

STATE OF NEW YORK
DEPARTMENT OF STATE

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In the Matter of the Application of

WILLIAM E. ROSEN

DECISION

For a Commission as a Notary Public

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This matter came on for hearing before the undersigned, Roger Schneier, on March 7, 2000 at the office of the Department of State located at 123 William Street, New York, New York.

The applicant, having been advised of his right to be represented by an attorney, chose to represent himself.

The Division of Licensing Services (hereinafter "DLS") was represented by License Investigator III Richard Drew.

ISSUE

The issue before the tribunal is whether, in light of the facts underlying his disbarment, the applicant should be granted a commission as a notary public.

FINDINGS OF FACT

1) By application dated July 9, 1999 the applicant applied for a commission as a notary public. He answered "yes" to question number 6 on the application: "Have you ever been convicted of a crime or offense (not a minor traffic violation) or has any license, commission or registration ever been denied, suspended or revoked in this state or elsewhere?" (State's Ex. 2). That application was accompanied by a copy of the opinion and order of the Supreme Court Appellate Division, Second Judicial Department, disbarring the applicant, and the applicant's written statement addressing that disbarment (State's Ex. 2).

3) By letter dated August 5, 1999 DLS advised the applicant that it proposed to deny his application because "the actions and circumstances which surround applicant's disbarment from the practice of law indicated a lack of good character and trustworthiness required for commission," and that he could request a hearing, which he did by letter dated September 2, 1999. Accordingly, the matter having been referred to this tribunal on October 20, 1999, a notice of hearing for January 6, 2000 was served on him by certified mail (State's Ex. 1). The matter was subsequently adjourned at the applicant's request.

6) On August 3, 1998, by order of the Supreme Court Appellate Division, Second Judicial Department, the applicant was disbarred (State's Ex. 2). The Court found that the respondent:

a) Converted and failed to protect escrow funds entrusted to him as a fiduciary for two clients;

b) Failed to maintain and produce, pursuant to demand, required bookkeeping records;

c) Filed a false certification regarding his compliance with Disciplinary Rule 9-102 (regarding the maintenance of escrow funds) with the Office of Court Administration; and

d) Engaged in conduct which adversely reflects on his fitness to practice law.

7) The applicant has made full restitution of the funds in question.

8) Subsequent to his graduation from law school in 1956 the applicant served two years in the Office of the Judge Advocate General. Upon his discharge from the army he began employment with the New York State Tax Commission. From 1959 through 1974 he was employed by the New York State Rent Commission and its successor, the New York City Department of Housing and Development. From 1974 to 1982 he served as Chief of Litigation of the Conciliation and Appeals Board. In 1982 the applicant joined the law firm of Rosenberg & Estis, where he later became a partner and headed the administrative law department. In 1989 he joined the firm of Horing & Welikson (State's Ex. 3).

9) The applicant's misconduct, which was uncharacteristic of his prior behavior, occurred at a time when his judgement was impaired by clinical depression. He has since entered into therapy with a psychiatrist, whom he sees on a regular basis, and takes medication prescribed by that physician, who has testified that the applicant is currently mentally stable and should remain so as long as he takes his medication (State's Ex. 3).

10) The applicant seeks a commission as a notary public so that he can obtain employment as a title closer.

OPINION

I- As the person who requested the hearing, the burden is on the applicant to prove, by substantial evidence, that he is of good moral character. Executive Law §§130 and 131; 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- "A notary public is a public officer and the responsibilities of the Secretary of State extend to protecting the public

against misconduct by notaries, the caliber of a notary and his right to remain in office to be measured not only by his activities as such but also by trustworthiness and competence exhibited in other areas in which the public is concerned." *Patterson v Department of State*, 35 AD2d 616, 312 NYS2d 300 (1970)(citations omitted).

In its opinion, the Appellate Division found that the applicant had engaged in improper acts with regards to his handling of escrow funds. The applicant readily admits to such conduct, but claims that it resulted from mental illness which is now under control. A reading of the report of the Special Referee appointed by the Appellate Division to hear and report on the charges in the attorney disciplinary proceeding supports that claim.

The applicant has had a long and productive career as an attorney. The acts which resulted in his disbarment appear to have been aberrational, and the apparent underlying cause of those acts is now under control. There is no reason, therefore, to believe that the applicant cannot be trusted to perform the duties of a notary public in an honest and trustworthy manner.

CONCLUSIONS OF LAW

The applicant has established that he is of sufficiently good moral character to be commissioned as a notary public and that the issuance of the commission would not involve an unreasonable risk to the property and welfare of the general public. Accordingly, his application should be granted. Executive Law §§130 and 131; SAPA §306[1].

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the application of William E. Rosen for a commission as a notary public is granted.

Roger Schneier
Administrative Law Judge

Dated: March 7, 2000