SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DEBRA A. JAMES** **PART** **IAS MOTION 59EFM**

Justice

----------X

PEOPLE OF THE STATE OF NEW YORK by LETITIA A. JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Petitioner,

- v -

SECURITY ELITE GROUP, INC., A/K/A SECURE ENFORCEMENT GROUP, STEPHAN EDOUARD, LJW SECURITY SERVICES & TRAINING, and LARRY WILLIAMS,

Respondents.

----------X

INDEX NO. 450025/2015

MOTION DATE 12/15/2017

MOTION SEQ. NO. 003 004 005 006 007

DECISION + ORDER ON MOTIONS + AFTER BENCH TRIAL

The following e-filed documents, listed by NYSCEF document number (Motion 003) 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 80

were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110

were read on this motion to/for STAY.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 133, 134, 135

were read on this motion to/for CONTEMPT.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 129, 130, 131, 132, 139, 152

were read on this motion to/for CONTEMPT.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 126, 127, 128, 148, 149, 153, 154

were read on this motion to/for RENEWAL.

Before the bench trial ("trial"), Respondents LJW Security Services & Training and Larry Williams moved (1) by Notice of Motion for a protective order with respect to the Notice to Admit dated March 8, 2016 (Motion Sequence Number 003), which

was fully submitted on July 27, 2016 and (2) by Order to Show Cause, to stay proceedings pending the determination of their motion for a protective order and to sever the claims and order a separate trial against Respondents L&W Security Services, Inc. and Larry Williams, from the trial against Respondents Security Elite Group, Inc. and Stephan Edouard (Motion Sequence Number 004), which was fully submitted on July 27, 2106.

The trial in this proceeding took place on October 19, 20, 21, 24, 26, 27, 31, November 2, and November 3, 2016. The attorneys for the parties submitted proposed findings of fact and conclusions of law to this court on January 13, 2017.

Post-trial, Petitioner moved (1) by Notice of Motion for an order of contempt against Respondents Stephan Edouard and Security Elite Group, Inc. (Motion Sequence Number 005), which was fully submitted on February 17, 2017; (2) by Order to Show Cause, for an order of contempt against Respondents Stephan Edouard and Security Elite Group, Inc. (Motion Sequence Number 006), which was fully submitted on February 8, 2017; and (3) by Notice of Motion to renew this court's order dated December 18, 2015 (Motion Sequence Number 007), which was fully submitted on December 15, 2017.

At the hearing on July 27, 2016, this Court denied the motion and order to show cause (Motion Sequence Numbers 003 and

004) of Respondents LJW Security Services & Training for a protective order, stay of the proceedings and separate trial.

On December 15, 2017, upon submission of the post hearing motion to renew the order dated December 18, 2018 of Petitioner, this court consolidated for consideration and disposition with the determination on the bench trial, Motion Sequence Numbers 005, 006, and 007.

ORDER

It is hereby

ORDERED that the application, brought by show cause order of Respondents LJW Security & Training, Inc. and Larry Williams for a protective order with respect to the Notice to Admit dated March 8, 2019 (Motion Sequence Number 003) is denied; and it is further

ORDERED that the application, brought by notice of motion of Respondents LJW Security & Training, Inc. and Larry Williams for a stay of the hearing pending determination on their motion for a protective order and for a trial severed from the trial against Respondents Security Elite Group, Inc. and Stephan Edouard (Motion Sequence Number 004) is denied; and it is further

ORDERED that the motion of petitioner to amend the Petition to conform the evidence introduced at trial pursuant to CPLR §

3025 is granted, and the Petition is hereby deemed amended to interpose claims based upon alleged violations of General Business Law §§ 181(1), 185-86, 187(3)and 841-c against Respondents Security Elite Group, Inc., Stephan Edouard, LJW Security Training & Training, Inc., and Larry Williams; and it is further

ORDERED that the motion of petitioner for leave to renew its motion for summary disposition of its petition is granted (Motion Sequence Number 007) and upon renewal, the opinion modified only to the extent that the court determines that the Attorney General may bring a stand-alone claim for statutory fraud under Executive Law § 63(12) and that the statute of limitations for such claim and for a claim pursuant to General Business Law 349 is six years from accrual of such claims; and it is further

ORDERED and ADJUDGED that upon due deliberation on the evidence presented at the trial before the undersigned, the Verified Petition is granted in its entirety and the following equitable relief in favor of Petitioner and against the Respondents

1. permanently and enjoining and prohibiting Respondents Security Elite Group, Inc. a/k/a Secure Enforcement Group, Stephan Edouard, LJW Security Services and Training, Inc. and Larry Williams from violating Executive Law § 63(12) and General Business Law [GBL] Article 22-A, and from engaging in fraudulent, deceptive and illegal acts and practices alleged in the Verified Petition;

2. permanently enjoining and prohibiting Respondents Security Elite Group, Inc. a/k/a Secure Enforcement Group, Stephan Edouard, LJW Security Services and Training, Inc. and Larry Williams from making advertisements or offerings of employment opportunities or employment placement assistance and offerings to sell or selling of security guard training or other training, and directing the posting, and

3. compelling Respondents Security Elite Group, Inc. a/k/a Secure Enforcement Group and Stephan Edouard to execute and file with the Attorney General a performance bond in the sum of $825,000 by a surety or bonding company licensed by, and in good standing with the new York State Dept of Insurance, guaranteeing that each Respondent comply with each and every injunction entered herein, the proceeds of the bond to provide a fund for restitution to consumers defrauded or damaged by the past or future conduct of Respondents Security Elite Group, Inc. a/k/a Secure Enforcement Group and Stephan Edouard;

4. compelling Respondents LJW Security Services and Training, Inc. and Larry Williams to execute and file with the Attorney General a performance bond in the sum of $500,000 by a surety or bonding company licensed by, and in good standing with the new York State Dept of Insurance,

guaranteeing that each Respondent comply with each and every injunction entered herein, the proceeds of the bond to provide a fund for restitution to injured consumers defrauded or damaged by the past or future conduct of, LJW Security Services and Training, Inc. and Larry Williams;

5. directing the disgorgement of all profits resulting from the fraudulent and illegal practices determined herein by Respondents Security Elite Group, Inc. a/k/a Secure Enforcement Group, Stephan Edouard, LJW Security Services and Training, Inc. and Larry Williams;

6. directing the rendering of an accounting to the Attorney General of the names and addresses of each consumer who paid fees directly to Security Elite Group, LJW Security Services & Training, Inc., Stephan Edouard or Larry Williams and the amount of money received from each such consumer;

7. permanently enjoining, barring, directly or indirectly, the destruction or disposal of any records pertaining to their business;

8. permanently enjoining, barring the conversion, transferal, selling or disposal of funds paid by consumers to Respondents;

9. compelling and directing that Respondents Security Elite Group, Inc. a/k/a Secure Enforcement Group, Stephan

Edouard, LJW Security Services and Training, Inc. and Larry Williams provide notification to Petitioner of any change of Respondents' address(es) within five days of such change;

10. compelling the payment by Respondents Security Elite Group, Inc. a/k/a Secure Enforcement Group and Stephan Edouard, jointly or severally, to pay a penalty in the sum of $50,000 to the State of New York for the violation of GBL Article 22-A pursuant to GBL § 350-d; and it is further

11. compelling the payment by Respondents LHW Security Services and Training, Inc. and Larry Williams, jointly and severally, of a penalty in the sum of $25,000 to the State of New York for the violation of GBL Article 22-A pursuant to GBL § 350-d; and it is further

ORDERED that Petitioner is entitled to recover from each Respondent, additional costs of $2,000 pursuant to CPLR § 8303(a)(6); and it is further; and it is further

ORDERED and ADJUDGED that the Clerk of the Court is directed to enter judgment in favor of Petitioner and against Respondents Security Elite Group, Inc. a/k/a Secure Enforcement Group and Stephan Edouard, jointly or severally, to in the sum of $825,000, with interest at the statutory rate from, until the date of the decision in this action, and thereafter at the statutory rate, as calculated by the Clerk, together with costs

and disbursements as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED and ADJUDGED that the Clerk of the Court is directed to enter judgment in favor of Petitioner and against Respondents LJW Security Services and Training, Inc., jointly or severally, to in the sum of $300,000, with interest at the statutory rate from, until the date of the decision in this action, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED and ADJUDGED that pursuant to Judicial Law §§ 750 and 753, Respondents Security Elite Group, Inc. a/k/a Secure Enforcement Group are adjudged in civil and criminal contempt of the Temporary Restraining Order, as modified on February 5, 2015, and the Order of Civil Contempt, entered on July 28, 2016; and it is further

ORDERED that should Respondent Stephan Edouard fail to comply with the prior Contempt Order entered on July 28, 2016, by (1) within 60 days of service of this order with notice of entry, (a) paying $2,432 to the NYAG to reimburse the known consumers identified in Exhibit H to the Lee Affirmation dated October 5, 2015; (b) submitting an affidavit that SEG has ceased operations and vacated the premises at 80 Broad Street, Suite

1202; and (c) producing a spreadsheet that contains contact information and the amount paid by consumers to SEG after February 5, 2015 and disclosing the participation of Edouard after February 5, 2015 in that activity, a warrant shall be issued for the arrest and imprisonment for a jail term of thirty days of Respondent Stephan Edouard or until he purges himself of contempt, whichever is sooner.

