

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Application of

JOHN PALMA

ORDER

For a License as a Private Investigator

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By decision dated September 10, 1996 the application of John Palma for a license as a private investigator was denied for failure to establish that he has sufficient qualifying experience. 204 DOS 96.

By letter dated September 21, 1996 the applicant appealed from that decision, and by decision dated November 5, 1996 the matter was remanded to me "for the purpose of explaining or setting forth the basis or reasons for not following prior precedent or indicating why a different result was reached here." 4 DOS APP 96.

The basis for the remand is the appeals officer's conclusion that the applicant was treated differently than was one Bernard McNellis, who was granted a license as a private investigator on May 21, 1995. That conclusion was apparently based on a review of the applicant's letter of June 18, 1996, in which he claimed to have the same qualifications as Mr. McNellis (State's Ex. 1), Mr. McNellis' letter of August 7, 1996 discussing the applicant's qualifications (App. Ex. A), and, most significantly, a reading of the McNellis application file, which was not offered in evidence at the hearing.

Pursuant to 19 NYCRR 440.2[k], the decision on appeal must be based solely on the record on appeal which, according to that same regulation, consists of the evidentiary exhibits from and transcript of the hearing, and the memorandums of appeal, opposition, and cross-appeal. Accordingly, findings of fact on appeal may not be made based upon evidence not presented at the original hearing, and this tribunal is unable to act on the factual conclusion in the appeal decision that the factual situation in this and the McNellis applications is essentially the same.

Accordingly, to enable the tribunal to issue the clarification ordered by the decision on appeal, the matter is hereby re-opened for the presentation of evidence regarding the McNellis application and the basis upon which a license as a private investigator was granted to Mr. McNellis. The matter will be heard at 10:00 AM on November 26, 1996 at 270 Broadway, 28th Floor, New York, New York,

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at which time the Division of Licensing Services is directed have present the file of the application of Bernard McNellis for a license as a private investigator.

Roger Schneier
Administrative Law Judge

Dated: November 8, 1996