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STATE OF NEW YORK DEPARTMENT OF STATE

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In the Matter of the Application of

### CHARLES BOYLE

## DECISION

For a License as a Private Investigator

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Pursuant to the designation duly made by the Hon. Gail S. Shaffer, Secretary of State, the above noted matter came on for hearing before the undersigned, Roger Schneier, on April 7, 1993 at the office of the Department of State located at 270 Broadway, New York, New York.

The applicant, of 2 Byway Drive, Deer Park, New York 11729, having been advised of his right to be represented by an attorney, appeared <u>pro se</u>.

The Division of Licensing Services was represented by Supervising License Investigator Michael Coyne.

# ISSUES

The issues in the hearing were whether the applicant has sufficient experience to qualify for a license as a private investigator, and whether his dismissal from the New York City Police Department was sufficiently explained by him to warrant the issuance of such a license.

#### FINDINGS OF FACT

1) Notice of hearing together with a copy of an explanation for the proposed denial of his application for a license as a private investigator was served on the applicant by certified mail (Dept. Ex. 1).

2) On January 28, 1992 the applicant took and passed the qualifying examination for a license as a private investigator. By application dated April 22, 1992 he applied for a license as a private investigator, basing the application upon experience allegedly gained as a police officer employed by the New York City Police Department (Dept. Ex. 2).

On June 8, 1992, in response to a request from the Division of Licensing Services, the applicant submitted additional information

regarding his experience, and an explanation of his dismissal from the police department (Dept. Ex. 3).

3) The applicant was employed by the New York City Police Department with the rank of patrolman commencing on October 2, 1964. He was suspended on September 23, 1970, and was dismissed on December 12, 1974.

From 1966 through 1970 the applicant was, with the exception of a few intermittent assignments to uniformed patrol, assigned to plain clothes duty in the 75th Precinct in Brooklyn. Those plain clothes duties involved several months of assignment to the precinct "combat car", the function of which was to patrol, stake out, and conduct surveillance in high crime areas. The bulk of his time however, amounting to a total of at least three years, was spent on assignment to the Detective Squad, where he assisted the detectives in preliminary investigative matters such as background checks, criminal record checks, and in checking the names of known perpetrators, nicknames, descriptions, and modus operandi of known criminals. Duties with the Detective Squad also included locating and arresting suspects and persons for whom warrants had been issued. The applicant is unable to produce documentation for those duties due to the accidental destruction of many records predating 1972 which were in the custody of the police department.

The respondent's suspension from duty occurred after he and another officer were indicted on a charge of misdemeanor conspiracy. It was alleged that the applicant had been involved in a stolen car ring in the Bronx. Three years later, after thirtythree adjournments requested by the prosecution, the case was dismissed when the District Attorney stated that there was no evidence to support the prosecution of the applicant and the other indicted police officer (the other, civilian, defendants, had all been indicted on felony counts).

An internal police department trial was held in March 1974, and in December 1974 the applicant was dismissed from the police department based on a finding that he had used a police car to aid in the stealing of cars in the Bronx while on patrol duty in Brooklyn.

Since his suspension and dismissal from the police department the applicant has worked as an operator of heavy construction equipment. There is no evidence of any prior or subsequent allegations of illegal conduct.

# **OPINION**

I- As the person who requested the hearing, the burden is on the applicant to prove, by substantial evidence, that he has acquired the required experience, and that the circumstances behind his dismissal from the police department do not establish that he is not sufficiently trustworthy, to be licensed as a private investigator. State Administrative Procedure Act (SAPA), §306(1); General Business Law (GBL) §72. Substantial evidence is that which a reasonable mind could accept as supporting a conclusion or ultimate fact. <u>Gray v Adduci</u>, 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." <u>City of</u> <u>Utica Board of Water Supply v New York State Health Department</u>, 96 A.D.2d 710, 465 N.Y.S.2d 365, 366 (1983)(citations omitted).

