

**DEPARTMENT OF EXCISE AND LICENSES
DENVER, COLORADO**

RECOMMENDED DECISION

**IN THE MATTER OF A BUSINESS LICENSE HELD BY PINKERTON
CONSULTING & INVESTIGATIONS INC.**

PRIVATE SECURITY EMPLOYER LICENSE # 2019-BFN-0010065

INTRODUCTION

On November 16, 2020, the Executive Director of Excise and Licenses issued an Order setting a hearing for the renewal application of the above-referenced License and consolidating the renewal with a Show Cause Order hearing issued the same day. As detailed below, the consolidated matters were set for hearing, then continued to February 3, 2021. Hearing Officer Bruce Plotkin presided. The Department was represented by Senior Assistant City Attorney Katie Conner. Respondent (hereinafter “Pinkerton”) was represented by Shaun Kennedy, Esq., and Peter Kurtz, Esq., of Holland and Hart LLP. The following exhibits were admitted by stipulation of the parties: C-1 through C-15; and A-H. The parties also stipulated to the facts as stated in each other’s pre-filed briefs. At hearing, the parties agreed the issues could be decided without fact witnesses. Thus, the issues are resolved through consideration of the parties’ exhibits, briefs, and applicable authority.

ISSUES

The issues to decide at hearing were:

- A. whether Pinkerton violated the authority specified below and, if so,
- B. whether Pinkerton’s license should be suspended, revoked, or not renewed.

FINDINGS

1. The findings germane to this recommended decision were not disputed. The following findings derive from the combined Complaint, Order to Show Cause, Briefs, and Exhibits filed and stipulated by the parties, except as specifically noted.
2. On March 30, 2020, the Department issued a Private Security Employer license with a firearm endorsement, to Pinkerton. The license was to expire on October 16, 2020.
3. On October 8, 2020, Channel 9News in Denver contacted Pinkerton’s Managing Director to request security services for its crew anticipated to cover demonstrations at the Capitol Building in downtown Denver on October 10. [Ex. G].¹ Pinkerton had already provided

¹ 9 News’s parent company, TEGNA, had contracted with Pinkerton in June 2020 to provide security

such services to 9News and had a “Master Consulting and Services Agreement with 9News’s parent company TEGNA Inc. [Ex. C].

4. The following day, 9News determined it would send two crews for that coverage and requested Pinkerton to provide a security guard for each crew.
5. The same day, October 9, Pinkerton contacted Isborn Security Services, with whom it had a “master” contract since 2005 for such subcontracted security services. Subcontracting security guards is a routine practice in Pinkerton’s operations. Pinkerton’s request to Isborn specified it sought an armed, non-uniformed guard “to blend in” and to provide “executive/staff protection” for 9News through its parent company. [Ex. D; Ex. H; Complaint p.2].
6. Isborn contracted with Matthew Dolloff to perform security services on behalf of Pinkerton for 9News. [Ex. H; Ex. G, p.2]. Dolloff was not an employee of Isborn, but an independent contractor Isborn had used previously. [Complaint p.2]. Isborn’s owner was aware Denver requires licensure for security guards; however, he was not aware of any Denver Security Guard License for Dolloff. [*Id.*].
7. After securing Dolloff to provide the security services requested by Pinkerton, Isborn, notified Pinkerton, still on October 9, that Dolloff would be one of the security agents for 9News. [Ex. H].
8. Early on October 10, Pinkerton’s Managing Director confirmed to 9News it would provide (“staff”) two security guards, specifically naming Dolloff. [Ex. G].
9. During 9News’s coverage of the demonstrations on October 10, Dolloff “was involved in an altercation with Lee Keltner. During that altercation, Dolloff shot and killed Mr. Keltner.” [Complaint p.2; *see also* Pinkerton’s Pre-Hearing Brief p.3]. Dolloff was not licensed to provide security services on October 10, 2020, as required by City ordinance and Department regulations.²
10. At all times pertinent to this appeal, Pinkerton was licensed as a Private Security Employer in Denver, including a Firearm Endorsement to its license. [Ex. C-5; Ex. A; Ex. F]. Isborn was also licensed as a Private Security Employer in Denver with a Firearm Endorsement. [Ex. F]. Pinkerton’s renewal of its license has been pending since October 7, 2020. [Ex. B].
11. As a result of the Denver Police Department investigation into the shooting incident on October 10 during which it was discovered Dolloff was unlicensed, the Department issued a Complaint against Pinkerton on November 10, 2020, followed by its Order to Show Cause on November 16,

² This point was neither stipulated nor denied by Pinkerton. However, the preponderance of the stipulated evidence establishes Dolloff was not a licensed Security Guard in Denver on October 10, 2020. *See, e.g.* Ex. C-2 at p. 2 (“Mr. Isborn admits he is not aware of any Denver Security Guard License for Mr. Dolloff”); C-14 (“they [Isborn] do not have any [security] guards associated with their license”); Pinkerton’s Pre-Hearing Brief at p.9 (“Mr. Dolloff, the person without a requisite security guard license issued by the Department...”).

