

July 14, 2017

Mr. Fabian P. Blache III
Executive Director & Chief Administrative Officer
LA State Board of Private Security Examiners
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Re: Comments regarding TigerSwan, LLC's Application to LSBPSE

Dear Mr. Blache and LSBPSE Board Members,

First, I would like to express my gratitude to yourself and the entire Louisiana State Board of Private Security Examiners ("LSBPSE" or "the board") for providing the public with an opportunity to give input regarding TigerSwan, LLC's ("TigerSwan") pending application to operate in Louisiana. In acknowledgement of the lack of formal procedure for public comment in the application process, it is particularly appreciated that you have extended an invitation for public input regarding this company's application.

For your consideration, I wish to highlight examples of TigerSwan's allegedly unlawful and/or intrusive operations in Illinois and North Dakota over the past twelve months, warranting additional scrutiny into whether the LSBPSE can find that this company satisfies the qualification and suitability requirements for company licensure in the state of Louisiana. TigerSwan's allegedly illegal operations in other states instantiates a finding that this company may be unsuitable for licensure in Louisiana based on the qualifying criteria applicable to LSBPSE's evaluation. In upholding the core principles of health, safety and welfare of the citizens of Louisiana, we request the board to conduct a thorough investigation prior to granting a license to a company subject to such serious allegations before the South Central District Court in North Dakota.

The Louisiana Legislature created the Private Security Regulatory and Licensing Law in consideration of the safety, health and welfare of Louisiana's citizens.¹ The legislature recognized the potential dangers of unqualified persons or entities providing private security services in the state. Therefore, it is only in the best interest of the citizens of Louisiana that the board exercise its authority, with caution and thorough review, to privilege an individual or entity with licensure to operate in Louisiana. The applicable laws and procedures authorize the board to issue or deny the application submitted by TigerSwan, on a myriad of bases. The forthcoming paragraphs discuss three areas of the board's evaluation of potential licensees that warrant additional scrutiny, including satisfactory minimum qualifications, suitability and causes for nonissuance, each will be discussed, in turn, herein.

¹ R.S. 37:3270 (A) and (B) (discussing the purpose of the statute).

A. Satisfactory Minimum Qualifications

The Louisiana Administrative Code at Title 46, Part LIX and the Private Security Regulatory and Licensing Law (Louisiana Revised Statute 37:3270-3298, *et. seq.*) provide the board with standards and criteria upon which to evaluate the qualifications of an applicant. The statute provides certain “satisfactory *minimum* qualifications” as threshold criteria to be met for licensure in Louisiana.² Amongst those enumerated criteria is a determination by the board as to whether or not the applicant “[i]s of good moral character.”³ Although it is presumably a difficult task to determine an applicant’s character based on perfunctory answers to the application form requirements, it is a mandatory, minimum qualification that warrants a thorough assessment. I hope that this letter can assist the board in evaluating TigerSwan’s character with emphasis on the company’s allegedly unlawful conduct.

In its June 12, 2017 Complaint filed last month against TigerSwan, LLC,⁴ the North Dakota Private Investigative and Security Board (“NDPISB”) claims the company has been operating illegally in the state, providing private investigative and security services under contract with Energy Transfer Partners, without a license, since September 2016.⁵ The state agency’s allegations, corroborated by leaked internal Situation Reports, describe invasive military-style surveillance operations spearheaded by TigerSwan from September 2016 to as late as April 2017.⁶ In addition to the alleged violations and circumvention of the North Dakota Century Code and Administrative Rules, claims of the company’s allegedly incomplete application and failure to disclose its conduct when prompted by the agency raises serious cause for concern.