II- (GBL) §72 establishes certain experience requirements which must be met by an applicant before a license as a private investigator may be issued:

"Every such applicant for a license as a private investigator shall establish to the satisfaction of the secretary of state...(that he) has been regularly employed, for a period of not less than three years, undertaking such investigations as those described as performed by a private investigator in subdivision one of section seventy-one of this article, as a sheriff, police officer in a city or county police department, or the division of state police, investigator in an agency of the state, county or United States government, or employee of a licensed private investigator, or has had an equivalent position and experience.".

GBL §71(1) defines "private investigator" to

"mean and include the business of private investigator and shall also mean and include, separately or collectively, the making for hire, reward or for any consideration whatsoever, of any investigation for the purpose of obtaining information with reference to any of the following matters...; crime or wrongs done or threatened against the government of the United States of America or any state or territory of the United States of America; the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation or character of any person, group of persons, association, organization, society, other groups of persons, firm or corporation; the credibility of witnesses or other persons; the whereabouts of missing persons; the location or recovery of lost or stolen property; the causes and origin of, or responsibility for fires, or libels, or losses, or accidents, or damage or injuries to real property; or the affiliation, connection or relation of any person, firm or corporation with any union, organization, society or association, or with any official, member or representative thereof; or with reference to

any person or persons seeking employment in the place of any person or persons who have quit work by reason of any strike; or with reference to the conduct, honesty, efficiency, loyalty or activities or employees, agents, contractors, and sub-contractors; or the securing of evidence to be used before any authorized investigation committee, board of award, board of arbitration, or in the trial of civil or criminal cases."

The applicant's experience has been as a police officer. In that capacity, while assigned to the detective squad, he was employed conducting the type of investigations conducted by private investigators on a full time basis for at least three years.

III- Accepting, as I must, the truth of the allegations as confirmed by the decision of the police department, the issue of the applicant's dismissal from the police department clearly reflects on his trustworthiness. A private investigator serves in a quasi law enforcement capacity, <u>Codelia v Shaffer</u>, Index. No. 29114/91 (Supreme Court, NY County), and, therefore, the fact that the applicant was found to have participated in a car theft ring while on duty is relevant to the question of his fitness to be so licensed.

While the applicant has not been convicted of a crime, guidance on how to deal with his application can be found in Corrections Law Article 23-A, since to apply different, more stringent, standards would have the effect of penalizing the applicant for the fact that the criminal charges against him were dismissed. Perhaps most relevant in that regard is the expressed public policy of the State of New York to encourage the licensure and employment of persons previously convicted of a criminal offense, the over twenty years which have elapsed since the occurrence of the events in question, and the fact that there is no evidence of any previous or subsequent criminal conduct by the applicant. While those aspects must be weighed against the legitimate interest of the Department of State in protecting the property, safety and welfare of the public, it is my opinion that, in balance, the equities are on the side of issuance of the In addition, having observed the calm and unemotional license. demeanor of the applicant in a situation in which his future career was to be decided, curcumstances in which many other applicants have become unduly argumentative and have alleged that the Division of Licensing Services was a party to a conspiracy to deprive them of their livelihood, it appears to me that whatever the applicant may have done in the past he is now sufficiently mature that it would not create an undue risk to the public to issue to him a license as a private investigator.

# CONCLUSIONS OF LAW

The applicant has established by substantial evidence that he possesses sufficient experience to qualify for the issuance of a license as a private investigator, and that the fact of his dismissal from the New York City Police Department should not disqualify him from being so licensed. GBL §72; SAPA §306(1). DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Charles F. Boyle has established that he is qualified to be licensed as a private investigator, and the Division of Licensing Services is directed, upon completion by the applicant of any remaining prerequisites, to issue such license to the applicant forthwith.

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:

GAIL S. SHAFFER Secretary of State By:

James N. Baldwin Executive Deputy Secretary of State