

STATE OF NEW YORK  
DEPARTMENT OF STATE  
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Application of

**JAMES BALES**

**DECISION**

For a License as a Private Investigator

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on March 10, 2000 at the office of the Department of State located at 41 State Street, Albany, 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 the applicant has sufficient qualifying experience to be granted a license as a private investigator.

**FINDINGS OF FACT**

1) By application received on September 30, 1999 the applicant applied for a license as a private investigator, basing the application on experience obtained as a Fire Investigator and a Deputy Chief Fire Investigator with the Ulster County Arson Task Force (hereinafter "ATF") from August 1982 through the present (State's Ex. 2 and 3).

2) By letter dated October 14, 1999 DLS advised the applicant that it proposed to deny his application because he had "failed to satisfactorily prove 3 years full-time qualifying investigative experience," and that he could request an administrative hearing, which he did by letter received by DLS on November 3, 1999. Accordingly, the matter having been referred to this tribunal on January 13, 2000, notice of hearing was served on the applicant by certified mail posted by DLS on January 24, 2000 (State's Ex. 1).

3) The applicant's position with the ATF is voluntary in nature, and he has other employment as service manager at an automobile dealership. He is, however, on call full time, just as is a volunteer fire fighter, and investigates, together with a

partner, approximately 40 fires each year. He has averaged 40 investigations per year, with a high of 70 per year in both 1987 and 1988, and a low of 16 in 1982 during his first 6 months with the ATF (State's Ex. 3, App. Ex. A).

4) The applicant is a Certified Fire Investigator, having been granted such certification by the International Association of Arson Investigators, and has testified about his findings in numerous criminal and civil proceedings. He has taken numerous courses given by, and has received certificates of completion from, various fire control and investigation organizations, including the Department of State's Office of Fire Prevention and Control's Academy of Fire Science (State's Ex. 3, App. Ex. A).

### 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. General Business Law 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.*" (emphasis added).

The applicant's experience was obtained as a volunteer Fire Investigator. 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. 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 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 the major part, if not all, of his duties as a Fire Investigator is comprised of investigations as to the causes of fires (which falls within the areas of investigations as to the origins or responsibility for crimes and offenses, as to the cause or origin of or responsibility for accidental damage or injury to real property, or to secure evidence for civil or criminal cases), and that he has performed those duties for more than three years. While the position is voluntary in nature and, therefore, the applicant must maintain other employment, he is on call full time, just as he would be if he were on salary and sitting in a fire house waiting for an alarm. Under these circumstances, to distinguish a paid full time position from a volunteer full time on call position is illogical and contrary both to the obvious intent of the statute and regulations, that being to assure that applicants for licenses as private investigators have sufficient experience, and to the public interest in encouraging volunteer fire protection activities.

#### **CONCLUSIONS OF LAW**

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

#### **DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** the application of James Bales for a license as a private investigator is granted.

Roger Schneier  
Administrative Law Judge

Dated: March 17, 2000