DECISION

In this special proceeding, Petitioner the People of the State of New York, by Letitia A. James (Attorney-General) seeks, pursuant to Executive Law § 63 (12), to, inter alia, permanently enjoin Respondents Security Elite Group, Inc. (SEG), Stephan Edouard (Edouard), from engaging in alleged false advertising, employment opportunities offerings, or employment placement assistance, and from selling or conducting in security guard training.

FINDINGS of FACT

Background

A. Temporary Restraining Order and Prior Adjudication of Civil Contempt Against Respondent SEG

By Ex Parte Order entered January 13, 2015, pursuant to CPLR § §§ 6301 and 6313 and Executive Law § 63(12), pending a hearing on the Verified Petition (Temporary Restraining Order), the court (Friedman, J.) granted the following temporary interim relief against Respondents:

1. temporarily restrained from advertising or offering employment opportunities or employment placement assistance and from offering or selling security guard training or other training; and further

2. temporary restrained from transferring, converting or otherwise disposing of any assets owned, possess or controlled by Respondents, except in the ordinary course of business;

3. directed to provide to the State of New York, within twenty-four (24) hours after service of this Order, a list that identifies all assets of each Respondent and the names and addresses of all banks, savings and loan associations and other financial depositories located inside and outside of New York at which Respondents maintain any account(s) or have the right to have funds credited to them in any account(s) together with the account numbers and titles; and it is further

4. upon service of this Order upon [such] bank(s), savings and loan association(s) or depositor(ies), pending the hearing of the Verified Petition, from paying out, transferring, honoring drafts or checks against or setting off or assigning to itself or to any other person or firm such funds; and it is further

5. upon service of a copy of this Order upon HSBC Bank USA, JPMorgan Chase and CitiBank, N.A., [such] banks are hereby temporarily restrained, pending the hearing of this [Petition} from paying out, transferring, honoring drafts or checks against or setting off or assigning to themselves or to any other person or firm such funds including, but not limited to, funds held in HSBC Bank USA, JPMorgan Chase and CitiBank, N.A. accounts held in the name of Respondents Security Elite Group, Inc., Stephan Edouard, LJW Security Services & Training, Inc. and Larry Williams.

By Order dated January 23, 2015 and entered on February 4, 2015 (James, J.), the Temporary Restraining Order was modified to exclude the prohibitions with respect to "employment assistance" and a certain HSBC Bank Account. By Order entered on February 26, 2015 (James, J.), the Temporary Restraining Order was supplemented

"to allow respondent Security Elite Group, Inc. (SEG) to access its Chase bank account # ****** so that it may meet its legitimate obligations in the ordinary course of business. Said monies will be spent as follows: a) $8,000 for rent; b) $2000 for payroll (other than Stephan Edouard and his family members); c) $1,000 for utilities and janitorial services."

Following a hearing on the motion of Petitioner (fully submitted on December 4, 2015 and granted on December 18, 2015), seeking to hold SEG and Edouard in contempt for violating the Temporary Restraining Order, as modified, this court, by settled Order entered on July 28, 2016, held Respondent SEG in civil contempt of the Temporary Restraining Order and directed punishment therefor. The determination of the court was grounded upon the admissible evidence submitted by Petitioner that demonstrated that Respondent SEG violated three clear directives of the Temporary Restraining Order, coupled with the failure of SEG or Edouard, in opposition to the application, to raise any issue. Neither Edouard nor SEG came forward with admissible evidence in the form of an affidavit of a witness with personal knowledge, concerning the circumstances surrounding a certain certificate of incorporation for a corporation named Security Enforcement Group of New York, Inc. and other documents allegedly showing that a corporate entity, separate and apart from SEG, was lawfully assigned the lease of its 80 Broad Street office, and

occupied the premises and carried out the activities for which Petitioner seeks to hold such respondents in contempt. Of no probative value, and incredible in any event, were the assertions by affirmation of SEG's counsel that such company, with "coincidentally" the same acronym and logo, was separate and apart from SEG, that for at least seven months after the issuance of the Temporary Restraining Order moved into the same offices as SEG, placed employment advertisements in the Daily News, interviewed consumers and, in some cases, accepted fees for training and employment placement from such consumers, which concededly, if done by SEG, would have violated the Temporary Restraining Order, and that Edouard simply collected the rent from such new corporation under the lease assignment. The court, therefore, adjudicated that respondents SEG and Edouard disobeyed such Temporary Restraining Order by continuing after January 12, 2015 to (a) "advertis[e]", (b) "offer employment opportunities" and (c) "offer to sell and sell security guard training and other training" to consumers, failing to satisfactorily explain or excuse such contempt.

Such Order punishing SEG for civil contempt (Civil Contempt Order) stated, in pertinent part:

> ORDERED, that Petitioner's motion to punish Respondent Security Elite for civil contempt of court is granted; and it is further

ADJUDGED that Security Elite is guilty of civil contempt of court in having willfully disobeyed the requirements of the Court's Temporary Restraining Order dated January 12, 2015, and amended on February 4, 2015 ("TRO"), that prohibited Security Elite from "advertising or offering employment opportunities . . . and from offering to sell or selling security guard training or other training." Respondent Security Elite willfully disobeyed the TRO by continuing after January 12, 2015 to: (a) "advertis[e]," (b) "offer[ ] employment opportunities" and (c) "offer to sell and sell security guard training and other training" to consumers and Respondent Security Elite failed to satisfactorily excuse or explain said contempt; and it is further

ADJUDGED that the above misconduct prejudiced the rights of the People of the State of New York because consumers continued to pay money to Security Elite based on its false advertising and false promises of employment; and it is further

ORDERED that for said contempt, Security Elite shall pay a fine to the NYAG in an amount sufficient to indemnify consumers who paid funds to Security Elite after issuance of the TRO. Security Elite shall provide to NYAG a sworn affidavit from a corporate officer containing a spreadsheet of the contact information for the period between January 12, 2015 and February 4, 2015 for all consumers who paid money to Security Elite for "employment assistance" and/or "security guard training or other training," the amounts paid, and from February 5, 2015 to the present for all consumers who paid money to Security Elite for "security guard training or other training," less any refunds. NYAG shall review the spreadsheet for accuracy and apply to the Court for an amount NYAG determines is equal to the amounts paid by consumers to Security Elite, less any refunds after January 12, 2015; and it is further

ORDERED that within ten (10) days of this order the sum of $2,431 be paid to NYAG to reimburse the known consumers identified in Exhibit H to the Lee Affirmation dated October 5, 2015 who paid monies to Security Elite after the TRO in order to make these consumers whole; and it is further

ORDERED that Security Elite shall provide, by December 18, 2015 a sworn affidavit from a corporate officer disclosing any payments made after January 12, 2015 to Stephan Edouard including the amount and date of such payments; and it is further

ORDERED that Security Elite shall provide, by December 18, 2015 a sworn affidavit from a corporate officer disclosing any participation by Stephan Edouard after January 12, 2015 in any activity precluded by the TRO including the date of Edouard's participation, the consumer involved in such participation, if any, and a description of Edouard's conduct that violated the TRO for each date; and it is further

ORDERED that Security Elite shall cease all operations immediately, including providing "employment placement assistance," and vacate the premises at 80 Broad Street Suite 1202 New York, NY 10004 and provide a sworn affidavit from a corporate officer that it has done so within ten (10) days of this order.

By Verified Petition, Petitioner The People of the State of New York, by Letitia A. James (NYAG), seeks, pursuant to Executive Law § 63 (12), to permanently enjoin Respondents Security Elite Group, Inc. (SEG), Stephan Edouard (Edouard), LJW Security Services and Training, Inc. and Larry Williams from engaging in alleged false advertising, employment opportunities offerings, or employment placement assistance, and from selling or conducting in security guard training.

Following a hearing on the Verified Petition, as well as on the affidavits and other evidence submitted by The Attorney General and on the Verified Answers of Respondents, and other evidence submitted by such Respondents pursuant to CPLR § 409(a), by Order

dated December 18, 2015, this court ordered a trial pursuant to CPLR § 410.

B. Order dated December 18, 2015 (entered on December 21, 2015) Setting Proceeding Down for a Trial Pursuant to CPLR § 410 (CPLR § 410 Order)

Incorporated by reference is this court's order dated December 18, 2015, which directed that triable issues of fact were raised, which would be tried forthwith pursuant to CPLR § 410.

Finding that the papers raised triable issues of fact, the CPLR § 410 Order held:

(1) **Executive Law § 63 (12)** does not create an independent cause of action but is only "a mechanism by which the petitioner may show that injunctive relief and restitution are proper". Under such provision where petitioner establishes that respondents violated other statutes", the Attorney-General may bring a proceeding for restitution, damages and injunctive relief in response to "repeated fraudulent or illegal acts" or "persistent fraud." Section "63 (12) . . . broadly construe[s] the definition of fraud so as to include acts characterized as dishonest or misleading and eliminating the necessity for proof of an intent to defraud" (People v Apple Health & Sports Clubs, 206 AD2d 266, 267 (1st Dept. [1994]). . . .[A] violation of state, federal or local law constitutes illegality within the meaning of Executive Law § 63 (12) and is actionable t hereunder when persistent or repeated (State of New York v Princess Prestige Co., 42 NY2d 104, 107 [1977]).

