

STATE OF NEW YORK  
DEPARTMENT OF STATE

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In the Matter of the Complaint of

DEPARTMENT OF STATE  
DIVISION OF LICENSING SERVICES,

Complainant,

DECISION

-against-

JAMES SHANAHAN,

Respondent.

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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 April 12, 1994 at the New York State Office Building, 65 Court Street, Buffalo, New York.

The respondent, of Rte.1, Box 163 Java, Arcade, New York 14009, having been advised of his right to be represented by an attorney, appeared pro se.

The complainant was represented by Supervising License Investigator Michael Coyne.

#### COMPLAINT

The complaint seeks the revocation of the respondent's commission as a notary public based on the allegation that in spite of the fact that he had previously been convicted of Forgery 2nd degree, Criminal Possession of a Forged Instrument 2nd degree, and Offering a False Instrument for Filing 2nd degree, that commission was inadvertently renewed on April 30, 1993.

#### FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail delivered on January 13, 1994 (Comp. Ex. 1).

2) Since sometime prior to March 30, 1991 the respondent has been commissioned as a notary public. On March 2, 1993 the complainant received the respondent's most recent renewal application, on which he disclosed that since his last renewal he had been convicted of a crime or had a license, permit, commission or registration denied, suspended or revoked. In spite of that, his commission was renewed. (Comp. Ex. 2).

The renewal of the respondent's commission appears to have occurred while inquiry was being made into the application, as by letter dated June 15, 1993 the applicant was advised by the complainant that it proposed to deny his application because of his conviction. By letter dated September 29, 1993 he was advised that the commission had been renewed inadvertently

and was told to surrender it, which by undated letter received on October 7, 1993 the respondent refused to do (Comp. Ex. 1).

3) On March 18, 1991 the respondent was convicted in County Court, Erie County, on his guilty pleas, of Forgery 2nd degree (170.10-1 PL), a class D felony; Criminal Possession of a Forged Instrument 2nd degree (170.25 PL), a class D felony; and Offering a False Instrument 2nd degree (175.30 PL), a class A misdemeanor, and on June 25, 1991 was sentenced to terms of imprisonment totaling six months. On May 27, 1992 he was granted a Certificate of Relief From Disabilities by the sentencing judge. By its terms that certificate relieved the respondent of all disabilities and bars to employment other than the right to be eligible for public office (Comp. Ex. 3).

4) The respondents convictions derive from his preparation and filing with the Department of Motor Vehicles (DMV) of false documents involving the sale of a motor vehicle in 1988, while he was employed by the DMV as an automotive facilities inspector (Comp. Ex. 3).

5) The respondent uses his notary commission in conjunction with his current business: the sale of used motor vehicles.

#### OPINION

Pursuant to Executive Law §130, a commission as a notary public may not be issued to any person who has been convicted of a felony and who has not subsequently received either an executive pardon or a Certificate of Good Conduct from the parole board.

The respondent has been convicted of two felonies. While he has been granted a Certificate of Relief From Disabilities, he has not been granted a Certificate of Good Conduct by the parole board.

A Certificate of Relief From Disabilities does not grant the holder the right to retain or be eligible for public office. Corrections Law §701; People v Olensky, 91 Misc.2d 225, 397 NYS2d 565 (Supreme Court Queens County, 1977). A Certificate of Good Conduct provides relief from all disabilities, without exception made with regards to public office. Corrections Law §703-a. The difference is significant inasmuch as a notary public is a public officer. People v Wadhams, 176 NY 10 (1903); People v Rathbone, 145 NY 436 (1895); Patterson v Department of State, 35 AD2d 616, 312 NYS2d 300 (1970). Accordingly, the issuance of a Certificate of Relief From Disabilities does not grant the holder the right to be commissioned as a notary public, People v Olensky, supra.

In spite of the statutory bar to the issuance of a notary commission to the respondent, the complainant issued one to him. That, however, does not bar the revocation of that commission, as estoppel is not available to preclude a governmental entity from discharging its statutory duties. Parkview Associates v City of New York, 71 NY2d 274, 525 NYS2d 176 (1988).

The respondent argues that had he not been assured by the sentencing judge that he would be able to retain his notary commission he would not have plead guilty. Even if that assertion is believed, it cannot override a clear statutory prohibition.

The respondent also argues that this proceeding is untimely. He bases that argument on 19 NYCRR 400.13, which provides that, subject to possible extension, all adjudicatory proceedings brought under the jurisdiction of the Secretary of State must be completed within 150 days of the date of the hearing stated in the notice of hearing or, in the case of applications, within 150 days of receipt from the applicant of a demand for a hearing. As this is not an application case, the applicable deadline for the completion of the proceeding is September 9, 1994, 150 days from April 12, 1994, the date stated in the notice of hearing. Even were that not the case, pursuant to the terms of the regulation, the respondent's sole remedy would have been a proceeding in the nature of mandamus to compel the holding of a hearing and the issuance of a determination.

#### **CONCLUSIONS OF LAW**

1) Having been convicted of two felonies, and not having received either an executive pardon or a Certificate of Good Conduct, the respondent is not eligible to be commissioned as a notary public. Executive Law §130. Accordingly, the commission previously issued to him in error must be revoked.

2) The proceedings have been conducted within the time limits established by 19 NYCRR 400.13.

#### **DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** James Shanahan is ineligible to be commissioned as a notary public and accordingly, pursuant to Executive Law §130, the commission as a notary public previously issued to him in error is revoked, effective immediately.

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