORDER

NOW, THEREFORE, it is hereby order that the Proposed Decision annexed hereto dated the 9th day of December, 1993 and filed by the Administrative Law Judge, shall be and hereby is directed to be the final decision of the Department of Regulation and Licensing.

The rights of a party aggrieved by this Decision to petition the Department for rehearing and the petition for judicial review are set forth on the attached *Notice of Appeal Information*.

Dated this 3rd day of January, 1994.

Pat McCormack

Department of Regulation and Licensing
By: Pat McCormack, Deputy Secretary

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE APPLICATION FOR RENEWAL OF PRIVATE DETECTIVE LICENSE #7082 AND APPLICATION FOR ORIGINAL PRIVATE DETECTIVE AGENCY LICENSE (RANDALL DETECTIVE AGENCY) FOR MARIAN R. RANDALL, APPLICANT.	:	PROPOSED DECISION LS9309171RAL

The parties to this proceeding for the purposes of Wis. Stats., sec. 227.53 are:

Marian R. Randall
2801 Century Harbor #2
Middleton, Wisconsin 53562

Department of Regulation & Licensing
P.O. Box 8935
Madison, Wisconsin 53708

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708

A hearing was held in the above-captioned matter on September 28, 1993. Gerald M. Scanlan, Attorney at Law, appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. The applicant, Marian R. Randall appeared in person without legal counsel.

Based upon the record herein, the Administrative Law Judge recommends that the Department of Regulation and Licensing adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Applicant, Marian R. Randall, 2801 Century Harbor #2, Middleton, Wisconsin, filed an application dated April 30, 1993 for renewal of private detective license #7082.

2. Randall filed an application dated April 30, 1993 for a private detective agency license (Randall Detective Agency).

3. On December 22, 1986, Randall was issued a private detective license (#7082) as an employee under Robert T. Shunk & Associates, a licensed private detective agency. Randall's employment with Robert T. Shunk & Associates was terminated as of January 20, 1987. Randall transferred her private detective license to AAT Security Systems on February 3, 1987.

4. On January 16, 1987, Randall was charged with parole violation and retail theft. The parole violation stemmed from Randall's conviction on November 2, 1984, of two counts of issuance of worthless checks and one count of theft based upon her plea of no contest and plea of not guilty by reason of mental disease or defect. Randall was found not guilty by reason of mental disease or defect and ordered into treatment at the Winnebago Mental Health Institute.

5. In a letter dated February 3, 1987, the department notified Randall that, if the charges of parole violation and retail theft resulted in a conviction, there could be cause for possible disciplinary action being taken against her license by the department.

6. On December 14, 1987, Randall was convicted of retail theft and sentenced to 8 days in jail and placed on probation for 1 year and 6 months.

7. In February, 1988, Randall voluntarily surrendered her private detective license #7082 to the department. The license expired August 31, 1988.

8. In conjunction with its consideration of Randall's application for renewal of private detective license and application for original private detective agency license, the department mailed a letter, dated May 17, 1993, to Randall's probation and parole officer, Robert Lee, concerning Randall's conviction for retail theft and her cooperation with all terms of probation.

9. On Wednesday, June 2, 1993, at 1:31 p.m.; Thursday, June 3, 1993 at 3:10 p.m.; Monday, June 7, 1993 at 9:14 a.m.; and Tuesday, June 8, 1993 at 10:39 a.m., Randall telephoned the department and left a message on the department staff's "voice mail" inquiring as to whether or not the department had received a response from probation officer, Bob Lee. In each telephone message left by Randall, she stated that she hopes to get her licenses soon, as "I have cases pending".

10. In a letter dated June 3, 1993, and received by the department on June 7, 1993, Robert Lee indicated that Randall was on two periods of supervision with the Department of Corrections. The first was from February 21, 1985 until September 1, 1987. This period of parole or aftercare supervision was after she pled not guilty by reason of mental illness or defect to two counts of issuance of worthless checks. The court accepted the plea and ordered her into treatment at Winnebago Mental Health Institute. The court released her from treatment on February 21, 1985. On June 14, 1989, Randall completed her probation concerning the theft conviction of December 14, 1987. Lee indicated that Randall had an uneven adjustment to supervision.

11. On June 11, 1993, the department notified Randall by telephone of its decision to deny her application for renewal of private detective license #7082, and application for a private detective agency license.