> . . .[T]he existence of some satisfied consumers is not a defense to otherwise fraudulent and illegal practices (State of New York v Midland Equities of NY, 117 Misc 2d 203, 207 [Sup Ct NY County 1982]).
>
> Moreover, the unqualified statements set forth in the advertisements, such as: "Front Desk Agents Needed," "Serious Inquiries Only" and "Guards Needed" are not

mere "puffery" [where]. . . , the targeted consumers would not reasonably know that these statements were an exaggeration until after they paid the $400 course fees, completed the classes, and discovered they had not been hired or offered a position of employment (see People v H&R Block, Inc., 16 Misc.3d 1124(A) *7, 2007 Slip Op 51562 (U) [Sup Ct, NY County 2007]).

(2) Claim of fraud pursuant to Executive Law § 63 (12)

New York courts have recognized that Executive Law § 63 (12) incorporates the common-law definition of fraud, but also expands that definition to create a new standard of liability (State of New York v General Motors Corp., 120 Misc 2d 371, 374 [Sup Ct, NY County 1983]). Under this standard, scienter need not be established, and courts have predicated liability upon a finding that the defendant had "create[d] an atmosphere conducive to fraud" (People v General Elec. Co., 302 AD2d 314, 314 [1st Dept 2003]). The statute defines "fraud" to include "any device, scheme or artifice to defraud, and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions" (Executive Law § 63 (12)).

(3) **Under GBL § 349**, notice to respondents of this proceeding prior to its commencement was not in the public interest, and therefore the failure to provide notice under GBL § 350-c did not preclude the Attorney General from proceeding;

A plaintiff bringing a GBL § 349 claim must establish three elements: (1) "the challenged act or practice was consumer-oriented;" (2) "it was misleading in a material way;" and (3) "that plaintiff suffered injury as a result of the deceptive act" Stutman v Chemical Bank, 95 NY2d 24, 29 [2000]).

(4) The GBL § 350 Claim

To establish a claim pursuant to GBL § 350, the Attorney-General must make a similar showing as that required to establish a GBL § 349 claim (Lucker v Bayside Cemetery, 114 AD3d 162, 174 [1st Dept 2013]).

(5) Claims against SEG based upon violations of GBL § 172 and GBL § 185 (3)

Pursuant to GBL § 171(2) (c), any "person who, for a fee . . . directly or indirectly . . . procures or attempts to procure or represents that he can procure employment or engagements for persons seeking employment or engagements . . . [or] represents that he has access or has the capacity to gain access to jobs not otherwise available to those not purchasing his services . . ." is an "employment agency."

Employment agencies must be licensed pursuant to Article 11 of the GBL (GBL § 172). Persons operating an employment agency are required to pay a license fee according to the fee schedule set forth in the statute and applicants are required to post a bond with the Commissioner (GBL § 177 [1]).

GBL § 185(3) provides: "Deposits, advance fees. Notwithstanding any other provision of this section, an employment agency may not require a deposit or advance fee from any applicant except an applicant for class "A" or "A1" employment . . ."

(6) Williams' and Edouard's individual liability

"'. . . Executive Law § 63 (12) allows the Attorney General to seek relief against "any person," [and] there is no impediment to imposing personal liability against a corporate officer if it is established that he [or she] personally participated in or had actual knowledge of the fraud or illegality'" (One Source Networking, Inc., 125 AD3d at 1357 [citations omitted]; see also Apple Health & Sports Clubs, 80 NY2d at 807; Matter of People v Frink Am., 2 AD3d 1379 [4th Dept 2003]). Likewise, the language in GBL §§ 349 and 350 allows the Attorney-General to seek an injunction when he believes that "any person" has engaged in such violations.

(7) **Statute of Limitations**

The statute of limitations for claims pursuant to Executive Law § 63 (12) and General Business Law § 349 is the three year statute of limitations, as set forth in CPLR 214 (2)

(see State of New York v Daicel Chem Indus., Ltd., 42 AD3d 301, 303 [1st Dept 2007]; Lucker, 114 AD3d at 175). According to CPLR 214 (2), "the following actions must be commenced within three years . . . . an action to recover upon a liability, penalty or forfeiture created or imposed by statute . . ."

The fraud claim, as it is set forth as the first cause of action in the petition, is not a common-law fraud claim, since petitioner did not plead the elements of fraud, but only fraud as a violation of Executive Law § 63. As a result, the damages and penalties sought pursuant to these statutes are limited by the three-year statute of limitations. As petitioner filed this proceeding on January 12, 2015, the accrual date is no earlier than January 12, 2012 to be timely under the statute.

This court substantially adopts the findings of fact proposed by the NYAG, which it finds supported by a fair preponderance of the credible evidence introduced at trial as follows.

Respondents

Respondent SEG is a New York corporation located at 80 Broad Street, New York, NY. SEG operated from at least June 2011 to at least November 12, 2015. Respondent Stephan Edouard ("Edouard ") is the founder, president, and 100% stock owner of SEG.

Respondent LJW Services and Training ("LJW ") is a New York corporation located, among other places, at 13 E. 37th St., New York, NY. LJW operated from August 2010 to October 10, 2014. Respondent Larry Williams (" Williams") is its founder, owner, and co-school director.

SEG and Edouard's Interactions with DCA

NYAG offered testimony from Heather Bermingham, from the Department of Consumer Affairs ("DCA"), about the licensing process for New York City employment agencies , which it Supervises.

In order to issue an employment agency license, DCA requires the prospective agency to submit an application. As discussed below, from at least June 2011, SEG and Edouard procured , or attempted to procure, for a fee, employment for persons seeking employment. SEG "advertised . . . vacancies within the security field, "informed consumers who responded to those ads that it had jobs available, accepted fees, referred consumers to security guard training schools for training supposedly required for those specific jobs, and, once training was complete, purported to send its customers on "interviews" with security guard companies. Edouard stated in an affidavit that SEG was "a New York City employment agency which, "I started in 2012 [sic] to train and otherwise help people get jobs. He also claimed that SEG "sometimes . . . place[d] its graduates into jobs.

In response to a complaint, he described SEG to a DCA employee as "a staffing firm that assists clients/students job placement." Edouard also testified that SEG provided "vocational guidance or counseling services" for its customers.

As further discussed below, SEG represented that it could procure employment for persons seeking employment. It also provided information or services, such as " brokering" security guard training and setting up "interviews", which purported to promote or lead to jobs for its customers with security guard companies.

However, SEG did not submit an initial application to DCA for status as an employment agency until December 14, 2012, almost a year and a half after it began operating.

In that application, SEG stated that it intended to offer services to class A and class A1 applicants, as defined by the relevant law and regulations. Only Class A and A1 type applicants can be charged (within certain restrictions) advance fees.

As part of that application, DCA required SEG to submit documents it represented as its customer contract and receipt so that DCA could " make sure that the contracts comply with the codes and regulations." SEG did submit such a contract and receipt. SEG also acknowledged that any contract with its customers must set forth in a clear and concise manner certain terms included in GBL §§ 185 and 186 concerning fees and refunds.

SEG also represented that it would not require its customers to pay for or subscribe to any incidental services, including training, charge a registration fee, or charge an advance fee.

In December 2012, DCA issued SEG a license to operate as an employment agency.

On May 14, 2014, Edouard, on behalf of SEG, made a renewal application to DCA.

In that renewal application, SEG represented that it would place Class A job applicants; that it would include in all printed matter SEG's DCA license number, name and address, and the word "agency "; that it would use DCA's model contract and receipt with customers; that it would send job applicants only to currently available job openings; that it would not require job applicants to pay for or subscribe to any incidental service other than for job placement (including training), that it would not charge registration fees; that it would not charge advance and/or deposit fees; and that it would not collect any fees from job applicants until the applicant was employed.

Both the initial and renewal applications were signed by Edouard under penalty of perjury.

Bermingham testified that, in fact, security guards do not fall into either class A or class A1 employment.

Additionally, throughout SEG's existence, it used a contract and receipt for its clients that were substantially different from the ones it submitted to DCA with its application. The contract

Further, as discussed below, throughout its existence, SEG engaged in practices with its customers which differed from those it represented it would use on its applications.

Following SEG's application to renew its status as an employment agency, DCA issued SEG temporary authorizations to operate, the final one of which lapsed on January 31, 2015.

On March 17, 2015, DCA denied SEG's renewal application. SEG continued to operate as an employment agency after February 1, 2015 through at least October 7, 2015, including advertising positions in security and other fields, accepting fees, offering jobs, and referring consumers to schools for training supposedly required for those jobs.

An undercover investigator who walked into SEG's office in August 2015 looking for work was ultimately interviewed for "security" work by an SEG employee. SEG, under the direction of Edouard, thus also operated as an employment agency without authorization from DCA from February 1 , 2015, to at least October 7, 2015.

Respondents' Interactions with DCJS

NYAG offered the testimony of Department of Criminal Justice Services ("DCJS ") employee Thomas Canning concerning its approval process and the history of its interactions with respondents.

In New York, registration for a security guard license requires only the completion of an 8 hour pre assignment course; a 16 hour on the job course is also required for guards, but need not be completed until three months after licensing .

Under state law, every school in New York State must submit a security guard training school application to DCJS for approval to operate.

On August 3, 2010, Williams signed and filed an application with DCJS for LJW to serve as a security guard school, which was approved.

