

STATE OF NEW YORK  
DEPARTMENT OF STATE  
OFFICE OF ADMINISTRATIVE HEARINGS

-----X

In the Matter of the Application of

**KATRELL C. MORRIS**

**DECISION**

For Registration as a Security Guard

-----X

The above noted matter came on for hearing before the undersigned, Ziedah F. Giovanni, on November 7, 2013 at the office of the Department of State located at 123 William Street, New York, New York 10038.

The applicant was represented by Olivvy Cuggy, Esq. New York County Lawyers Association, 14 Vesey St. New York, NY 10007.

The Division of Licensing Services (DLS) was represented by Legal Assistant II Nadine Azarian.

**ISSUE**

The issue before the tribunal is whether the applicant should be denied registration as a security guard because of a criminal conviction that indicates a lack of good character, fitness and competence for registration.

**FINDINGS OF FACT**

1) By application dated January 23, 2013, the applicant applied for registration as a security guard, answering “yes” to question 4: “Have you ever been convicted in this state or elsewhere of any criminal offense that is a misdemeanor or felony?” (State’s Ex. 2).

2) By letter dated March 20, 2013, the applicant was advised by the DLS that it was proposing to deny his application because of his conviction. He was informed he could request an administrative hearing to review the proposed denial, which he did by letter dated April 3, 2013 (State’s Ex. 1). The DLS received the letter on April 8, 2013 and referred the matter to this tribunal on July 24, 2013. On or about September 4, 2013, the notice of hearing was served on the applicant by certified and regular mail. Neither mailing, nor the certified return receipt, was returned. The applicant acknowledged receipt of the notice of hearing (State’s Ex. 1). The hearing was adjourned from its original date at the request of the applicant.

3) On October 23, 1995, the applicant was convicted of Manslaughter in the 1<sup>st</sup> degree: With Intent to Cause Serious Physical Injury, PL §125.20 Sub 01, a Class B Felony (State’s Ex. 3). His conviction correlates to an arrest that occurred on July 28, 1992, the day after the

applicant's 19<sup>th</sup> birthday. The applicant was discharged from parole on July 23, 2001 (State's Ex. 3). He was awarded a certificate of relief from disabilities on December 3, 2012 (State's Ex. 2).

4) Applicant Morris was originally sentenced to fifteen years to life after a jury trial in 1992 (State's Ex. 3). He appealed the conviction, the original conviction was vacated and a new trial was ordered. He was offered three to nine years incarceration and he had already served three years. He testified that after discussing the risks with his family, he decided to plead guilty to a crime he did not commit because he believed it was the best way to get home (Transcript at 11). He pled guilty in on October 23, 1995 and was released from prison on May 24, 1999 (State's Ex. 3).

5) The applicant testified that a friend of his was involved in a "shootout" in which a person was killed. The victim's family told police that the applicant and one other man were also involved. The applicant testified that the victim's family knew all three of the men were friends and believed all three had participated in the shooting (Transcript at 9, 10). He maintained, however, that he did not commit the crime he pled guilty to, and was not present on the street corner where the crime occurred. He testified that he lived on the block where the crime took place and that he and his co-defendant had been in the middle of the block when the shooting occurred at the corner (Transcript at 8, 9). The applicant testified that during the time in his life in which the crime occurred, he had been involved in selling marijuana (Transcript at 27, 28).

6) While in prison, the applicant successfully earned his high school equivalency (App's Ex. A), and after his release, he fulfilled his probationary requirements without issue (Transcript at 14). After prison, applicant Morris enrolled in culinary school and graduated in 2005 (Transcript at 14) (App's Ex. A). He has also subsequently earned a number of professional certifications, including a "Handle With Care" award for juvenile counselling from 2008 and 2010, a fire safety coordinator certification from 2013, and a pathogen standard training program in 2008. He earned certification in a 16-hour security guard training program from 2012, as well as an 8-hour certificate from 2011 (App's Ex. A). The applicant has been married since 2003 (App's Ex. A).

7) Applicant Morris provided an undated character reference letter from a program coordinator at the Salvation Army. The coordinator worked with and supervised the applicant for 12 years. She stated, "Katrell can prioritize very complicated and challenging issues with poise and diligence. Katrell is a good listener and communicator, that is an important factor when interacting with clients. In the past I have had the opportunity to work closely with Katrell in a number of work environments where both clients and staff members respected his leadership and guidance as he managed various critical situations" [sic] (App.'s Ex. B).