2020, setting the matter for hearing on December 8, 2020. Hearing was later continued to February 3, 2021.³

ANALYSIS

12. The Department charged Pinkerton with violating D.R.M.C. 32-22 (4) and (8), which state:

D.R.M.C. § 32-22 Revocation

In addition to any other penalties prescribed by the Revised Municipal Code, the director may, on his own motion or on complaint, and after investigation and a show-cause hearing at which the licensee shall be afforded an opportunity to be heard, suspend or revoke any license previously issued by him for any violation of any of the following provisions, requirements, or conditions:

(4) The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any terms of the provisions pertaining to the license or any regulation or order lawfully made under and within the authority of the terms of the provisions relating to the license...

(8) The licensee, or any of the agents... of the licensee, have violated any ordinance of the city ... or have permitted such a violation on the premises by any other person...

13. D.R.M.C. § 32-22 (4) and (8), above, do not stand on their own as a basis for discipline, but require reference to a violation of some other license provision, regulation, or order. The Department specified Pinkerton’s acts or omissions regarding the absence of a Security Guard license for Dolloff on October 10 violated the following ordinance relating to Private Security Employers and Private Security Guards.

D.R.M.C. § 42-132 License required; exemptions.

...

(b) License required.

...

(2) It shall be unlawful for a private security employer to permit or direct any person to perform security services unless the person has obtained a license as provided in this article.

14. Pinkerton is a Licensee pursuant to its Security Guard Employer License with the Department. [PP 1.2; Ex. C-5]. This meets the first element of § 32-22(4)

15. The Department did not offer evidence that Pinkerton knowingly provided an unlicensed security guard to its client, 9News, in violation of D.R.M.C. 42-132(b)(2). The Department’s claim falls under the “requisite due care” portion of D.R.M.C 32-22(4). “Requisite due care” is not defined in the ordinance, and the parties did not suggest a definition. However, as noted by the Department, the City imputes requisite due care by holding a licensee responsible for the acts and

³ Authority for the Director to investigate Private Security Employers’ violations is granted via D.R.M.C. § 42-161, as applied in the Department’s Policies and Procedures (PP) Rules Governing Security Guards and Private Security Employers, § 2.

omissions of its subcontractors relating to its license (§ 32-22(4)) or relating to “any ordinance” (§32-22(8)) of the City.

16. Imputed liability of a licensee for wrongdoing by, *inter alia*, its independent contractors, is further defined as follows.

Any act or omission committed by any employee, agent, or independent contractor that occurs in the course of his or her employment, agency, or contract with the licensee shall be imputed to the licensee or permittee for purposes of imposing any suspension, revocation or other sanction on the licensee or permittee.

[D.R.M.C. 32-30(b)].

17. This is a linchpin of the Department’s argument. As this article applies to Pinkerton, the applicable language is clear and unmistakable. In essence this law states if, during the course of a contract with a licensee, the licensee’s independent contractor commits a license violation by omission, then the omission is imputed to the licensee and subjects the licensee to the same sanctions as the independent contractor.
18. The parties stipulated that the security services Isborn supplied to 9News on behalf of Pinkerton were as Pinkerton’s independent contractor. [See also, Ex. D. at ¶ 12.6].
19. Pinkerton did not dispute that Dolloff was unlicensed at the time he performed security services on behalf of Isborn, a Private Security Employer. [See n2].
20. At the time Dolloff performed unlicensed security services for Isborn, Isborn was in a contractual relationship with Pinkerton to provide those security services. As previously noted, under § 42-132(b)(2), it is unlawful for a Private Security Employer to permit an unlicensed guard to perform security services. D.R.M.C. § 42-132(b)(2).
21. Pursuant to D.R.M.C. 32-20(b), Pinkerton is in the same position as Isborn with respect to penalties for Isborn’s acts or omissions that violated Denver’s license law during its contractual relationship with Pinkerton. Because Isborn permitted an unlicensed guard to perform security services under its Private Security Employer license, in violation of § 42-132(b)(2), and Pinkerton stands in the same position as Isborn for its violation, the Department established Pinkerton’s violation of § 42-132(b)(2).
22. Pinkerton made four discernable arguments why it is not in violation: (1) Pinkerton neither directed nor permitted Isborn to perform Security Services without a valid Private Security Employer License; (2) Pinkerton claimed § 32-30(b) does not expand §42-132(b)(2) to impute liability to a licensee for the acts or omissions of its subcontractor; (3) the Department abandoned its §42-132(b)(2) claim; (4) Pinkerton cannot be liable because liability may attach only to a natural person, not an entity.
23. Directed or permitted/Private Security Employer License. Pinkerton claimed that it did not direct or permit Isborn to perform any security services without a valid Private Security Employer

License. This claim is immaterial, as the Department did not claim Pinkerton failed to possess a valid Private Security Employer license.