As of April 2011, DCJS security guard training school applications had to be accompanied by the enrollment agreement between the school and the students, which indicates the cost of courses, and the receipt issued to students. DCJS required the enrollment agreement to be directly between the school and its students " to ensure that the student, the customer, pays the school directly for the training that the school will be able to provide to the student.

On May 31, 2012, Williams signed and filed a renewal application for LJW with DCJS, which was approved. At that time, LJW provided DCJS with documents it represented as its enrollment agreement and payment receipt.

The LJW model enrollment agreement submitted to DCJS was signed and entered into by the student and LJW directly. LJW's

name and address appeared prominently at the top of the enrollment agreement. It listed various courses and prices.

On September 21, 2012, DCJS approved LJW's renewal application and reminded Williams that "the school must provide students with a copy of the executed enrollment agreement and that "[a]ny revisions to information reported in the application for school approval must be submitted to the Division for approval prior to release."

LJW never sought approval from DCJS to revise these forms. From at least November 2012, LJW did not use the forms attached to its 2012 renewal application. Instead, LJW arranged for students to enter into enrollment agreements directly with SEG. Similarly, LJW did not use payment receipts containing its name and address as submitted to DCJS. Instead, students paid SEG directly and received payment receipts from SEG.

Meanwhile, LJW asked students to initial a document stating in all capitals that "NO CONTRACT SIGNING OR CURRENCY EXCHANGE HAS BEEN MADE WITH LJW SECURITY" and ostentatiously disclaiming all liability for claims about enrollment or placement.

On October 10, 2014, Canning wrote Williams a letter informing him of DCJS's intent to deny LJW's 2014 renewal application, due to LJW's "numerous fraud complaints" and "pattern of unprincipled business practices."

At no time was SEG licensed to operate as a security guard training school. On February 15, 2012, DCJS denied SEG's application to be approved as a security guard school. Such denial stated:

> "This denial is based on false statements you provided as to your affiliation, ownership of, another proprietary school.
>
> . . .Questions 7a and 8a on the application ask, respectively, whether the school owner or director has "ever been affiliated with or owned another proprietary school?" You replied no to both questions.
> In December of 2011, the Division discovered an allegation of misconduct pertaining to you while working for C.P. International (C.P.I.). You stated that you had never worked for CPI but you had heard of them.
>
> The next day you sent me an email stating 'Unfortunately, C.P. International and I were associates.'"

Respondents' Practices

The NY AG offered the testimony of twelve New York residents who responded to ads placed by either SEG or LJW concerning their experience with SEG and/or LJW. While their reports of their experiences may have varied in some details, they were generally consistent with each other and the documentary record.

Additionally, the NY AG offered the testimony of two NYAG investigators who responded to these ads, one of whom visited SEG and LJW and one of whom visited only SEG. The NY AG also introduced into evidence audio and video recordings of the exchanges that took place between such investigators and persons running the

offices of LJW and SEG, which were each located on different floors of 80 Broad Street, New York, New York, at the dates and times in

In addition, the NY AG introduced the testimony of Michelle Figueroa, a customer who later became an employee of SEG,

The following findings concerning consumers' experiences with SEG and LJW are derived from these witnesses' testimony and recordings, as well as additional evidence, as discussed.

SEG's Advertisements

As discussed below, respondents placed thousands of ads in print and online which on their face are from employers looking to immediately hire security guard and similar positions at high hourly wages.

SEG placed more than 1,100 ads in amNewYork up until October 2014 and continued to place ads after that date, as well as 1,090 ads in MetroNY.

SEG's ads contain representations such as that (1) there were positions available with high salaries; (2) there were many such available positions; and (3) those positions were being filled "now" or "immediate[ly]".

The ads run by SEG usually did not include the name and address of SEG, its DCA license number, or the word "agency". The ads did not state that SEG was selling courses.

For example, SEG placed the following ads in the classified section of Metro New York, amNew York , and the New York Post on the below dates:

a. "Front Desk Guards Wall St. Location No Exp necessary Pay up to $ 13.25/hour Call Lt. Kelly 347 246 9305" (Metro NY, 12/ 17/12-12/21/12, 9/30/13-10/16/13, 10/14/13- 10/22/13, 10/21/13- 10/29/13, 10/29/13-11/5/13, 11/6/13- 11/12/13, 11/11/13- 11/19/13, 11/19/13- 11/26/13, 1/27/14- 2/2/14, 2/5/14- 2/11/14, 2/16/14- 2/22/14, 2/24/14- 3/2/14, 3/3/14- 3/9/14)

b. "CORPORATE SECURITY 25 New Openings F/T & P/T, up to $ 13.95 hr. + benefits Call 212 470 6364" (amNewYork, 9/10/14- 9/12/14, 10/7/14- 10/9/14).

c. "*EMPLOYMENT OPPORTUNITIES* As Concierge/Security Wall St. area. Great pay, Call HR 347 356 2452 " (amNewYork, 2/9/15- 2/15/15)

SEG also advertised online, including an ad which stated

"SECURITY EMPLOYMENT OPPORTUNITIES . NO EXP . NEEDED PAYING UP TO $ 13.25: SECURITY ELITE GROUP: CORPORATE FACILITIES SECURITY GUARD OPPORTUNITIES AVAILABLE IMMEDIATELY SHIFTS AVAILABLE: 6 AM 2 PM 8 AM 4 PM 4 PM 12 PM" (Craiglist, 3/18/12).

SEG generally did not have the specific job postings it advertised available, especially not at the advertised wages. Although Edouard testified to the contrary, his self-serving testimony was the sole evidence offered to that effect, contradicting the testimony of consumer witnesses and Figueroa. Edouard did not produce the Job Applicant and Employer Registers SEG was legally required to maintain, which would have provided evidence of these job openings. Further, Edouard testified that

he had not even read certain statements – including the affidavit he previously submitted in this case – although he had made them under penalty of perjury, indicating a general lack of credibility.

LJW's Advertisements

LJW placed at least 551 ads in amNewYork, 175 ads in Craigslist, and 100 ads in MetroNY.

LJW placed the following ads in the classified section of Metro New York, amNewYork, and the El Especialito on the below dates:

a. 100 Front Desk Guards No EXP NEC NO HSD OR GED BEST PAID JOBS WILL TRAIN HR. 212-470-8405/646-657-7456" (amNewYork; 8/17/11- 8/25/11)
b. " Security/HHA/OSHA Jobs Paying up to $17 Training Avail. Call HR (347) 746 3514/ (212) 302 3691" (MetroNY; 8/5/13 - 8/14/13)".

The ads run by LJW often did not include the name and address of LJW, nor did they indicate that they were placed by a security guard training school selling courses for a fee.

LJW's ads typically offered salaries ranging from $12 to $17.50 per hour. Some LJW ads promised $20 or more an hour.

LJW also advertised online. A representative example of LJW's Craigslist ads is:

> IMMEDIATE HIRE jobs now: We have access to 35 open positions in Brooklyn, Manhattan, and The Bronx Our clients are seeking people with NO SECURITY EXPERIENCE THIS IS FOR PEOPLE WHO DO NOT HAVE A SECURITY LICENSE Once you successfully complete our program we will set you up to meet with our clients who are actually hiring NOW! . . . Compensation : $8- $15 hr " (12/12/10-12/18/10)

LJW was not "NOW HIRING " and did not have clients who " are actually hiring NOW!" The positions advertised actually did not exist at all. LJW offered no evidence supporting the truth of these representations. In fact, Larry Williams testified that no such jobs were available.

LJW claimed on its website at (www.liwss.com) that it had "a 92% job placement assistance success rate with all of our students." However, Williams testified that LJW did not actually track the job placement of its students.

LJW ultimately entered into an agreement with SEG to send consumers to take courses at LJW and split fees with LJW.

Interviews

After calling the number listed in an SEG or LJW ad, consumers were told by a salesperson that a security guard job was available The consumer was then given the address for the relevant office to come in for an " interview " for the advertised job, without being told the name of the company.

SEG salespeople also told consumers to bring $80 to the interview or asked them to pay $80 at the start of the interview; this money was sometimes described as a deposit, application, or registration fee, or for "screening". These findings refer to the entire period for SEG and to the period from 2011 to approximately late 2012 when LJW was offering courses directly to students.

For instance, the recording of the call made to one of the undercover investigators shows that she was invited for "a face to face interview" She was told that "I have full time positions available as of right now. They pay 13.95 an hour". The salesperson further explained that " [t]his is a corporate security position and entails conducting some guard duties within the facility of the Wall Street area of Manhattan" and that at "the job . . . [y]ou will be responsible for securing the front lobby and entrance of the building. You will administrate access control, which is just monitoring surveillance cameras, checking ID cards, logging guests in, signing for packages, and an assigned area will be given to you which you'll be responsible to check on periodically." She was asked if she was available to start work as of the end of the next week. The undercover investigator was also told "[n] ow if I want to hire you for my company, because it would be your first time stepping into a security type position, I would be required to put you through a registration process to make sure that everything is legitimate . . . And that means we need $ 80.00 to "get you screened". SEG salespeople were told to use false last names with consumers. They were also sometimes told not to schedule interviews with consumers who already had the certifications necessary to work as security guards, even though the ads were for security guard jobs.