12. On June 15, 1993, Jerry Randall of Randall Press, Inc., Madison, WI, contacted the department inquiring whether Marian Randall was licensed as a private detective as his company had received a telephone request on June 14, 1993 from her to get a business card printed. On June 15, 1993, Marian Randall went to Randall Press, Inc., to review a draft of the business card and to make changes to the draft. Marian Randall remitted $15.22 (check #2581) as a down payment and asked that the card be done by June 18, 1993.

13. The draft of the business card approved by Marian Randall on June 15, 1993, for printing by Randall Press, Inc., states:

State of Wisconsin
Private Detective License
This is to certify that Marian Randall is a licensed private detective
#8504996
Department of
Regulation and Licensing

14. On June 15, 1993, Randall Press, Inc., sent a letter to Marian Randall which states, in part, that: "We are very sorry to inform you that we are not authorized to print certificates for the State of Wisconsin. Therefore, we are returning your check left as a deposit".

15. A "Notice of Denial and Notice of Right to Request Hearing On Denial", dated June 18, 1993, was issued and mailed by the department to Randall relating to her application for renewal of private detective license #7082, and application for an original private detective agency license (Randall Detective Agency).

CONCLUSIONS OF LAW

1 The Department of Regulation and Licensing has jurisdiction in this matter pursuant to s. 440.26, Wis. Stats., s. RL 31.05 Wis. Adm. Code and s. RL 35.01 Wis. Adm. Code.

2. Applicant has a conviction record.

3. Applicant, by having been convicted of retail theft violated a law the circumstances of which substantially relate to the practice of a private detective, in violation of s. RL 35.01 (2) Wis. Adm. Code.

4. Applicant, by engaging in conduct as described in findings of fact #12 and 13, used the title "private detective" and represented to another person that she was a private detective, in violation of s. RL 32.01 (2) Wis. Adm. Code.

5. Applicant, by using the title "private detective" and representing to another person that she was a private detective, engaged in conduct reflecting adversely on professional qualification, in violation of s. RL 35.01 Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED, that the application of Marian R. Randall for renewal of private detective license #7082, and application for a private detective agency license (Randall Detective Agency), be and hereby is, denied.

OPINION

On December 22, 1986, Marian Randall was issued private detective license #7082 as an employee under Robert T. Shunk & Associates, a licensed private detective agency. Her employment with the agency was terminated on or about January 20, 1987, following her arrest for retail theft. She transferred her private detective license to AAT Security Systems on February 3, 1987.

On January 17, 1987, Randall was charged with parole violation and retail theft. The department informed her by letter, dated February 3, 1987, that if the charges resulted in a conviction, there could be cause for possible disciplinary action being taken against her license by the department. On December 14, 1987, she was convicted of retail theft and sentenced to 8 days in jail and placed on probation for 1 year and 6 months. In February, 1988, she voluntarily surrendered her private detective license to the department. The license expired on August 31, 1988.

In April, 1993, Randall filed an application for renewal of her private detective license, along with an application for a private detective agency license. The applications were denied by the department on June 18, 1993. Randall requested a hearing on the department's decision to deny the applications.

The department's decision to deny Randall's applications is based upon its determination that Randall violated one or more provisions contained in chs. RL 30 to 35 Wis. Adm. Code.

Procedurally, this matter involves a Class 1 proceeding and a Class 2 proceeding. The Class 1 proceeding relates to the department's decision to deny Randall's application for a private detective agency license. The Class 1 proceeding is being conducted pursuant to ch. RL 1, Wis. Adm. Code. The Class 2 proceeding relates to the department's decision to deny renewal of Randall's private detective license. That proceeding is being conducted pursuant to ch. RL 2, Wis. Adm. Code.

I. CONVICTION RECORD

Section RL 31.02 (1) (b) 1. Wis. Adm. Code provides that a license as a private detective agency may be granted if the individual applicant, subject to ss. 111.321, 111.322 and 111.335, stats., does not have an arrest or conviction record. In addition, s. RL 35.01 (2) Wis. Adm. Code provides that the department may deny an application for renewal upon proof that the licensee has engaged in conduct reflecting adversely on professional qualification, which includes but is not limited to, violating, or aiding or abetting the violation of, any law, the circumstances of which substantially relate to the practice of a private detective.

