

STATE OF NEW YORK  
DEPARTMENT OF STATE

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In the Matter of the Application of

**DAVID PERSAUD**

**DECISION**

For Renewal of a Commission as a  
Notary Public

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This matter came on for hearing before the undersigned, Roger Schneier, on May 22, 1997 at the office of the Department of State located at 270 Broadway, New York, New York.

The applicant, of 94-38 116th Street, Richmond Hill, New York 11419, having been advised of his right to be represented by an attorney, appeared *pro se*.

The Division of Licensing Services (hereinafter "DLS") was represented by Supervising License Investigator William Schmitz.

**ISSUE**

The issue before the tribunal is whether, in light of his conviction of a felony, the applicant should be granted renewal of his commission as a notary public.

**FINDINGS OF FACT**

1) By application dated November 7, 1996 the applicant applied for renewal of his commission as a notary public for the period of December 5, 1996 through December 5, 1998. On that application he answered "yes" to the question: "Since your last application, have you been convicted of a crime or offense (not a minor traffic violation) or has any license, commission or registration ever been denied, suspended or revoked in this state or elsewhere?" (State's Ex. 2).

2) On or about February 15, 1996 the applicant was convicted of operating a motor vehicle while under the influence of alcohol (DWI), in violation of Vehicle and Traffic Law (VTL) §1192[3]. Inasmuch as that was his third DWI conviction in less than ten years (State's Ex. 4) the crime was classified as a felony. VTL §1192[5].

3) The respondent has been issued a Certificate of Relief From Disabilities which states that it was issued "for Notary Republic (sic) renewal." (State's Ex. 3).

4) By letter dated March 26, 1997 DLS advised the applicant that it proposed to deny his application because he had been convicted of a disqualifying criminal offense and had not obtained an Executive Pardon or Certificate of Good Conduct, and that he could request a hearing. By letter dated March 31, 1997 the applicant requested a hearing, and, the matter having been referred to this tribunal on April 15, 1997, notice of hearing was served on him by certified mail delivered on April 23, 1997 (State's Ex. 1).

### OPINION

I- As the person who requested the hearing, the burden is on the applicant to prove that he is entitled to have his commission as a notary public renewed. State Administrative Procedure Act (SAPA), §306[1].

II- Pursuant to Executive Law §130, a commission as a notary public may not be issued to any person who has been convicted of a felony and who has not subsequently received either an Executive Pardon or a Certificate of Good Conduct from the Parole Board. The applicant has received a Certificate of Relief From Disabilities. That, however, does not entitle him to be commissioned as a notary public. *Matter of the Application of Goldberg*, 77 DOS 94.

The Certificate of Relief From Disabilities issued to the applicant states that it was issued to relieve the applicant of the bar against his being commissioned as a "Notary Republic." From the differences in the handwriting in the various sections of the certificate it is clear that that malapropism was not inserted by the judge. In any case, as discussed below, regardless of the intent of the judge, as a matter of law a Certificate of Relief From Disabilities may not eliminate the bar to the commissioning of the applicant as a notary public which arises out of his felony conviction.

Correction Law §701, in discussing Certificates of Relief From Disabilities, provides that "no such certificate shall apply, or be construed so as to apply, to the right of such person to retain or to be eligible for public office."

"A Certificate of Relief From Disabilities does not grant the holder the right to retain or be eligible for public office. Correction Law §701; *People v Olensky*, 91 Misc.2d 225, 397 NYS2d 565 (Supreme Court Queens County, 1977). A Certificate of Good Conduct provides relief from all disabilities, without excep-

tion made with regards to public office. Correction Law §703-a. The difference is significant inasmuch as a notary public is a public officer. *People v Wadhams*, 176 NY 10 (1903); *People v Rathbone*, 145 NY 436 (1895); *Patterson v Department of State*, 35 AD2d 616, 312 NYS2d 300 (1970). Accordingly, the issuance of a Certificate of Relief From Disabilities does not grant the holder the right to be commissioned as a notary public, *People v Olensky, supra.*" *Division of Licensing Services v Shanahan*, 44 DOS 94, 2-3.

**CONCLUSIONS OF LAW**

The applicant has failed to meet his burden of establishing that he is entitled to be commissioned as a notary public, and accordingly his application should be denied. SAPA §306; Executive Law §130.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** the application of David Persaud for renewal of his commission as a notary public is denied.

Roger Schneier  
Administrative Law Judge

Dated: May 29, 1997