

STATE OF NEW YORK
DEPARTMENT OF STATE

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In the Matter of the Application of

ERASMO SCIACCA

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 October 18, 1994 at the office of the Department of State located at 270 Broadway, New York, New York.

The applicant, of 7 Torwood Court, S. Huntington, New York 11746, having been advised of his right to be represented by an attorney, appeared pro se.

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 January 31, 1994 the applicant applied for a license as a private investigator (State's Ex. 2). By letter dated April 27, 1994 he was advised by the Division of Licensing Services that it proposed to deny his application because he did not have sufficient qualifying experience, and that he could request an administrative review. By letter dated May 10, 1994 the applicant requested such a review, and on July 7, 1994 the Division of Licensing Services responded that it had conducted the review and that it still proposed to deny the application. The applicant was advised that he could request an administrative hearing, and by letter dated August 1, 1994 he did so. Accordingly, a notice of hearing was served on the applicant by certified mail on September 16, 1994 (State's Ex. 1).

2) The applicant bases his claim to sufficient qualifying experience on his activities as a "Patrol Car Dispatcher" employed

by the New York City Transit Authority from January, 1985 through August, 1989.

As a Patrol Car Dispatcher the applicant had various duties, among them the checking of operations on various bus routes with regards to safety, service, and schedules; the establishment of bus routes; training of drivers; and the investigation of accidents. It is that last function with which the applicant seeks to support his claim of experience.

There were two distinct aspects to the applicant's activities with regards to accidents. First, he went to the scene and gathered facts regarding the cause and results of the accident. Then, possibly the next day, he would visit the hospital to follow up on the condition of injured victims. While the applicant testified that together those two activities constituted his primary duties, he was unable to state specifically how his time was allocated between those two functions.

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. 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- General Business Law (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." (emphasis added).

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 was obtained as a Patrol Car Dispatcher employed by the New York City Transit Authority. He was not employed by a licensed private investigator or as a sheriff, police officer, or employee of a licensed private investigator, nor is his application supported by a claim of experience or evidence regarding employment as a government investigator.¹ Therefore, for his experience to be used to enable the applicant to be licensed as a private investigator, that experience would have to constitute "equivalent positions and experience", defined in 19 NYCRR 172.1 as:

"...investigations as to the identity, habits, conduct, movements, whereabouts, affiliations, reputation, character, credit, business or financial responsibility of any person, group of persons, association, organization, society, firm or corporation, or as to the origins

¹ The fact that the applicant's duties included some investigative work did not make him a government investigator. He was a bus dispatcher with some investigative responsibilities.

or responsibility for crimes and offenses, the location or recovery of lost or stolen property, the cause or origin of or responsibility for losses or accidental damage or injury to persons or to real or personal property, or to secure evidence to be used before any authorized investigation committee, board of award, board of arbitration or in the trial of civil or criminal cases including as to the credibility of any witnesses. Such investigations shall be have performed for a period of three years, for an employer, firm, organization or governmental agency, whether subject to the provision of Article 7 of the General Business Law or otherwise, which required such investigations in the course of its regular operations, and which such investigations were conducted on a full-time basis in a position the primary duties of which were to conduct investigations and same comprised the major portion of the applicant's activities therein...."

The applicant has established that as part of his duties he conducted investigations as to the causes of, and responsibility for, accidents and injuries. Those investigations, conducted at the scene of the accident, are the type of conduct which may, in the proper circumstances, qualify an applicant for a license as a private investigator. However, his follow up visits to hospitals cannot be applied to the experience requirement. While those visits may have been valuable to his employer in evaluating the possible financial consequences of the accidents, they did not involve investigative activity as contemplated by the statute and regulation because they had nothing to do with determining the causes of, or responsibility for, the accidents, or with obtaining evidence as to the credibility of witnesses to those accidents. That results in a fatal flaw in his case: he has established that he has investigative experience, but, since he did not show that the on site investigations by themselves were his primary duties and constituted the major part of his activities, he has not shown that the experience was obtained in a position in which the primary duties constituting the major part of his activities were to conduct the type of investigations required by the statute and regulation. 19 NYCRR 172.1.

CONCLUSIONS OF LAW

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

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the application of Erasmo Sciacca 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