The agency first sent a letter in September 2016, notifying TigerSwan that it lacked the proper license to provide private security services in the state.⁷ The October 4, 2016 response from the company’s Senior General Counsel, Fransico J. Calvo, denies the board’s assertion that it was conducting private security services in the state.⁸ However, on December 14, 2016, the NDPISB sent another notice to TigerSwan asserting “our resources state that your Agency (Tigerswan) is currently doing security work in North Dakota. Please explain the nature of the work you are presently doing.”⁹ In response, James Reese denied TigerSwan’s performance of any “security work” in the state, asserting that it was merely performing managing and IT consulting for its client, Energy Transfer Partners.¹⁰

² R.S. 37:3276(A) (emphasis added).

³ *Id.* at (A)(1).

⁴ TigerSwan is a North Carolina limited liability company, cofounded by former Delta Force military member James Reese, which provides safety and security services to business and government entities.

⁵ NDPISB v. TigerSwan, LLC and James Patrick Reese, “Verified Complaint and Request for Injunction” June 12, 2017 at ¶7-30, Attachment A [hereinafter *Complaint*].

⁶ *See Complaint* and accompanying “Situation Reports” attached.

⁷ 9/23/16 Letter from NDPISB to TigerSwan, Attachment B; *see also Complaint* at ¶16).

⁸ 10/4/16 letter from TigerSwan, Attachment C; *Complaint* at ¶17.

⁹ 12/14/16 email from NDPISB, Attachment D.

¹⁰ 12/14/16 reply email from Reese to NDPISB, Attachment E.

Upon notice of the NDPIBS's denial of its application for one or more of the following reasons: disqualifying criminal history, failure to disclose arrests and to provide sufficient information regarding whether the offense has a direct bearing on Reese's ability to serve the public, Reese admitted to his failure to disclose all arrests but claimed this mistake was merely an oversight.¹¹ In response, the NDPIBS again noted that "[o]ne reason for the denial concerns your failure to respond to the Board's request for information as to TigerSwan's and James Reese's activities within the State of North Dakota."¹²

Absent an express definition provided in the statute, the LSBPSE's determination of the "good moral character" of an applicant is contextually supported by considerations of the applicant's general character, integrity and honesty, as mentioned in the "suitability" criteria discussed herein. The volume of evidence in the form of Situational Reports whereby TigerSwan and James Reese's private investigative services include investigating persons, locations, identities and activities surrounding the North Dakota Access pipeline project opposition since as late as September 2016¹³ sufficiently belies the allegedly fraudulent assurances made by TigerSwan to the NDPIBS in response to the agency's legitimate inquiries. This alleged conduct evidences TigerSwan's potential for poor moral character in purportedly misleading a state agency and continuing operations in a state without a license, circumventing the legal processes in place to protect the public.¹⁴

In Louisiana, if the applicant provides insufficient information for the board to adequately evaluate whether it meets the minimum qualifications, LSBPSE can require the applicant to supply additional information.¹⁵ Therefore, LSBPSE can require TigerSwan to supplement its application materials to include the documents discussed herein, and any additional Situation Reports or investigative documents prepared by the company regarding "safety and security" services, to ascertain whether, based on its own review and analysis, this company meets the satisfactory minimum qualification of good moral character. We urge LSBPSE to seek out all relevant information from TigerSwan, the North Dakota Private Investigative Security Board, the North Dakota Bureau of Criminal Investigation and additional sources, to inform its decision-making process and promote transparency in the best interests of Louisiana citizens. If TigerSwan's alleged method of operation for North Dakota was followed in Louisiana, it is possible that TigerSwan has been operating in Louisiana without a license in light of Energy Transfer Partners' proposed Bayou Bridge pipeline in Louisiana. Energy Transfer has been engaged in the permitting process in Louisiana for more than a year. On February 8, 2017, a TigerSwan advisory board member and chair spoke at a public hearing before the Louisiana Department of Natural Resources

¹¹ "Notice of Intent to Deny Application and Right to Request Administrative Review" issued by NDPIBS IN THE MATTER OF: The Application of: JAMES REESE, Dec. 19, 2016, Attachment F; 12/27/16 Email from Reese to NDPIBS, Attachment G.

¹² 1/10/17 Letter from NDPIBS to TigerSwan & Reese, Attachment H.