8) The applicant presented evidence of a long work history with the Salvation Army that began in 2000. He began work there as a part-time cook serving young people at a group home. These youth were under the care of the Administration for Children's Service and mandated by court order to live there (Transcript at 15, 16). The applicant was promoted many times and served as an adolescent development counselor, group home assistant director, group home director, direct care worker, shift supervisor, shift supervisor, and interim shift supervisor (App.'s Ex. A). He testified, "I enjoy working with the kids. That's my way of giving back" (Transcript at 26).

9) Applicant Morris lost his job in November of 2012 when the Salvation Army lost its shelter contract and Volunteers of America took over. Volunteers of America would not allow him to work without a security license (Transcript at 22). The applicant testified that Volunteers of America would allow him to return if he were granted his security guard registration (Transcript at 28). He testified, "It would mean a lot. It would mean employment – right now, I'm not working. I'd be able to get a job with the security license...If I get employment – I'd be able to work once I get that license" (Transcript at 25). Applicant Morris expressed a desire to continue to make amends, "I would – well, as evidenced from my work history, I try to work with kids from the community, to show them what they shouldn't do, or you'll end up where I ended up" (Transcript at 26).

### **OPINION**

I - As the person who requested the hearing, the burden is on the applicant to prove, by substantial evidence, that he is entitled to be registered as a security guard. 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 - Pursuant to General Business Law §89-h(6), the Secretary of State may deny registration as a security guard to any person who has been convicted of a crime which, in the discretion of the Secretary of State, bears such a relationship to the performance of the duties of a security guard as to constitute a bar to employment.

It is also necessary to consider, together with the provisions of General Business Law Article 7-A, the provisions of Correction Law Article 23-A, which imposes an obligation on licensing agencies

"to deal equitably with ex-offenders while also protecting society's interest in assuring performance by reliable and trustworthy persons. Thus, the statute sets out a broad general rule that...public agencies cannot deny...a license to an applicant solely based on status as an ex-offender. But the statute recognizes exceptions either where there is a direct relationship between the criminal offense and the specific license...sought (Correction Law §752[1]), or where the license...would involve an unreasonable risk to persons or property (Correction Law §752[2]). If either exception applies, the employer (sic) has discretion to deny the license...." *Matter of Bonacorsa*, 71 N.Y.2d 605, 528 N.Y.S.2d 519, 522 (1988).

In exercising its discretion, the agency must consider the eight factors contained in Correction Law §753(1).

"The interplay of the two exceptions and §753(1) is awkward, but to give full meaning to the provisions, as we must, it is necessary to interpret §753 differently depending on whether the agency is seeking to deny a license...pursuant to the direct relationship exception...or the unreasonable risk

exception.... Undoubtedly, when the...agency relies on the unreasonable risk exception, the eight factors...should be considered and applied to determine if in fact an unreasonable risk exists.... Having considered the eight factors and determined that an unreasonable risk exists, however, the...agency need not go further and consider the same factors to determine whether the license...should be granted....

§753 must also be applied to the direct relationship exception...however, a different analysis is required because ‘direct relationship’ is defined by §750(3), and because consideration of the factors contained in §753(1) does not contribute to determining whether a direct relationship exists. We read the direction of §753 that it applies ‘[i]n making a determination pursuant to section seven hundred fifty-two’ to mean that, notwithstanding the existence of a direct relationship, an agency...must consider the factors contained in §753, to determine whether...a license should, in its discretion, issue.” *Bonacorsa, supra*, 528 N.Y.S.2d at 523.

A direct relationship is one wherein the offense bears directly on the applicant’s ability or fitness to perform one or more of the duties or responsibilities necessarily related to the license. Correction Law §750(3). Correction Law §750(3) “contains no similar definition of ‘unreasonable risk’ for the obvious reason that a finding of unreasonable risk depends upon a subjective analysis of a variety of considerations relating to the nature of the license...and the prior misconduct.” *Bonacorsa, supra*, 528 N.Y.S.2d at 522.

“A direct relationship can be found where the applicant’s prior conviction was for an offense related to the industry or occupation at issue (citation omitted) (denial of a liquor license warranted because the corporate applicant’s principal had a prior conviction for fraud in inter-state beer sales); (citation omitted) (application for a license to operate a truck in garment district denied since one of the corporate applicant’s principals had been previously convicted of extortion arising out of a garment truck racketeering operation), or the elements inherent in the nature of the criminal offense would have a direct impact on the applicant's ability to perform the duties necessarily related to the license or employment sought (citation omitted) (application for employment as a traffic enforcement agent denied; applicant had prior convictions for, *inter alia*, assault in the second degree, possession of a dangerous weapon, criminal possession of stolen property, and larceny).” *Marra v City of White Plains*, 96 AD2d 17, 467 NYS2d 865, 869 (2<sup>nd</sup> Dept. 1983).