24. No imputed liability. Pinkerton’s claim here was in two parts. First, Pinkerton claimed it neither endorsed nor ratified Isborn’s act or omission in hiring an unlicensed security guard. This claim fails since, as stated above, the City imputes liability to a licensee for the acts and, as relevant here, omissions of its independent contractor. This imputed liability applies irrespective of intent. Thus, Isborn’s awareness or lack of awareness of Dolloff’s license status is, for reasons stated above, an omission imputed to Pinkerton, irrespective of whether Pinkerton endorsed or ratified Isborn’s omission.
25. Next, Pinkerton claimed § 32-30(b) does not expand § 42-132(b)(2) to impute liability for a licensee’s subcontractor’s omissions to the licensee. Pinkerton reads § 32-30(b) to mean Isborn’s omission – the failure to provide security services by a licensed security guard – applies only to the relationship between Isborn and Dolloff, not between Pinkerton and Isborn. As noted by the Department, this interpretation would always enable a licensee to avoid liability for wrongdoing simply by subcontracting with another, a doubtful intended result of such reading.
26. Moreover, Pinkerton’s claimed immunity is contrary to the City’s explanation of licensee liability under § 32-30.

For purposes of suspending or revoking any license... the licensee... shall be deemed to have permitted an act or condition if a reasonable licensee or permittee would have been aware of the act or condition and taken action to stop the act or eliminate the condition.

[D.R.M.C. § 32-30(a)].⁴

27. Pinkerton claimed it provided all care that was due, citing several steps it took allegedly to ensure its own compliance with its duties as a Private Security Employer. Pinkerton’s cited its “due diligence” form, which it required Isborn to complete. Notably, the “Licenses, Insurance and Certificates” section of that form did not ask if Isborn’s employees and subcontractors possessed requisite licenses. Pinkerton’s Due Diligence form asked Isborn “[d]o you have an internal auditing process” which Isborn answered “No.” The form also asked what is Isborn’s process for managing the performance of its subcontractors who would be interacting directly with Pinkerton. Isborn answered “None.” [Ex. E, p.2].
28. Isborn’s responses, suggesting it had little or no process to ensure its guards are licensed, would have caused a reasonable licensee to inquire further into its subcontractors’ practices. Pinkerton’s failure to do so, and its failure to have procedures in place to avoid hiring unlicensed Security Guards, whether directly or indirectly, renders it liable for Isborn’s unlicensed security guard pursuant to § 42-132(b)(2) as further defined by § 32-30.

⁴ The Department did not cite § 32-30(a) as a substantive violation. I consider it insofar as it defines the word “permit” in D.R.M.C. 42-132(b)(2), to wit: “It shall be unlawful for a private security employer to permit or direct any person to perform security services [without a license].”

29. Pinkerton also claimed it is not liable for Isborn’s violation under Springer v. City & Cty of Denver, 990 P.2d 1092, 1096 (Colo. App. 1999)(*rev’d on other grounds Springer v. City & Cty of Denver*, 13 P.3d 794 (Colo. 2000), in which the court stated “[a]s a general rule, a person hiring an independent contractor to perform work is not liable for the negligence of independent contractor.” Pinkerton’s expansion of this general rule, particularly in light of explanatory §§ 32-30 (a) and (b) would lead to the unreasonable result that a licensee may subcontract away its liability resulting in a discordant rather than a harmonious reading of §§ 42-132(b)(2), 32-30(a), and 32-30(b). *See Young v. Brighton Sch. Dist.* 27J, 325 P.3d 571, 576 (2014). For reasons stated here, Pinkerton failed to establish that a licensee is not liable for the acts and omissions of its subcontractor.
30. Department abandoned § 42-132(b)(2). Pinkerton alleged the Department abandoned its claim under §42-132(b)(2) by stating Isborn’s violation of § 42-132(b) may be imputed to Pinkerton through § 30-32(b)(2). There was no indication from the Department, in its Response Brief or otherwise at hearing, that it abandoned its § 42-132(b)(2) claim against Pinkerton. It does not follow from Pinkerton’s assertion - that because the Department alleged Isborn’s § 42-132(b)(2) violation is imputed to Pinkerton via § 30-32(b) – that the Department therefore abandoned § 42-132(b)(2). Pinkerton offered no authority for its allegation, and it remains unproven.
31. No liability if not a natural person. Here, Pinkerton makes two arguments. First, it claims it cannot be liable under § 32-30(b) because the ordinance’s reference to “his or her” precludes Pinkerton as a legal entity. [Pinkerton Reply Brief, p.3]. Denver’s ordinances specifically include businesses in gendered pronouns. “When any subject matter, party, or person is described or referred to by words importing the masculine, females as well as males, firms, associations, and corporate organizations as well as individuals, shall be deemed to be included.” [D.R.M.C. § 1-2 (8)].⁵ In the same vein, Denver law regarding Private Security Businesses and Guards law specifies “[p]erson includes any individual, natural person, firm, company, business, association, organization, partnership, or corporation.” [D.R.M.C. 42-131(5)].
32. Moreover, irrespective of its gender argument, Pinkerton expressly assumed liability for its subcontractor Isborn’s failure to provide a licensed Security Guard. “Pinkerton expressly assumes all liability and responsibility for such Subcontractors’ compliance with, or breach of, the terms of this Agreement.” [Ex. C, p.1]. Pinkerton expressly included, in its assumption of liability, each “work order” such as its contract with 9News for security services. “Each such Work Order shall be incorporated into this [Master Consulting and Services] Agreement by reference.” [*Id.*]. Since Isborn was “prohibited from utilizing unlicensed security guards...” [Respondent’s Pre-Hearing Brief, p.8], Pinkerton, therefore, contractually assumed liability for Isborn’s omission in hiring an unlicensed security guard to perform security services.
33. Finally, Pinkerton asserts “the” licensee in § 32-30(b) limits liability to the licensee with whom the natural person (Dolloff) has a legal relationship. [Pinkerton Reply Brief, p.3]. This reading would impermissibly vitiate the first portion of § 32-30(b). For reasons specified above, liability attaches to Pinkerton for any act or omission of its independent contractor, Isborn, that occurred during the course of the Pinkerton-Isborn security services contract. [*See* ¶¶ 12, 13 *supra*].