¹³ See *Complaint* and accompanying Situation Reports.

¹⁴ See 93-02-01.1-01 (3)-(5) (discussing the ability of the applicant to serve the public and the board's evaluation of the applicant's act(s) that might be "indicative of bad moral character and which has a direct bearing on the applicant's ability to serve the public.").

¹⁵ R.S. 37:3276(B).

for the Bayou Bridge pipeline in Napoleonville.¹⁶ Presumably TigerSwan has had people in Louisiana assisting Energy Transfer Partners with matters related to their pipeline as far back as six months ago.

Not only do the licensing qualifications include the application form requirements, proof of general liability insurance, experience, and the minimum determination of good moral character, but the suitability analysis is likewise included in this threshold evaluation of an applicant's eligibility and satisfaction of the minimum qualification requirements. The authority and mandatory responsibility of the board to conduct a thorough evaluation of an applicant's character and suitability criteria cannot be overstated.

B. Suitability

In addition to the more general requirements discussed in the chapter 2 of title 46, Part LIX of the Admin. Code, section 801 and R.S. 37:3276 authorize LSBPSE to deny an application to operate in the state based on the applicant's "suitability." In fact, the Private Security Regulatory and Licensing Law provides that "[n]o person shall be granted a license under the provisions of this Chapter unless the applicant has demonstrated to the board that he is suitable for licensing."¹⁷ Therefore, a finding of suitability is also a threshold qualification for licensure, and the board must find that the applicant is suitable prior to issuing a license thereto. The statute defines suitability to mean that the applicant is (among other things):

(a) A person of *good moral character, honesty, and integrity*.

(b) A person whose *prior activities, arrest, or criminal record if any, reputation, habits, and associations do not pose a threat to the public interest of this state or to the effective regulation of private security companies, and do not create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and operations* in the activities authorized by this Chapter and financial arrangements incidental thereto.

(c) *Likely to conduct business as authorized in this Chapter in complete compliance with the provisions of this Chapter.*¹⁸

¹⁶ See "What this Outsider with Hidden Conflicts of Interest can Learn from a Local about the Bayou Bridge Pipeline", DESMOGBLOG.COM, Feb. 15, 2017, available at <https://www.desmogblog.com/2017/02/15/what-outsider-hidden-conflicts-interest-can-learn-local-about-bayou-bridge-pipeline>.

¹⁷ R.S. 37:3276.1(B)(1); see also La. Admin. Code tit. 46: LIX, § 801(A) ("The board may deny an application, suspend, revoke, or restrict a licensee upon the vote of four concurring members when it finds that the licensee or business entity is unsuitable for the purpose of its license or endangers the health, safety, or welfare of the citizens of this state.").

¹⁸ R.S. 37:3276.1(B)(1)(a)-(c) (emphasis added). Also memorialized in the criteria articulated in La. Admin. Code tit. 46: LIX, § 801(B).

As a threshold consideration, this section provides that a person convicted of an enumerated crime of violence or a felony offense within ten years of the date of application is ineligible to apply.¹⁹ Evidence of an arrest, summons, charge or indictment should be supplied by the applicant and considered by the board regardless of the ultimate outcome. It is unclear from the publically-available documents whether James Reese (Founder/President of TigerSwan with a 30% ownership interest), William A. Whitlow (CEO listed in TigerSwan's Sept. 28, 2016 application in North Dakota with 21% ownership interest), or any additional owners of a 10% or more interest in the company and principal officers are ineligible for licensure in Louisiana for convictions articulated in R.S. 37:3276.1(A). We urge LSBPSE to conduct a thorough criminal-background check, cross-referencing results with other states' agencies, to ascertain the company and its owners/officers' eligibility for licensure pursuant to this section.²⁰

Even if the applicant is not disqualified on the basis of a prior conviction as described in subsection A, the statute emphasizes the duty of the board to determine that the applicant otherwise meets the suitability requirements, the aforementioned criteria contained in subparagraphs (1)(a), (b) and (c) in particular. As previously discussed, NDPISB's claims of TigerSwan's allegedly illegal activities in North Dakota, its purported failure to suspend operations upon notification from the NDPISB, its uncertain replies to members of NDPISB regarding the nature and character of its work in the state and ultimately its supposed failure to provide detailed information sought regarding its activities cannot be indicative of "good moral character, honesty, and integrity" as those qualifications are considered by statute.