While the issuance of a certificate of relief from disabilities or certificate of good conduct creates a presumption of rehabilitation, as explained by the Court in *Bonacorsa*, that presumption is only one factor to be considered by the tribunal along with the eight factors set forth in Correction Law §753(1). *Hughes v. Shaffer*, 154 AD2d 467, 546 NYS2d 25 (1989); *Matter of Mahshie*, 192 AD2d 1133, 598 NYS2d 756 (4th Dept. 1993).

“The presumption of rehabilitation which derives from...a certificate of relief from civil disabilities, has the same effect, however, whether the...agency seeks to deny the application pursuant to the direct relationship exception or the unreasonable risk exception. In neither case does the certificate establish a prima

facie entitlement to the license. It creates only a presumption of rehabilitation, and although rehabilitation is an important factor to be considered by the agency...in determining whether the license...should be granted (see, Correction Law §753(1)(g), it is only 1 of 8 factors to be considered.” *Bonacorsa*, supra, 528 NYS2d at 523.

Further, an agency which seeks to deny an application has no obligation to rebut the presumption of rehabilitation which derives from a certificate of relief from disabilities or certificate of good conduct so long as it properly considers the other factors set forth in Correction Law §753(1). *Arrocha v. Board of Education of City of New York*, 93 NY2d 361, 690

In determining whether there is a direct relationship between the crime for which the applicant was convicted, and registration as a security guard, it is first necessary to consult the definition of "security guard" in GBL §89-f[6]. A security guard is a person who: protects individuals and/or property from harm, theft or other unlawful activity; deters, observes, detects and/or reports incidents in order to prevent unlawful or unauthorized activity; patrols on the street; and responds to security alarms. The applicant’s conviction for manslaughter is directly related to the duties of a security guard to protect individuals from harm and prevent unlawful activity.

There being a direct relationship, it is necessary to consider the factors set forth in Correction Law §753.

The pertinent duties and responsibilities of a security guard (§753(1)(b)) have already been discussed in regard to the question of direct relationship. The fact that the applicant was convicted of a crime directly related to those duties leads to a negative inference regarding his fitness to perform those duties and to meet those responsibilities (§753(1)(c)).

Twenty two years have passed since the applicant’s crime (§753(1)(d)). He was 19 years old, a very young adult (§753(1)(e)).

The seriousness of his crime is established by the fact that it is a felony manslaughter (§753 (1)(f)).

In the applicant’s favor is the public policy of encouraging licensure of ex-offenders (§753(1)(a)).

The applicant testified credibly about his successful attempts at schooling and professional certification, his stable work history, and his proven desire to give back to his community through his work with the Salvation Army (§753(1)).

All of the above must be considered in light of the legitimate interest of the DLS in the protection of the safety and welfare of the public (§753(1)(h)).

The weighing of the factors is not a mechanical function. Rather, as the Court of Appeals said in *Bonacorsa*, it must be done through the exercise of discretion to determine whether the relationship between the “convictions and the license sought ha[s] been attenuated sufficiently.” *Bonacorsa v. Van Lindt*, 528 NYS2d at 524 (1988).

The applicant was convicted of a very serious crime. Although he denies involvement in the killing on July 27, 1992, he candidly admitted that at that time in his life he was involved in illegal activity. He testified credibly to the circumstances under which he pled guilty. The arrest underlying the applicant's conviction occurred the day after his 19<sup>th</sup> birthday; over 20 years have passed. Applicant Morris completed his GED in prison and continued his rehabilitation when he was released. He earned various certificates, including one in the culinary arts. His achievements at the Salvation Army are particularly noteworthy, where he thrived in positions that required great skill and trustworthiness during his work with particularly vulnerable and challenging juveniles.

Having heard the applicant's testimony and observed his demeanor, and in consideration of the full record, I find that the risk imposed by the direct relationship that exists between the criminal offenses for which he was convicted, and duties of a security guard (Correction Law, §753[1][g]), has been sufficiently attenuated.

### **CONCLUSIONS OF LAW**

After having given due consideration to General Business Law §89-1[2][b] and the factors set forth in Correction Law §753, and having weighed the rights of the applicant against the rights and interests of the general public, it is concluded that the applicant has demonstrated by substantial evidence that he has the requisite good character, integrity and trustworthiness to be registered as a security guard. It is further concluded that the issuance to him of a security guard registration card would not involve an unreasonable risk to the safety and welfare of the public.

### **DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** the application of Katrell C. Morris, UID #10012372959, for registration as a security guard, is granted.

/s/  
Ziedah F. Giovanni  
Administrative Law Judge

Dated: March 26, 2014