

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF THE LICENSES OF
CORY GREEN TO PRACTICE AS AN
ARMED PRIVATE SECURITY OFFICER
AND TO PROVIDE CONTRACT
SECURITY COMPANY SERVICES IN THE
STATE OF UTAH

**ORDER SETTING ASIDE
EMERGENCY ORDER**

Case No DOPL-2010-45

This matter came before J Steven Eklund, Administrative Law Judge, and Thad LeVar, presiding officer, on June 1, 2010 in a hearing to determine, pursuant to U C A § 63G-4-502 and Utah Admin Code R151-46b-16, whether the Emergency Order issued in this matter on February 9, 2010 should be affirmed, set aside, or modified. The Respondent is represented by his attorney, Bradley J Schofield. The Division of Occupational and Professional Licensing ("DOPL") is represented by its attorney, Laurie Noda. Both parties presented evidence and arguments during the June 1, 2010 hearing. The presiding officer makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1 The factual determination in this matter rests on an evaluation of the credibility of two conflicting sets of testimony: the testimony of Cory Green and the testimony of minors B D and J R. The remainder of the testimony presented was primarily hearsay and personal opinions of the credibility of those witnesses.

2 While there were some inconsistencies in the testimony of B D and J R, those

inconsistencies were not alarming due to the age of the witnesses. None of those inconsistencies were serious enough to cast doubt on the significant events to which they were testifying

3 Green's testimony was less credible than that of B D and J R for reasons including the following observations

a As an adult, Green should be held to a higher standard of detail and consistency than minors B D and J R

b Based on the physical appearance of B D and J R at the June 1, 2010 hearing, Green's claim that in late 2009 he had understood both of them to be adults is virtually unbelievable

c Green's assertion that he was willing to pay increasingly significant sums of money, extremely disproportionate to the amounts he paid for chiropractic services, for medical massages at motels and at his home is not believable

d Green testified under oath that he had not used an escort service prior to the August 22, 2009 incident, but immediately reversed that testimony and admitted to two prior uses of escort services

e Green testified that he has not attended a party since high school, but also testified that he had previously used escort services for a bachelor party while he was in his 20s

4 On October 23, 2001 DOPL issued to Green a license to practice as an armed security officer

5 On August 19, 2009 DOPL issued to Green a license to operate a security services company by the name of Statewide Patrol Agency LLC Green was the sole owner and

qualifying agent

6 On August 17, 2009 Green met B D , a female minor, while working as a security officer for the Layton Meadows Apartment Complex. Later, when Green was again working at the complex, B D introduced J R , a friend of B D who was also a female minor, to Green

7 On August 22, 2009 at approximately 11 00 p m Green drove minors B D and J R to a Motel 6 and paid each of them cash for a massage. Green called an escort who came to the motel room and manually ejaculated Green in the presence of minors B D and J R

8 On September 22, 2009, Green drive B D to a Victoria's Secret and purchased merchandise for her totaling \$207. He then took B D to a Motel 6 where she gave him a massage

9 At some point after the September 22, 2009 incident Green sent B D a text message referring to marrying B D after she turned 18

10 During October 2009 B D was driven by her friend K M to Green's home where Green paid B D to give Green a massage and a manual ejaculation

11 On December 10, 2009, B D and her friend E both went to Green's home where Green paid B D to give Green a massage and a manual ejaculation

12 After the December 10, 2009 incident Green and B D exchanged text messages in which B D threatened to go to the police if Green did not pay B D \$2,500

13 On January 14, 2010, the Davis County Attorney's Office issued an arrest warrant for Green including two second degree felony counts of forcible sexual abuse, which have subsequently been dismissed, and two third degree felony counts of dealing in material harmful

to a minor, which are pending

14 On February 10, 2010, DOPL issued an emergency order¹ immediately and indefinitely suspending the license of Green to practice as an armed private security officer and to operate a security services company

15 On February 16, 2010, DOPL received from Green's attorney a written request for a hearing on the Emergency Order. Negotiations to possibly resolve this case without a hearing continued over several weeks. DOPL did not schedule a hearing or obtain a written agreement from Green to waive his right to a hearing within 20 days after his request. Contradictory statements from Mr. Schofield and Ms. Noda make it impossible to conclude that Green otherwise waived his right to a hearing within 20 days after his request.

CONCLUSIONS OF LAW

16 Following the issuance of an emergency order by DOPL, R151-46b-16 provides that once the affected party requests a hearing, DOPL "will conduct a hearing as soon as reasonably practical but not later than 20 days from the receipt of a written request unless the Division and the party requesting the hearing agree to conduct the hearing at a later date."

17 In this matter, DOPL made the conscious decision to initiate an emergency adjudicative proceeding. In doing so, DOPL affirmatively assumed the legal duty to satisfy the higher standards and obligations associated with an emergency proceeding.

¹ While not directly relevant to this Order, the testimony of DOPL investigator Gaylen Kester is worth noting. Upon cross examination it was shown that Kester contacted Green and asked Green to contact him prior to DOPL initiating an emergency proceeding. Green emailed Kester, contested the facts, and gave the name and contact information of his attorney. Kester did not make any further attempt to contact Green or Green's attorney or to evaluate Green's version of the events, before moving forward with the emergency proceeding. This kind of careless investigative work violates internal Department of Commerce policy and hurts DOPL's public image and reputation.

18 Because DOPL assumed that legal duty, once DOPL received the Respondent's request for a hearing on February 16, 2010, DOPL's responsibility was to either

a schedule the hearing within 20 days, or

b bear the burden to prove that DOPL and the Respondent had agreed to conduct the hearing at a later date

19 The best proof of a joint agreement to conduct the hearing at a later date would be a written waiver of the 20 day time frame signed by both parties. Absent such a written waiver, the burden falls to DOPL to prove a "meeting of the minds" with respect to such a joint agreement

20 Because DOPL did not obtain a written waiver or otherwise prove an agreement to delay the hearing, DOPL did not meet the legal obligations associated with an emergency adjudicative proceeding

21 These conclusions are dispositive to this matter and make any further conclusions of law unnecessary

ORDER

22 For the reasons noted previously, the February 9, 2010 Emergency Order is set aside without prejudice

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

Agency review of this order may be obtained by filing a request for agency review with the Executive Director, Department of Commerce, 160 East 300 South, Box 146701, Salt Lake City, Utah 84114-6701, within thirty (30) calendar days after the date of this order. The agency action in this case was a formal proceeding. The laws and rules governing agency review of this proceeding are found in Title 63, Chapter 46b of the Utah Code, and Rule 151-46b of the Utah Administrative Code. Please see the enclosed "INFORMATION ABOUT AGENCY REVIEW," which is also available at <http://www.commerce.utah.gov/welcome.html> by selecting "Agency Review."

DATED this 2nd day of June, 2010



Thad LeVar, Presiding Officer
160 East 300 South
Salt Lake City, Utah 84114-6704
Telephone No (801) 530-6601