Once consumers visited SEG's office, the consumer met with a company salesperson for a one on one "job interview. "SEG typically collected consumers' initial payments of $80 before or near the beginning of their "job interviews". LJW customers also paid deposits of $80. These payments were made prior to the provision of any service by respondents.

At the interview, consumers who had not already been told this were informed that there was a job available for them, usually as a security guard, typically with an hourly wage of at least $12 per hour. Often, they were told a job was guaranteed . As one consumer said, SEG "guaranteed that they would give me a job. Otherwise, I would not have paid that much money."

After offering consumers high paying positions during the initial phone calls or in person interviews, respondents' employees – for the first time – told them that they needed to pay for three security guard training courses, usually at an additional cost of $299, before they could begin working in the promised position. SEG and LJW claimed that the promised security guard positions would start shortly after completion of the courses.

For example, one consumer, Ms. Cepin, was surprised to learn that she was expected to pay an additional $299 after she had paid the $80 fee, but did not object because "[i]n my mind, I was on a job interview and I didn't want to jeopardize not getting the position and I was desperate for work.

Respondents told consumers without security guard licenses that all three classes must be completed to be eligible to work as a security guard.

Respondents told consumers who already had a security guard license that they had to repeat courses or take other courses, such as Fireguard Prep.

Respondents generally required consumers to pay for this training before completing classes or receiving any other services.

For consumers who dealt directly with LJW, the company generally charged consumers $299 or more for a package of three courses, significantly more than the $60 or $90 fee that LJW sometimes advertised for these same courses. However, some LJW customers paid more than $2,000. These consumers were told that they were guaranteed jobs and that the more money they paid, the higher paid the job would be.

For consumers who answered ads placed by SEG, SEG typically charged consumers a total of $379 for these same three classes, which were taught by LJW.

After giving SEG the initial payment, SEG consumers signed contracts or enrollment agreements with SEG that specified the total price and that "[t]raining will be conducted by LJW Security and Training Inc."

Before signing, one SEG consumer spoke directly to Edouard about her doubts.

> "I asked him was this a scam, because I don't have the money to dish out like that. I'm really going down to the last of everything that I have. And, I explained to him that I was pawning my son ' s bracelet — my son was about four at the time — and , my engagement ring at the time And I told him that that ' s what I was doing, hoping and looking for compassion . That if it was a scam that he would tell me, you know, just . . . go about my business . But , you know, he continued."

SEG has split fees with LJW since at least June 2011 and has paid over $ 108,000 to LJW since that time. LJW had over 18,000 customers.

Promised Jobs and Job Referrals

After finishing their coursework at LJW , consumers were instructed or expected to return to whichever company they had initially contacted.

Both LJW and SEG repeatedly failed to provide consumers who completed their training with the promised employment or any meaningful job placement assistance services.

After consumers completed security guard training courses , respondents provided consumers with "referrals" that listed the name of a security guard company or companies and the address for that company. The referrals took the form of a sheet of paper with the name and address of a security guard company and the time for a purported scheduled interview.

In fact, no interview had been scheduled with the security guard company listed on the referral. Rather, consumers who visited the named company were, at best, offered the opportunity to apply for a job in the same manner as any other consumer off the street.

In many cases, the companies were not even hiring. The job referral forms did not provide consumers an advantage over other candidates because anyone could have visited the listed security guard companies without a "referral form, "and companies did not afford favorable treatment to applicants who showed an LJW or SEG referral. The information provided on the referral form and list was publicly available.

For instance, one consumer went on what she believed was an interview SEG had set up with a company called Metro One for a job paying $ 13.75/hour, but when she arrived, she found a whole room of classmates . . . waiting to be seen as well". She "was never interviewed . . . never got a one on one session". Even if she had been able to interview, the company offered jobs that paid only "$8.0C, if that. But "they weren't hiring . . . [they] had no position."

Consumers were generally not offered jobs at the wages advertised ($12/hr. or more).

Consumer Complaints and Refunds

SEG refused to refund deposits paid by consumers who decided not to take LJW's training course. This was so even for consumers who requested the refunds immediately. Respondents also refused to issue refunds to consumers who completed LJW's training program, but were unable to obtain jobs on the terms on which they had been promised.

SEG and LJW 's Relationship to Individual Representatives

Both SEG and LJW representatives met with consumers in their respective offices. The SEG office door had the SEG logo on it. There was no evidence of any visual indication to consumers that such representatives worked for anyone but SEG or LJW.

SEG representatives used business cards with the SEG name , address, and logo on them, identical in style to those used by Edouard himself.

Edouard testified that he permitted "eight to ten" SEG representatives to use his own email address, stephanedouard@ seeuritvelitegroup.com to place ads, with his name signed to the emails sent. He also testified that he reviewed the ads before they were placed and was responsible for them.

Edouard also testified that he permitted SEG representatives to use the corporate debit card to pay for these ads, even if they were not officially authorized users.

Williams testified that he paid for the ads placed by the LJW representative "Mr. Hossain."

Both SEG and LJW representatives signed contracts with consumers on behalf of their respective companies. These contracts bore the company name, address, and logo. The SEG contracts did not differ in any respect from those which Edouard himself signed on behalf of SEG.

When SEG or LJW was confronted with complaints about their services, neither claimed that the representatives were not SEG or LJW employees or disclaimed the contracts entered into by those representatives. In fact, they often explicitly affirmed those contracts, citing to contract provisions to attempt to justify their refusals to provide refunds. Some complaints directed to SEG were even responded to by these representatives on SEG letterhead.

Edouard also testified that he created a "pitch outline" which represented the script from which he expected his representatives to work in speaking to customers. He testified that he fired a representative, " Ms. Ivy, "for failing to follow the outline . In the affidavit he submitted in this case , Edouard repeatedly refers to SEG representatives as "employees" or "staff", specifically including the "Ms. Ivy" who spoke to the state's undercover investigator and to another consumer.

While Edouard testified that he considered at least some SEG representatives to be "independent contractors", he offered no factual basis for that claim and no evidence of such facts, simply a conclusory assertion.

Similarly, while Williams testified that he considered LJW representatives to be recruiters" rather than employees, he offered no factual basis for this claim and no evidence of such facts.

Edouard's Individual Participation

Edouard had detailed knowledge of and participated in the practices described above.

Edouard, SEG's sole owner and president, operated SEG without the necessary DCA employment agency license for substantial periods of time. He personally filed licensing applications on behalf of SEG in which he made misrepresentations to DCA.

Edouard personally entered into an agreement with Larry J. Williams to refer consumers to LJW for training and, pursuant to that agreement, signed checks to LJW and Larry J. Williams.

Edouard wrote or reviewed, authorized, placed and paid for many of the thousands of ads for security guard jobs which SEG placed. Edouard has testified that he permitted other SEG employees to use his personal email account to place ads in one paper rather than placing them himself.

Additionally, while disclaiming personal involvement in the placement of dozens of ads content in another paper, Edouard failed to explain away the fact that the paper's records often identified him personally as the caller who placed a particular ad.

Edouard personally " interviewed " consumers who came to SEG's office seeking employment, falsely promised or guaranteed them employment, and sold them SEG's package of security guard courses

Edouard has interacted with consumers requesting refunds and denied consumers refunds.

Edouard regularly responded to governmental agencies, including the Office of the Attorney General ("NYAG") and DCA, as well as the Better Business Bureau (BBB), in connection with consumer complaints. Due to his (1) personal involvement in reviewing, authorizing, placing and paying for SEG's ads; (2) personal participation in sales to SEG customers; and (3) personal responses to numerous consumer complaints of misrepresentations committed by his employees, Edouard was both aware of the fraudulent or illegal conduct of SEG employees and participated in SEG's fraudulent or illegal conduct personally.

Williams's Individual Participation

As discussed below, Williams has detailed knowledge of and participated in the practices described above. Williams represented LJW in interactions with DCJS, including attending a remedial orientation based on complaints about LJW.

In his capacity as School Director, Williams submitted licensing applications to DCJS and responded to DCJS's inquiries and inspections. Williams reviewed, authorized, and paid for ads that solicited consumers appearing to be placed by companies hiring for security guard and other positions. Williams personally took LJW training courses, signed enrollment agreements with and paid fees directly to SEG and not LJW, as required by DCJS rules. Williams regularly responded to governmental agencies, including DJCS, NYAG and DCA, as well as the BBB, in connection with consumer complaints. Williams answered complaints and requests for refunds from individual students from his school. In one notable instance, at a meeting with a complaining student, he took a job guarantee she had received from one of his employees and tore it up in front of her.

Due to his (1) review of and personal responses to numerous consumer complaints of false promises and misrepresentations committed by his employees; (2) personal involvement in reviewing, authorizing, placing and paying for LJW's advertising and (3) responses to inquiries from DCJS, Williams was both aware of and participated directly in LJW's misconduct.

CONCLUSIONS of LAW

Ruling from the bench on July 27, 2016, this court denied Respondents' LJW Security Services & Training Inc. and Larry Williams' application by Show Cause Order for a protective order

with respect to the Notice to Admit, which they alleged was improper, for a stay of the proceedings pending such determination and for a trial separate from that against co-respondents Security Elite GrouOp, Inc. and Stephan Edouard **(Motion Sequence Numbers 003 and 004)**. Respondents did not convince the court that they failed to receive copies of the documents, which were appended to the petition, and were referenced and for which authentication was sought in the Notice to Admit propounded by petitioner. Nor did respondents set forth the reasons that they could not truthfully admit or deny the matter requested in the Notice to Admit. See Great American Ins. Co. v Matzen Const. Inc., 114 AD2d 625, 626 (3d Dept. 1985).

