

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Application of

RONALD E. WOLFE

DECISION

For a Commission as a Notary Public

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on August 2, 2000 at the office of the Department of State located at 123 William Street, New York, New York.

The applicant, having been advised of his right to be represented by an attorney, chose to represent himself.

The Division of Licensing Services (hereinafter "DLS") was represented by Legal Assistant II Thomas Napierski.

ISSUE

The issue before the tribunal is whether the applicant's application for renewal of his commission as a notary public should be denied because the actions and circumstances surrounding the denial of his private investigator's license indicate a lack of competence.

FINDINGS OF FACT

1) By application dated February 7, 2000 the applicant applied for renewal of his commission as a notary public (State's Ex. 2).

2) The applicant's prior application for renewal of his license as a private investigator was denied, after a hearing, based on a finding that he had demonstrated incompetence in that as qualifying officer of a private investigation firm he failed to supervise the operations of that firm and permitted the firm to be operated by an unlicensed person. The hearing decision specifically found that the applicant had not demonstrated untrustworthiness. 58 DOS 99, aff'd. 5 DOS APP 99.

3) By letter dated April 21, 2000 the applicant was advised by DLS that it proposed to deny his application because "(t)he applicant's action and circumstances which surround the denial of his private investigator license (59 (sic) DOS 99 and 5 DOS APP 99), indicates a lack of good character, competence and

trustworthiness for commission as a notary public,"¹ and that he could request an administrative hearing, which he did by letter received on May 18, 2000. Accordingly, the matter having been referred to this tribunal on June 7, 2000, notice of hearing was served on the applicant by certified mail (State's Ex. 1).

OPINION

As the person who requested the hearing, the burden is on the applicant to prove, by substantial evidence, that he is entitled to commission as a notary public. 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). However, in meeting that burden, the applicant must first be presented with a logical and cogent reason for the proposed denial of his application.

DLS claims that the denial of the applicant's application for a license as a private investigator because he demonstrated incompetency as such is grounds for holding that he is incompetent to be commissioned as a notary public. It has not, however, presented any argument whatsoever to support that claim. The duties of a private investigator, as set forth in General Business Law Article 7, which involve the conducting of various types of investigations and the providing of protection for persons and property, are in no way equivalent to the duties of a notary public, as set forth in Executive Law §130 *et. seq.* and in various other statutes, which are to administer oaths, accept acknowledgements, attend the opening of safe deposit boxes, and issue certificates of protest regarding the non-payment of bills of exchange and promissory notes.

The applicant was denied a license as a private investigator because he neglected to supervise the firm of which he was qualifying officer, having improperly delegated those responsibilities. That conduct in no way reflects on his competency to perform the duties of a notary public which are, by their very nature, personal and impossible to delegate.

No evidence was presented to show that the applicant, who, I take official notice was first commissioned as a notary public in 1976, has ever acted incompetently in that position.

¹ At the commencement of the hearing Mr. Napierski withdrew the allegations regarding character and trustworthiness.

CONCLUSIONS OF LAW

The applicant has established that he is competent to be commissioned as a notary public.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the application of Ronald E. Wolfe, Registration Number 01WO4626722, for renewal of his commission as a notary public is granted.

Roger Schneier
Administrative Law Judge

Dated: August 2, 2000