The evidence establishes that Randall has a conviction record. She was convicted on November 2, 1984, of two counts of issuance of worthless checks and one count of theft based upon her plea of no contest and plea of not guilty by reason of mental disease or defect. In addition, Randall was convicted on December 14, 1987, of retail theft and sentenced to 8 days in jail and placed on probation for 1 year and 6 months.

It can be inferred from the evidence that Randall's conviction in November, 1984, was considered by the department prior to granting Randall a license in December, 1986 (Exhibit #1). The analysis which follows relates to Randall's conviction in 1987 for retail theft (Exhibit #2).

Section 943.50 (1m), Stats., provides that "whoever intentionally alters indicia of price or value of merchandise or who takes and carries away, transfers, conceals or retains possession of merchandise held for resale by a merchant or property of the merchant without his or her consent and with intent to deprive the merchant permanently of possession, or the full purchase price, of the merchandise may be penalized as provided in sub. (4)". Section 943.50 (4)(a), Stats., provides in part, that "whoever violates this section is guilty of a Class A misdemeanor, if the value of the merchandise does not exceed $1,000".

Based upon the criminal complaint, on January 16, 1987, a security officer at Prangeway department store in Madison observed Randall in the jewelry department remove various items of jewelry and place the jewelry inside of her hat. At some point in time after being detained, it was determined that Randall had taken from the store "various jewelry pins, 1 bracelet, 1 pin and earring set, 2 pair earrings, 1 necklace and Duracell batteries, for a total value of $40.60" (Exhibit #2).

Randall testified that she took the items from the store at the request of an individual at AAT Security Systems for purposes of testing the security of the store, and that she had taken items on at least two earlier occasions. She stated that she did not inform the department store of what she doing. (Tran. p. 10-12; 39-40).

Randall's account of why she took the items from the store is not credible, and is inconsistent with the testimony provided by Robert Lee, the probation and parole agent who supervised her following her convictions. Lee testified that Randall told him that she felt if she could shoplift items at the store without being apprehended, she could expose the shortcomings of the store and persuade the owner (of AAT Security Systems) to employ her at the agency. According to Lee, Randall admitted to him that she had shoplifted items from the store on two earlier occasions, and told him that she was planning on returning the items to the store (Tran. p. 10-11).

Sections 111.321, 111.322 and 111.335, Stats., prohibit a licensing agency from refusing to license, or bar or terminate from licensing, any individual on the basis of a conviction record. Section 111.335 (1)(c), Stats., provides that, notwithstanding s. 111.322, it is not discrimination because of conviction record to refuse to license or to terminate from licensing any individual who has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the licensed activity.

The purpose of the exception structured by the legislature in s. 111.335 (1)(c), Stats., was discussed by the Wisconsin Supreme Court in <u>County of Milwaukee v. Labor and Industry Review Commission</u>, 139 Wis. 2d 805, 407 N.W. 2d 908 (1987). The Court stated that it is the circumstances which foster criminal activity that are important, i.e., the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person which are relevant in determining whether the circumstances of the offense and practice are substantially related.

In determining whether the circumstances of the crime for which Randall was convicted substantially relate to the practice of a private detective, it is important to consider the "opportunity" for her to engage in criminal behavior and her character traits as they relate to the practice of a private detective.

The term "private detective" is defined in s. RL 30.01 (12) (a) Wis. Adm. Code to mean:

1. A person who acts as, uses the title or otherwise represents that the person is a private detective, private investigator or special investigator.

2. A person engaged for compensation or other consideration on behalf of another, in investigating or otherwise obtaining or furnishing information relating to any of the following:

a. Crimes or wrongs done or threatened against the United States, any state or territory, or any political subdivision thereof.

b. The identity, conduct, business, honesty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation or character of any person, if such information is obtained in secret, without the knowledge of the person being observed.

c. The identity, disposition or recovery of lost or stolen property.

d. The cause or responsibility for fires, libels, losses, accidents, damage, injury or death.

e. Securing evidence to be used before any court, board, officer, or investigating committee.