Respondents LJW Security Services& Training Inc. and Larry Williams also sought a separate trial. This court likewise denied that motion as such respondents did not demonstrate prejudice with respect to the Notice to Admit served on co-respondents Security Elite Group, Inc. and Stephan Edouard, concededly not until the eve of trial by petitioner. Nor such moving defendants demonstrate prejudice, as neither Edouard nor Security Elite Group, Inc. conceded liability, and moving respondents did not assert that Edouard and/or Security Elite Group, Inc. asserted any cross claim against such respondents, or intended to offer evidence adverse to such respondents. See People v Chin, 181 AD2d 828 (2d Dept. 1992).

Petitioners moved by notice of motion dated December 9, 2016, to renew the Order dated December 18, 2015, to the extent that it held that "Executive Law 63(12) does not create an independent cause of action" and that "the statute of limitations for claims pursuant to Executive Law § 63(12) and General Business Law § 349 is the three year statute of limitations" (Motion Sequence Number 007).

Contrary to the argument of respondents LJW Security Services & Training Inc. and Williams that petitioners' motion is untimely, as argued by petitioners, there is no time limit for making such motion, where there has been no judgment entered and the time to appeal such judgment has not run. See Ramos v City of New York, 61 AD3d 51 (1st Dept. 2009). The court likewise agrees with petitioner that respondents never objected to the introduction of evidence with regard to conduct that took place before January 20, 2012, i.e. actions of respondents that tool place beyond the three year statute of limitations.[1]

[1]The court notes that with respect to respondents LJW Security and Training Services and Williams, the trial record contains several instances of matters regarding LJW's conduct that pre-date January 20, 2012: (1) LJW Craiglist job ads of 12/18/10 - 12/25/10); (2) the DCA complaint of Robert Evans and his LJW enrollment agreement dated August 3, 2011; (3) the DCA complaint of Gladys Resto and her LJW enrollment agreement dated August 30, 2011, into which she entered in response to a Craiglist advertisement of that same date, and (4) the DCA complaint of Lino Modesto and his LJW enrollment agreement dated December 15, 2011.

This court concurs with petitioner that the Matter of the People of the State of New York v Trump Entrepreneur Initiative LLC, 137 AD3d 409 (1st Dept. 2016), which holds that the Attorney General may bring a stand-along cause of action for fraud under Executive Law § 63(12) and "is subject to the residual six-year statute of limitations in CPLR 213(1)(supra, 137 AD3d at 418), is binding on this court. See Dinallo v DAL Elec., 60 AD3d 620 (clarification of applicable law "is a sufficient change in the law to support renewal").

Petitioners seek to amend the Petition to conform to the evidence of violations they allege respondents committed of General Business Law §§ 173(2), 181(1), 185-86, 187(3)and 841-c.

General Business Law 173(2) requires an employment agency on its license application to "state truthfully. . .such other information as may be prescribed by the commissioner."

General Business Law §181(1) requires that every employment agency give to each employment applicant a contract setting forth in a clear and concise manner the provisions of GBL 185-186, which includes the circumstances permitting fees and that deposits and advanced fees are not permitted except for Class "A" or "A1" employment. General Business Law §185(4) defines Class "A" employment as "domestic, household employees, unskilled or untrained manual workers and laborers, including agricultural workers. General Business Law §185(4) defines Class "A1"

employment as "non-professional trained or skilled industrial workers or mechanics."

General Business Law § 187(3) provides that an employment agency shall not "advertise in newspapers or otherwise. . .unless such advertising…contains the name and address of the employment agency, the word 'agency' and the agency's license number."

General Business Law § 841-c provides that the Commissioner of DCJS shall prescribe minimum requirements for security guard training courses and shall approve and certify security guard training schools and courses. Pursuant to Executive Law 841-c, the DCJS commissioner, in Training Bulletin 699-1-11 has required a security guard training school seeking approval to submit the enrollment agreement it intends to use with its students.

In opposing petitioners' motion to confirm its pleading to the proof introduced at trial and to amend the petition to reflect claims pursuant to the foregoing General Business Law provisions, respondents LJW Security Services & Training, Inc. and Williams have not demonstrated any prejudice, i.e., they have not indicated how their defense was detrimentally affected by the petitioner's post-trial interposition of claims that they violated the above additional statutes. During the course of the trial, they had every opportunity to object to the introduction of any evidence relating to such claim proffered by petitioners or on their own case, to offer evidence rebutting the contentions that they

violated such statutes. See Dashinsky v Santjer, 32 AD2d 382 (2d Dept. 1969).

The court adopts in their entirety and nearly wholesale the post-trial conclusions of law proposed by the New York State Attorney General, as follows.

Executive Law § 63 (12) authorizes the New York State Attorney General to bring a special proceeding for repeated or persistent fraudulent conduct. Executive Law § 63(12) defines the terms "fraud" or "fraudulent" as "any device, scheme or artifice to defraud and any deception, misrepresentation, concealment , suppression, false pretense, false promise or unconscionable contractual provisions."

" Repeated " is defined as " repetition of any separate and distinct. . . act " or " conduct which affects more than one person." Exec. Law § 63(12); People v. Wilco Energy Corp, 284 A.D. 2d 469 (2d Dept 2001).

"Persistent" is defined as " continuance or carrying on of any fraudulent or illegal act of conduct . " Exec. Law § 63(12).

It is not necessary to establish the traditional elements of common law fraud, such as intent to deceive and reliance, to establish liability for fraud under Executive Law § 63(12). See,

e.g., State v. Trump Entrepreneur Initiative LLC, 137 A.D.3d 409, 413 14 (1st Dept 2016), lv. granted. Rather, the test of fraudulent conduct under Executive Law § 63(12) is whether the act "has the capacity or tendency to deceive , or creates an atmosphere conducive to fraud." In re People v. Applied Card Systems, Inc., 27 A.D. 3d 104, 107 (3d Dept 2005). Executive Law § 63(12) protects the credulous and the unthinking as well as the cynical and the intelligent. Spitzer v. Gen. Elec., 302 A.D. 2d 314 (1st Dept 2003); Applied Card, 27 A.D.3d at 106.

GBL § 349 declares unlawful "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in [New York]."

GBL § 350 prohibits " [f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service in [New York]." GBL § 350-a further provides that "false advertising" is advertising that is "misleading in a material respect."

As with fraud under Executive Law § 63 (12), the elements of common law fraud need not be established to demonstrate a violation of GBL § 349. Koch v. Acker, Merrall & Condit. Co. , 18 N.Y. 3d 940, 941 (2012) (finding reliance and intent not an element of a GBL § 349 claim).

It is well established that misleading advertising claims cannot be cured by subsequent disclaimers or disclosures. See,

e.g., FTC v . Medical Billers Network , Inc. , 543 F. Supp. 2d 283, 303, 304(S.D.N.Y. 2008). Moreover, courts have repeatedly found that fine print or inconspicuous disclaimers are inadequate to offset deceptive impressions in the main body of a solicitation . See, e.g., Gaidon v . Guardian Life Ins. Co. of Am., 94 N.Y. 2d 330, 345 (1999).

By virtue of the foregoing facts, all respondents have engaged in repeated and persistent fraudulent and deceptive conduct in violation of Executive Law § 63 (12) and GBL § § 349 and 350.

The ads placed by SEG and LJW were deceptive and misleading. They offered nonexistent job openings, purported to be placed by companies with actual job openings rather than an agency or school, and usually made no mention of any fees to be charged for services.

Respondents also made deceptive and misleading oral communications to consumers. They guaranteed jobs. SEG hid the fact that SEG would charge fees beyond the $ 80 mentioned in initial contacts until the consumer had already paid the consumer's "deposit".

Additionally, respondents lied to consumers about the amount of coursework required to be licensed as a security guard in New York.

Finally, they misled consumers regarding the "interviews" supposedly set up for them by the company. Any possible later disclaimers or disclosures could not cure these deceptions.

In addition to persistent fraud, Executive Law § 63 (12) also forbids persistent . . . illegality" in the conducting of a business. It thus authorizes the Attorney General to seek redress for the violation of other state or local statutes or regulations. See, e.g., People v. Applied Card Systems, Inc., 27 A.D. 3d 104 (3d Dept 2005).

GBL § 172 provides "No person shall open, keep, maintain, own or carry on any employment agency unless such person shall have first procured a license therefor as provided in this article." An "employment agency" is defined as, among other things, either "any person who, for a fee, procures or attempts to procure: employment or engagements for persons seeking employment or engagements" or "any person who, for a fee, renders vocational guidance or counselling services and who directly or indirectly (1) Procures or attempts to procure or represents that he can procure employment or engagements for persons seeking employment or engagements; or . . . (3) Provides information or service of any kind purporting to promote, lead to or result in employment for the applicant with any employer other than himself." GBL § 171.