⁵ Moreover, Pinkerton’s own documents undermine its argument since Pinkerton uses “he” and “she” to include entities. “Vendor [Isborn Security Services] certifies that he or she possesses any country or local business, private investigator or other licenses...” [Ex. D at ¶ 10.3].⁵

34. This also makes sense from a policy perspective as the cost for Pinkerton to have in place measures to ensure its subcontractors' security guards are properly and currently licensed is slight compared with the now-evident cost of failing to impose such imputed liability.
35. The Department met its burden to establish Respondent Pinkerton's violation of D.R.M.C. 32-22(4) via § 42-132(b)(2) and § 32-30(b). Therefore, the Department established Pinkerton is properly subject to disciplinary action.
36. The Department's claim under § 32-22(8) appears to be inapplicable to the present case, as that section appears to apply only to violations that occur on the physical premises of a licensee. What remains is the calculation of the degree of discipline.
37. In addition to revocation, the Director may assess penalties including suspension of a maximum of six months, [D.R.M.C. 32-1; 32-22; PP § 21.2.5], and additional terms, requirements, conditions, or limitations, [PP § 21.2.7]. Aggravating and mitigating factors should be considered in that calculation.
38. Mitigating Factors. Pinkerton did not intend to provide security services of an unlicensed security guard to 9News. Pinkerton made some attempt to ensure its subcontractor was in compliance with relevant license laws.
39. Aggravating Factors. Pinkerton failed to ensure its subcontractor, Isborn, complied with Denver license law, resulting in the provision of security services by an unlicensed security guard. Pinkerton's providing unlicensed security services endangered public safety.

RECOMMENDATION

In view of Pinkerton's violations and having considered mitigation and aggravating circumstances, the Hearing Officer recommends the following penalties.

- a. Impose a suspension of six months.⁶
- b. Pursuant to PP Article XXI, § 21.2.7, require Pinkerton to have in place internal procedures acceptable to the Department in its sole discretion, to ensure Pinkerton provides only licensed security services, whether directly or indirectly, before the Department will issue its renewal.
- c. Renew Pinkerton's Private Security Services license, subject to satisfactory completion of the conditions in ¶¶ a. and b.

DONE February 17, 2021.



Bruce A. Plotkin
Hearing Officer, Dept. of Excise and Licenses
Hearing Officer

⁶ There was no evidence presented whether Pinkerton has continued to provide Security Services since last October. If it has not, I recommend imposing this 6-month suspension *nunc pro tunc* to the date its previous license was to expire – October 16, 2020. If it has provided Security Services since that date, I recommend imposing the 6-month suspension from the date of the Executive Director's Final Decision.

CERTIFICATE OF SERVICE

I certify the foregoing RECOMMENDED DECISION was served via email on February 17, 2021, to the following:

EXLRecordsManagement@denvergov.org

CAOExciseandLicense@denvergov.org

Katie Conner, ACA, katie.Conner@denvergov.org

Shaun Kennedy, Esq., sckennedy@hollandhart.com

Peter Kurtz, Esq., pakurtz@hollandhart.com