As a private detective, Randall would be presented with ample opportunity to engage in repetitive criminal behavior. The primary function of a private detective is to provide services on behalf of another person or entity. In providing those services, a private detective may be required to interview individuals in residential and business settings; safeguard valuable goods pending receipt of instructions regarding appropriate disposition, and/or analyze confidential financial records, such as credit card receipts and bank documents. In many instances, the services of private detectives are utilized by storekeepers to deter employees and patrons from removing goods from store premises. In such cases, they have easy access to assets located on the premises.

In reference to character traits, Randall's conduct as evidenced by her conviction for theft reflects that she is dishonest, untrustworthy and lacks respect for the ownership rights of other individuals. Such traits are totally inconsistent with those traits essential to successful practice as a private detective.

II. USE OF TITLE/MISREPRESENTATION

Section RL 35.01 (9) Wis. Adm. Code provides that the department may deny an application for renewal upon proof that the licensee engaged in conduct reflecting adversely on professional qualification, which includes but is not limited to, violating any rule in chs. RL 30 to 35 Wis. Adm. Code.

Section RL 32.01 (2), Wis. Adm. Code provides that no person may practice as a private detective, nor use the title or anything else to represent the person as a private detective unless he or she is licensed as a private detective under s. 440.26, Stats., and holds a current license as set forth in the provisions for biennial renewal under s. RL 32.02 or 32.03.

The evidence in this case establishes that Randall did not hold a current private detective license at the time she made contact with Randall Press, Inc., regarding printing the "business card" which stated that she was a "licensed private detective". By making the request to the printing company to print the "business card" stating that she was a private detective, and by approving the draft of the business card, Randall used the title "private detective" and represented to employees at the printing company that she was a private detective.

III. CONDUCT REFLECTING ON QUALIFICATION

Section RL 35.01 Wis. Adm. Code provides that the department may deny an application for renewal upon proof that the licensee has engaged in conduct reflecting adversely on professional qualification.

Randall's conduct in submitting information to Randall Press, Inc., for printing which purported to be a certification from the department that she was licensed as a private detective constitutes conduct reflecting adversely on professional qualification (Exhibits #3-6; Tran. p. 14-20).

Based upon testimony provided by Michele Pollack, an employee of the printing company, Randall made a request to have "one" business card printed, which would have contained the following information:

State of Wisconsin
Private Detective License
This is to certify that Marian Randall is a licensed private detective.
#8504996
Department of
Regulation and Licensing

Randall admitted at the hearing that she "attempted to get a bogus private detective license created" and stated that she "just wanted something to carry" in her wallet (Tran. p.42-43).

IV. ADDITIONAL VIOLATIONS

Although the "Notice of Denial and Notice of Right to Request Hearing on Denial" contains specific references to alleged violations of additional statutory and code provisions, the evidence presented does not establish such violations (Exhibit #8). For example, the evidence does not establish that Randall practiced without a current license in violation of s. 35.01 (19). Randall's statement to department staff that she had "cases pending" is not sufficient to establish that she actually practiced as a private detective after the surrender of her license (Exhibit #7). In addition, Randall testified at the hearing that she had "three" cases pending, but that she had informed the "clients" that she "was going to be getting" her license and that when she got her license she would "take their case" (Tran. p. 41-42). Finally, the evidence does not establish that Randall "advised any person to engage in an illegal act or course of conduct", in violation of s. RL 35.01 (7) Wis. Adm. Code.

V. CONCLUSIONS

The evidence presented establishes that Marian Randall has violated numerous provisions of the statutes and administrative rules relating to the practice of private detectives. Her conduct reveals that she is incapable of practicing as a private detective in a manner which safeguards the interest of the public. As a private detective, she would have ample opportunity to commit crimes similar to the ones for which she was convicted. Her conduct, as evidenced by her conviction for theft, reflects that she is untrustworthy and lacks respect for the rights of other individuals. She is in essence a dishonest person.

Based upon the record in this proceeding and the discussions set forth herein, the Administrative Law Judge recommends that the Department of Regulation and Licensing adopt as its final decision in this matter, the findings of fact, conclusions of law and order as set forth herein.

Dated this 9th day of December, 1993.

Respectfully submitted,

Ruby Jefferson-Moore

Ruby Jefferson-Moore
Administrative Law Judge

BDLS2:3979

NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:

STATE OF WISCONSIN DEPARTMENT OF REGULATION AND LICENSING
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708.

The Date of Mailing this Decision is:

JANUARY 4, 1994

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)