From at least June 2011 to October 2015, SEG operated as an employment agency, as it procured or attempted to procure employment in the security field for its customers for a fee. SEG held itself out to the state as an employment agency when it

obtained and renewed its license to operate as one. SEG's claim , based solely on a single small print line in its contract, that it provided job placement services " as a courtesy" and was instead some sort of training broker, " does not overcome the fact that it advertised specific job openings, not training; promised people jobs, not training, which, when SEG brought classes up, it presented as merely an incidental requirement for employment they had already been chosen for; and sent consumers on fake "job interviews." Further, SEG was not legally authorized to offer security guard training or to enter into enrollment contracts for security guard training in this state. The only service it was licensed to offer for a fee (when it was licensed) was job placement. In fact, even if SEG had charged for training alone, it would have violated the law forbidding it from charging for incidental services such as training, which it had also represented to DCA under oath it would not do.

SEG has also admitted that it provided "vocational guidance or counseling services" for its customers, for which it charged a fee. In this connection, SEG provided information or services, such as " brokering" security guard training and "referring" applicants to interviews, purporting to promote or lead to employment for its customers with employers other than itself.

Between at least June 2011 and January 2012 and after February

1, 2015, SEG thus operated as an employment agency without a license. By repeatedly and persistently violating GBL § 172 , Respondent SEG has engaged in repeated and persistent illegal conduct in violation of Executive Law § 63 (12).

GBL § 185 (3) prohibits an employment agency from requiring an advance or deposit fee from any applicant except an applicant for class "A" or "A1" employment. Class "A" employment is defined as "domestics, household employees, unskilled or untrained manual workers and laborers, including agricultural workers." NY GBL § 185 (4). Class "A1" employment is defined as "non-professional trained or skilled industrial workers or mechanics."

Respondent SEG repeatedly and persistently required that applicants seeking positions in security pay up front or deposit fees. These individuals were not applicants for class A or A1 employment. By charging advance or deposit fees to non-class A or A1 applicants, SEG repeatedly and persistently violated GBL § 185 and thus also engaged in repeated and persistent illegal conduct in violation of Executive Law § 63 (12).

GBL § 187 (10) prohibits employment agencies from requiring applicants to subscribe to any publication or incidental service." By charging applicants for incidental services such as training, SEG repeatedly and persistently violated GBL § 187 (10) and thus also engaged in repeated and persistent illegal conduct in violation of Executive Law § 63 (12).

GBL § 185 (2) provides that "[n]o fee shall be charged or accepted for the registration of applicants for . . . employment." By repeatedly and persistently charging consumers "registration " fees", SEG violated § 185 (3) and Executive Law § 63 (12).

GBL § 181 (1) requires that every employment agency give to each applicant for employment a contract setting forth in a clear and concise manner the provisions of GBL §§ 185 (Fees) and 186 (Return of Fees). By repeatedly and persistently failing to provide applicants for employment such contracts, SEG violated § 181 (1) and therefore Executive Law § 63 (12) .

GBL § 187 (3) provides that an employment agency shall not " advertise in newspapers or otherwise . . . unless such advertising . . . contains the name and address of the employment agency , the word 'agency' and the agency's license number." By repeatedly and persistently failing to include in its advertising its name and address, the word "agency", and its license number, SEG violated GBL § 187 (3) and therefore Executive Law § 63 (12).

GBL § 173(2)(a) requires that on its license application, an employment agency must "state truthfully . . . such other information as may be prescribed by the commissioner." By repeatedly and persistently engaging in misrepresentations concerning its conduct, such as placing other than Class A or A1 applicants, on its initial and renewal applications , SEG violated GBL § 173 (2) (a) and therefore Executive Law § 63 (12).

Pursuant to Exec. Law § 841-c (13), the DCJS commissioner, in Training Bulletin 699 1 11, has required a security guard training school seeking approval to submit the enrollment agreement it intends to use with its students. By repeatedly and persistently failing to use any enrollment agreement with the students referred to it by SEG , LJW has violated DCJS regulations and therefore Executive Law § 63 (12).

An employer is liable for the acts of an employee or agent committed while acting within the scope of his employment or within the agent's actual or apparent authority. See, e.g., Riviello v . Waldron , 47 N.Y. 2d 297 , 302 (1979); Gen. Elec., 302 A.D. 2d at 317; Ederer v. Gursky, 9 N.Y. 3d 514, 522 (2007).

An "independent contractor is a person who contracts with another to do something for him but who is not controlled by the other nor subject to the other's right to control with respect to his physical conduct in the performance of the undertaking." E . B . A . Wholesale Corp. v. S.B. Meek Corp., 127 A.D. 2d 737, 739 (2d Dept 1987). Given the control exercised over those representatives by their respective employers, including having them work from their office, providing them with company documents to use with customers, and SEG's approval of ads placed by representatives and its expectation that its representatives would use the pitch outline, the court finds that SEG and LJW

representatives were employees of their respective companies , not independent contractors. In selling the services of their company to consumers, the representatives were also acting within the scope of their employment. Thus, SEG and LJW were liable for the acts of their representatives as employees .

An agency relationship based on actual authority "results from the manifestation of consent of one person to allow another to act on his or her behalf and subject to his or her control, and consent by the other so to act." Maurillo v. Park Slope U Haul, 194 A.D. 2d 142, 146 (2d Dept 1993). For an agent to possess actual authority, it does not matter whether the agents would be considered at law as employees of the company or independent contractors . " FTC v. Five Star Auto Club, Inc . , 91 F. Supp. 2d 502, 527 (S.D.N.Y. 2000). An agency relationship may arise "not only out of actual authority but also apparent authority." Empire Communications Consultants , Inc. v. Pay TV of Greater New York, Inc., 126 A.D. 2d 598, 601 (2d Dept 1987). "Essential to the creation of apparent authority are words or conduct of the principal, communicated to a third party, that give rise to the appearance and belief that the agent possesses authority to enter into a transaction." Pasquarella v William St., LLC, 120 A.D. 3d 982, 983 (4th Dept 2014).

SEG and LJW consented to allow their representatives to act on their behalf in placing ads, speaking to consumers who called

in response to those ads, and signing contracts that they later explicitly affirmed. Therefore, those representatives were agents of the respective companies with actual authority. Further , SEG and LJW conducted themselves in a manner – for example, by allowing their representatives to operate out of their offices and to offer contracts with the company logo to consumers – that gave rise to the appearance to consumers that these representatives possessed authority to enter into transactions on the companies' behalf. Therefore, SEG and LJW representatives possessed apparent authority, as well. SEG and LJW are thus also liable for the actions of their representatives as agents.

Individuals may be held liable for the fraudulent and illegal acts of corporations of which they are officers or directors if they have participated in the conduct or had actual knowledge of it. See, e.g., People v. Apple Health & Sports Clubs, 80 N.Y.2d 803, 807 (1992). The Court finds that Edouard and Williams are individually liable based on their knowledge of and participation in the fraudulent, deceptive and illegal acts described here.

Except for the early period in which LJW marketed directly to consumers without SEG, and after LJW SEG and LJW worked together to execute their scheme up to the time that LJW ceased operating the security guard school in October 2014. The Court thus finds

that for that period, Edouard, Williams, SEG, and LJW all acted together to defraud consumers and commit other illegalities.

In proceedings brought pursuant to Executive Law § 63 (12) and GBL §§ 349 and 350, the Court has broad equitable authority to grant injunctive relief, restitution, disgorgement, damages, civil penalties and costs. See People v . Empyre Inground Pools, Inc., 227 A.D. 2d 731, 734 (3d Dept 1996); Princess Prestige, 42 N.Y. 2d at 107; State v. Scottish Am. Assn, 52 A.D. 2d 528 (1st Dept 1976).

Pursuant to Executive Law § 63 (12), the State is entitled to judgment in its favor against each of the Respondents granting the injunctive relief, restitution, damages, disgorgement, penalties and costs sought in the Verified Petition.

As SEG paid LJW $50 per student referred, and records show that SEG paid at least $108,945 to LJW. SEG referred to LJW at least 2,178 students. Since consumers were expected to pay in full before commencing (or, in some cases, completing) coursework, and SEG charged $379 in total for its services, consumers paid at least $ 825,462 to SEG. While this figure is only an estimate, it likely understates SEG's revenues from fraudulent activity, as an unknown number of consumers paid only the initial $80 fee. Additionally, as SEG failed to keep the registers of applicants and employers mandated by GBL §179, any imprecision is the fault of respondent SEG.

This court awards $825,000 in restitution, for which SEG and Edouard are jointly and severally liable.

The court sets the amount of restitution to be paid by LJW and Larry Williams substantially less than that assessed against SEG, as there is no evidence that LJW continued either to place any job ads or conduct any training after 2013, and specifically as of October 2014, when LJW was not longer licensed as a security training school, while SEG continued to bilk consumers for two more years. Further, unlike SEG, LWJ was licensed as a security training school from August 2012 to August 2014. In addition, there is some evidence that substantial numbers of consumers who took security guard courses with LWJ were not recruited by SEG. Given that LJW's bogus employment offering ads ran only from the end of December 2012 to August 2013, coupled with DCJS employee Canning's testimony that he visited LJW offices, where he observed one of the "best in the business" instructors teaching the students, this court determines that the magnitude of SEG's and Edouard's fraud far outpaced that of LJW and Williams.

The $108,945 in fees paid to LJW by SEG does not capture the number of consumers who paid fees only to LJW before it ceased independently advertising jobs as of August 2013. Thus, extrapolating, the court awards $300,000 in restitution for which LJW and Williams are joint and severally liable.

