

STATE OF NEW YORK  
DEPARTMENT OF STATE

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In the Matter of the Application of

**RICHARD G. RUFF**

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 May 2, 1994 at the New York State Office Building located at 333 E. Washington Street, Syracuse, New York.

The applicant, of 8286 Carnation Drive, Baldwinsville, New York 13027, was represented by Frank Ventre, Jr., Esq., 429 James Street, Syracuse, New York 13203.

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

ISSUE

The issue before the tribunal is whether the applicant has sufficient experience to qualify for a license as a private investigator.

FINDINGS OF FACT

1) By application dated November 19, 1992, received by the Division of Licensing Services on May 14, 1993, the applicant applied for a license as a private investigator (Dept. Ex. 2). By letter dated August 19, 1993 the applicant was advised by the Division of Licensing Services that it had credited him with 8 months toward the required 36 months of experience, and, therefore, proposed to deny his application for want of sufficient qualifying experience. He was advised that he could request an administrative review, and by letter dated September 3, 1993 Susan E. Rodems, Esq. did so on his behalf. By letter dated October 14, 1993 the applicant and Ms. Rodems were advised that the Division of Licensing Services stood by its prior decision, and that a request for a formal hearing could be made. By letter dated November 12, 1993 the applicant requested such a hearing, and on January 10, 1994 he was served by certified mail with a notice of hearing (Dept. Ex. 1).

2) The applicant bases his claim to qualifying experience on his employment by Robert P. Diamond, d/b/a Diamond Investigations,

a licensed private investigator. He was employed part time from May 2, 1988 through September 31, 1988, working an average of 32.95 hours per week. He was then employed full time until June 21, 1991. In that employment he assisted Mr. Diamond in conducting investigations into the causes of fires for somewhere between 20 to 40% of the time. The rest of his time was spent in providing non-investigative services as directed by Mr. Diamond.

### OPINION

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. 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).

General Business Law (GBL) §72 establishes the 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 of 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 an employee of a licensed private investigator. In that employment he participated in the investigation of the causes of fires. The only question remaining is how much time he actually spent on such investigations, and, therefore, how much experience credit should be granted to him.

The applicant was employed by Diamond full time for a period of thirty three months. However, less than half of his time was spent conducting investigations, and he can be granted credit only for that part of his time which did involve conducting investigations. Matter of the Application of Oddo, 42 DOS 94. Should he be granted credit for 40% of that time, the maximum amount of time which the evidence establishes that he spent conducting investigations, that credit amounts to only 13.2 months. The applicant was also employed part time for 5 months. Even were credit to be granted as if that employment were full time (the 32.95 hours per week claimed approaches the full time employment level of 35 hours per week, cf. 19 NYCRR 175.21[c]), that would still amount to only an additional 2 months, leaving the applicant almost 21 months short of the required 36 months of experience.

#### **CONCLUSIONS OF LAW**

The applicant has failed to establish by substantial evidence that he has sufficient experience to qualify to be licensed as a private investigator, and, accordingly, his application for such a license should be denied. GBL §72; SAPA §306[1].

DETERMINATION

**WHEREFORE, IT IS HEREBY DETERMINED THAT** the application of Richard G. Ruff for a license as a private investigator 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:

GAIL S. SHAFFER  
Secretary of State  
By:

James N. Baldwin  
Executive Deputy Secretary of State