

STATE OF NEW YORK
DEPARTMENT OF STATE

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In the Matter of the Application of

NORMAN F. RUSSAKOFF

DECISION

For a Commission as a Notary Public

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This matter came on for hearing before the undersigned, Roger Schneier, on April 6, 1995 at the office of the Department of State located at 270 Broadway, New York, New York.

The applicant, of 58 School Street, Glen Cove, New York 11542, was represented by Joel B. Meirowitz, Esq., 14 Glen Street, P.O. Box 210, Glen Cove, New York 11542.

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

ISSUE

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

FINDINGS OF FACT

1) By letter dated March 16, 1994 the applicant advised DLS that he had been disbarred, and that he had been instructed by the office of the Nassau County Clerk to contact the Department of State in connection with his application to renew his commission as a notary public (State's Ex. 4).

2) By application dated March 17, 1994 the applicant applied for renewal of his notary commission. He answered "yes" to the question on the application: "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. 3). That application was accompanied by a letter to the Nassau County Clerk in which the applicant made reference to his March 16, 1995 letter to DLS, and by a copy of that letter (State's Ex. 4).

3) By letter dated April 18, 1994 DLS advised the applicant that it could not process his application without a copy of the accusatory instrument, of the referee's report, and of the order of

suspension (sic), and that he should provide "your statement of the circumstances which led to your suspension" (State's Ex. 4).

4) By letter dated April 26, 1994 the applicant sent the requested items. A second set was sent on June 24, 1994, as the letter of April 26, 1994 was apparently misplaced (State's Ex. 4).

5) By letter dated August 24, 1994 DLS advised the applicant that it proposed to deny his application because, in light of his disbarment, the issuance of the commission to the applicant would involve an unreasonable risk to property and the safety or welfare of specific individuals or the general public, and that he could request an administrative review. The applicant made such a request by letter dated September 26, 1994. By letter dated November 7, 1994 the applicant was advised by DLS that it continued to propose to deny his application, and that he could request a hearing, which he did by letter dated December 10, 1994. Accordingly, a notice of hearing was served on him by certified mail on February 13, 1995.

6) On August 9, 1993, by order of the Supreme Court Appellate Division, Second Judicial Department, the applicant was disbarred (State's Ex. 5). The Court found, based on the report of a Special Referee and its own review of all the evidence that:

a) The applicant converted funds to his own use, specifically part of a down payment entrusted to him the course of representing a client in the sale of real property;

b) At the closing of the above sale the applicant agreed to retain part of the deposit until a certificate of occupancy was obtained, but then converted some of that money to his own use;

c) The applicant converted to his own use funds received as the down payment in another transaction;

d) The applicant engaged in professional misconduct by drawing upon his escrow account a check which failed to clear due to insufficient funds being on deposit; and

e) The applicant commingled personal and escrow funds.

OPINION

I- As the person who requested the hearing, the burden is on the applicant to prove, by substantial evidence, that he is of good moral character. Executive Law §§130 and 131; State Administrative Procedure Act (SAPA), §306[1]. Substantial evidence is that which a reasonable mind could accept as supporting a conclusion or ultimate fact. Gray v Adduci, 73 N.Y.2d 741, 536 N.Y.S.2d 40 (1988). "The question...is whether a conclusion or ultimate fact

may be extracted reasonably--probatively and logically." City of Utica Board of Water Supply v New York State Health Department, 96 A.D.2d 710, 465 N.Y.S.2d 365, 366 (1983)(citations omitted).

II- "A notary public is a public officer and the responsibilities of the Secretary of State extend to protecting the public against misconduct by notaries, the caliber of a notary and his right to remain in office to be measured not only by his activities as such but also by trustworthiness and competence exhibited in other areas in which the public is concerned." Patterson v Department of State, 35 AD2d 616, 312 NYS2d 300 (1970)(citations omitted).

In its opinion, the Appellate Division found that the applicant had violated DR 1-102[A][4], which provides that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. The special referee had found that the applicant depleted and commingled escrow funds directly for his own benefit and indirectly for the benefit of other clients; that the applicant was aware of the impropriety of his conduct; and that, according to the testimony of the applicant's treating psychiatrist, the applicant understood the nature and significance of his conduct and had the capacity to make an intelligent choice to refrain from his misconduct (State's Ex. 5).

The applicant contends that the seriousness of his acts is lessened by the finding of the special referee that they lacked the motive, scienter, purpose and intent necessary to be characterized as dishonest or deceitful. That contention ignores, however, the fact that the Appellate Division rejected that finding when it disaffirmed the special referee's failure to find a violation of DR 1-102[A][4].

The applicant also asserts that his activities in his synagogue, of which he was president with authority to sign checks, indicates that he is trustworthy. In light of the facts behind his disbarment that argument is not persuasive.

The applicant has been found guilty of dishonest acts which resulted in the loss of his license to practice law. Under the circumstances, and considering how much less economic value a commission as a notary public has, it appears probable that should he perceive it to be in his or his employer's interests to engage in an act of notarial misconduct, such as notarizing a document

which he knows to be fraudulent or when the purported signatory has not appeared before him, he would do so.

CONCLUSIONS OF LAW

The applicant has failed to establish that he is of good enough moral character to be commissioned as a notary public, and that the issuance of the commission would not involve an unreasonable risk to the property and welfare of the general public. Accordingly, his application for renewal of his commission as a notary public should be denied. Executive Law §§130 and 131; SAPA §306[1].

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the application of Norman F. Russakoff for renewal of his commission as a notary public is denied.

These are my findings of fact together with my opinion and conclusions of law. I recommend the approval of this determination.

Roger Schneier
Administrative Law Judge

Concur and So Ordered on:

ALEXANDER F. TREADWELL
Secretary of State
By:

Michael E. Stafford, Esq.
Chief Counsel