Moreover, TigerSwan's uncovered history of allegedly unlawful conduct poses a potential threat to the public interests of the state, including citizen rights to privacy, to be free from intrusion and peaceful assembly.²¹ The allegations surrounding TigerSwan's prior conduct also signifies the possible enhanced danger posed by the company's potentially illegal operations in states beyond North Dakota. The Complaint filed by NDPISB against TigerSwan and Reese alleges that TigerSwan personnel carried sidearms and semi-automatic rifles while illegally operating in the state.²² The applicant's alleged willingness to conduct unpermitted security surveillance in North Dakota while armed with semiautomatic weapons poses a potential threat to citizens of any state in which they operate and greatly enhances the possible danger of improper operations in those locations. If these allegations of TigerSwan's prior conduct are any indication, the likelihood of TigerSwan to operate in compliance with the Private Security Regulatory and Licensing Law and applicable portions of the Administrative Code is considerably low.

¹⁹ R.S. 37:3276.1(A).

²⁰ See "'Notice of Intent to Deny Application and Right to Request Administrative Review' issued by NDPISB IN THE MATTER OF: The Application of: JAMES REESE" Dec. 19, 2016, stating that Reese's application was denied pursuant to ND Century Code §§ 43-30-12 & 13 and ND Admin Code art. 93-02 for one of the following reasons: (1) positive criminal history for one or more disqualifying offenses; (2) failure to disclose on the application form all arrests and/or adjudications of guilt; (3) failure to provide sufficient information for the Board to determine whether a reported offense or adjudication has a direct bearing on your fitness to serve the public. Although the Notice fails to disclose details of the potential "disqualifying offense", the considered offense may likewise render Reese ineligible for licensure in Louisiana under R.S. 37:3276.1(A).

²¹ Louisiana Constitution, Art. I §§ 5, 9.

²² *Complaint* at ¶29.

On June 26, 2017, the Midwest Region Director of Food & Water Watch sent a letter to the Illinois Attorney General notifying Lisa Madigan of the organization's concerns and suspicions that TigerSwan has been operating illegally in Illinois and requesting an investigation into TigerSwan's operations in the state.²³ In her letter, Ms. Fujan expressed her concerns regarding TigerSwan's suspected surveillance activities against the organization, the implications of its operations without approval from the state and the potential violations of constitutional and statutory privacy rights. The letter identifies the dangers of illegal operations by an unlicensed security operator and its entanglement with public law enforcement.

The Louisiana Constitution provides inalienable rights to its citizens, including the right to privacy, which states that “[e]very person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy.”²⁴ In light of the alleged interactions between TigerSwan and public law enforcement in North Dakota, the lines between public and private action become enigmatically blurred. Whether its actions implicate constitutional considerations, privacy rights based in tort or counterintelligence/surveillance laws, there remain many unanswered questions surrounding TigerSwan's alleged operations in other states and the classification thereof. Although it is unclear at this time whether TigerSwan's alleged conduct and/or interactions with public law enforcement unlawfully infringe upon constitutional privacy rights of the water protectors in North Dakota, it would behoove any state or federal agency to conduct a thorough analysis of surveillance, counterintelligence, tort and constitutional law and to tread with caution in its interactions with private security providers with a history of potentially illegal conduct.

It is of the utmost importance to note that these two areas of evaluation, minimum qualifications and suitability, must be satisfied for the board to comply with the statute in issuing a license to operate in Louisiana. In other words, for LSBPSE to lawfully issue a license in this case, TigerSwan *must* demonstrate and the board must find that it satisfies the minimum qualifications and requirements and *must* be suitable for licensing. However, the final area of evaluation discussed herein provides the board with discretion to deny licensure on a myriad of bases.