GBL § 350-d (Civil penalty) permits the Attorney General to recover up to $5000 per violation of the statute. SEG ran more than a thousand false ads in one newspaper and LJW more than 500, as well as other ads in print and online. This Court therefore awards an additional $ 50,000 in penalties for the SEG ads, for which SEG and Edouard are jointly and severally liable, and an additional $25,000 in penalties for the LJW ads, for which LJW and Williams are jointly and severally liable.

Finally, except for the first being undated and omitting the movant attorney's name, by duplicate Notices of Motion, each returnable on January 27, 2017, NYAG move to hold Security Elite Group, Inc. Edouard in contempt, for a second time, on this occasion for contempt of the judgment and order for contempt against such respondents issued by this court on July 27, 2016, and entered on July 28, 2016 (Civil Contempt Order) (**Motions Sequence Numbers 005 and 006**). NYAG brought to this court's attention that the County Clerk declined to file the order as a judgment, but ultimately, at this court's direction, the NYAG filed the contempt order, and served such order with notice of entry upon respondents on or about October 18, 2016.

Specifically, the NYAG seeks to hold respondents SEG and Edouard in contempt for

(1) their violations of the directives of the Civil Contempt Order, that required respondents SEG and Edouard to (a)

submit to all counsel and this court affidavits from corporate officers concerning payments to Edouard, including the amounts and dates of such payments, as well as stating Edouard's participation in activity, the name of the consumer and nature and date of such activity that was prohibited by such Contempt Judgment and Order. The July 28, 2016 Contempt and Order adopted the deadline of December 18, 2015, which was the deadline proposed by the NYAG in its proposed Judgment and Order, which deadline had passed six months before the issuance of the July 28, 2016 Order. NYAG counsel sent an e-mail to counsel for respondent SEG and Edouard on July 28, 2016 proposing that such attorney cause his client to comply by August 10, 2016. Neither the NYAG nor respondents SEG and Edouard moved to re-settle of for a clarification of such order; (b) pay $2,431 to the NYAG to reimburse consumers and submit a sworn affidavit that SEG had cease all operations and vacated 80 Broad Street immediately; and

(2) their continued violations of the Temporary Restraining Order of January 2015, even after the NYAG moved for contempt for previous violations up to and including October 2015, based upon three DCA consumer complaints and dozens of postings on Instagram, as follows (i) on

March 1, 2016, one consumer visited SEG's 80 Broad Street office where the representative there promised that for $80 she would receive federal Office of Safety and Health Administration (OSHA) training, completing the training, never receiving a certificate, but asked for an additional $300 for job assistance for a job at a minimum salary of $12-$14 per hour; her calls to SEG were never returned; (ii) on February 24, 2016, responding to an ad on Craiglist (which listed the same number as respondent Security Elite used in September/October 2013 ads, a consumer met with a person named Diana at SEG's offices and was told that there was a cleaning job that paid $12 an hour available, but that she needed to take an OSHA class; after taking the class on three days in March 2016, during which respondent Edouard introduced himself to the students, the consumer obtained the certificate dated March 3, 2016, but did not obtain the job, and her calls to SEG were never returned; (iii) a consumer reported that on June 8, 2016, an employment agency named SEG was charging $80 for registration, and an additional $300; Instagram ads on February 29, May 4, 5, 2016 and a website active until July 27 that touted SEG's success at procuring jobs for consumers.

In opposition, by affidavit, signed before a notary public on January 11, 2017, Edouard (1) admits that he was personally in charge of SEG during the time alleged in the Petition, the subject of the trial; (2) asserts that he is personally with any funds, as SEG accounts have been "frozen" since February 2015; (3) contends that his wife is the sole wage earner in his household, supporting his two children; reiterates that when any consumer that saw him at the offices at 80 Broad Street after the issuance of the Temporary Restraining Order, he was simply collecting rent from the assignee of the lease; contends that on March 3, 2016, the day that the consumer who claims he introduced himself to the class received her OSHA certificate, he was at the hospital, 21 miles away, where his wife was giving birth to his son, and attaches a copy of his son's birth certificate; that at or around October 18, 2016, when he was served with the Civil Contempt Order, in attempting to comply with such order, he visited the 80 Broad Street offices, whose lease he allegedly assigned to a separate corporation, and found the offices in disarray, and was unable to find his laptop; on a future date, SEG was evicted from 80 Broad Street by its landlord, and he no longer had access to the office and that a "friend" who worked security for the building informed him that all his files, documents and computers were discarded by the office staff; he also referenced a certified copy of a DCA Certificate of Inspection dated December 22, 2011 that certified

that at SEG's offices at 80 Broad Street, there was "No Evidence of Employment Agency Activities"; the Inspector's Report attached to such Certificate stated that "Mr. Stephan Edouard [stated]. . . above company is operating only as training security classes and job placement service they provide is a free service as a courtesy to the customers."

This court finds Edouard's explanation and denials wholly inadequate on all scores to refute the NYAG's allegations that he and SEG are in contempt of this court's orders.

His affidavit of January 11, 2017 in which he contends that he visited his offices to try to comply with Civil Contempt Order dated July 27, 2016, comes only in response to the NYAG's motion for contempt made three months after the service of such Civil Contempt Order upon Edouard on October 18, 2016. As time was of the essence for both Edouard and this court, it is inexcusable that Edouard did not immediately inform this court by affidavit of the details of his inability, as corporate officer, to locate the records and files that would he needed in order to provide the spreadsheets that he was required to produce. Moreover, Edouard has not demonstrated that he has made any efforts, at a minimum, to secure copies of records of checks tendered by consumers to SEG with the name and address of such consumers endorsed from SEG's bank or other financial institution.

In addition, Edouard's insistence that he assigned the lease to another corporation, which continued to operate the unlicensed security training and or employment agency business, using the phone numbers, and indeed his first name on ads, is stretches and breaks credulity. Further, there is evidence in the record that as early as January 8, 2014, prior to the Temporary Restraining Order, SEG was using the a/k/a Security Enforcement Group in the form of a DCA complaint filed on that date, from a consumer who complained of a business called "Secure Enforcement Group" operating at 80 Broad Street, 12th Floor, on that date, which predated the Temporary Restraining Order, as revised.

His "alibi" that he was at the hospital many miles away with his wife as she was giving birth to their son on March 3, 2016, to refute the consumer claims to have seen him at SEG's offices at 80 Broad Street, is no defense. Edouard's denial does not defeat the consumer's claims since March 3, 2016 was the day that she received her Certificate of Completion, and the OSHA training course at 80 Broad Street was three days in duration. Likewise, that on a particular day, an inspector found no employment

With respect to Edouard's assertion that he is completely without funds to pay any penalty, once the NYAG

> "met [its] burden and established that [respondent] violated the order. . ., it was incumbent upon [respondent] to proffer evidence of his inability to pay. {Respondent's] argument to the contrary is unpersuasive because, as the contemnor, he is the party who is charged with violating the court's order,

> and also the party with access to the relevant financial information regarding his ability to pay.
>
> Nonetheless, [respondent] failed to submit evidence that he could not pay due to lack of sufficient funds, economic distress or financial hardship. Instead, he submitted an affidavit containing bald face statements. . .Such '[v]ague and conclusory allegations of … inability to pay or perform are not acceptable'. Rather, courts have required a more specific showing of contemnor's economic status. . .Ovsanikow v Ovsanikow, 224 AD2d 1049, 1051. . .[3d Dept. 1996][an undocumented assertion of the inability to pay without any evidentiary support, will not suffice to provide the defense of a financial inability to pay]."
> El-Dehdan v El-Dehdan, 26 NY2d 19, 35-36 (2015).

Finally, the DCA Certificate of Inspection dated December 22, 2011 that states "No Evidence of Employment Agency Activities" accompanied by the report that quoted Edouard as informing the inspector that "training security classes and job placement service they provide is a free service as a courtesy' is inadequate to refute the overwhelming evidence that Edouard and SEG were continuing to disobey this court's mandate, occurring on one isolated day and containing Edouard's admission that SEG was providing security classes, though it was never licensed as a security guard training school.

Where, as here, a party fails to comply with the terms of a clear and unambiguous court order, the imposition of statutory fines is warranted. NYAG has met its burden to establish by clear and convincing evidence that there was a lawful and unambiguous order of the court, of which SEG and Edouard had knowledge, and that SEG and Edouard's violations of such order tended to defeat,

impair and impede the rights consumers, represented by NYAG. See McCormick v Axelrod, 59 NY2d 574, 582 (1983) and State v Unique Ideas, 44 NY2d 345, 349 (1978).

Moreover, beyond a reasonable doubt, the NYAG has demonstrated that the disobedience of SEG and Edouard was blatant and willful, warranting criminal penalties. See Department of Environmental Protection v Department of Environmental Commission, 70 NY2d 233, 239 (1987).

10/15/2019
DATE

DEBRA A. JAMES, J.S.C.

CHECK ONE:	X	CASE DISPOSED			☐	NON-FINAL DISPOSITION	
	X	GRANTED	☐	DENIED	☐	GRANTED IN PART	☐ OTHER
APPLICATION:	☐	SETTLE ORDER			☐	SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN			☐	FIDUCIARY APPOINTMENT	☐ REFERENCE