C. Causes for Nonissuance

Finally, the statute provides the board with the discretion to refuse to issue a license for “good cause shown”, which includes (among other things):

- (2) Deceit or perjury in obtaining any certificate or license issued under this Chapter.
- (3) Providing false testimony before the board.

²³ See 6/26/17 Letter from Jessica Fujan (FWW) to Attorney General for the State of Illinois, Lisa Madigan, Attachment I.

²⁴ Louisiana Constitution, Art. I §5 Right to Privacy; see also *Parish Nat'l Bank v. Lane*, 397 So. 2d 1282 (La. 1981) and *Alessi v. Loehn*, 76 So. 3d 1142 (La. 2011) (regarding actions in tort for privacy).

- (4) Efforts to deceive or defraud the public.
- (5) Professional incompetency or gross negligence.
- (6) Rendering, submitting, subscribing, or verifying false, deceptive, misleading, or unfounded opinions or reports.
- (7) The refusal of the licensing authority of another state to issue or renew a license, permit, or certificate to practice in that state
- (9) Violation of any provision of this Chapter or any rules or regulations of the board or rules of professional conduct promulgated by the board.²⁵

Good cause shown for denial of an application for licensure includes professional incompetency or gross negligence. Neither of these phrases are defined in the statute, and therefore rules of statutory interpretation, the definitions inferable by the words of the statute or the purpose thereof, and jurisprudence can help contextualize the meaning. Involving a serious derogation from the standard of care, gross negligence is also to be construed in the context of the intent of the statute. As previously discussed, the statute's declaration of purpose proclaims that "it is necessary to require the licensure of private security agents and businesses to be in the best interest of the citizens of this state" and the purpose is thus "to require qualifying criteria in a professional field in which unqualified individuals may injure the public. The requirements of this Chapter will contribute to the safety, health, and welfare of the people of Louisiana."²⁶ Therefore, allegations that an applicant misrepresented its qualifications to another state's board of private security regulators and conducted illegal operations, without a license, that could endanger the welfare of a state's citizens could certainly support a finding of professional incompetency and gross negligence. If TigerSwan failed to accurately disclose its months of security surveillance operations in North Dakota, NDPISB's allegations suggest that TigerSwan not only deceived the public at large, but also the regulating body in the state of North Dakota.

Finally, the North Dakota Private Investigative Security Board's refusal to issue a license to TigerSwan to conduct security services in North Dakota, and the reasons behind that decision, warrant significant weight in LSBPSE's evaluation of "good cause shown" for refusal to issue a license in this case.

On behalf of Atchafalaya Basinkeeper, Gulf Restoration Network, Louisiana Crawfish Producers Association-WEST, BOLD Louisiana, Louisiana Bucket Brigade, 350 Louisiana, Waterkeeper Alliance and Louisiana Chapter of the National Lawyers Guild, we request that the LSBPSE conduct a formal investigation and/or inquiry into (1) whether TigerSwan has been operating in Louisiana prior to obtaining a license, and (2) whether TigerSwan satisfies the satisfactory minimum qualifications, the suitability requirements and any causes for nonissuance of a license to operate in the state of Louisiana. We are confident the LSBPSE, entrusted with the safety, health and welfare of Louisiana citizens, will engage in a thorough evaluation of TigerSwan's eligibility for licensure and ultimately determine that it is not in the best interests of the citizens of this state that this company be afforded the privilege to operate in Louisiana.

²⁵ R.S. 37:3289(A)(2)-(7), (9).

²⁶ R.S. 37:3270 (A), (B).

Thank you for your time, your commitment and your consideration of our comments on the subject. Please contact me should you have any questions or cause for discussion. I formally request that the LSBPSE notify me upon issuing its decision regarding the application at issue.

Sincerely,



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