

STATE OF NEW YORK
DEPARTMENT OF STATE

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In the Matter of the Application of

RICO BARBAGELATA

ORDER

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 December 15, 1992 at the office of the Department of State located at 162 Washington Avenue, Albany, New York.

The applicant, of 121 Benson Street, Albany, New York 12206, have been advised of his right to be represented by an attorney, appeared pro se.

The Division of Licensing Services was represented by District Manager Richard Drew.

ISSUE

The issue in the hearing was whether the applicant has sufficient experience to qualify for a license as a private investigator.

FINDINGS OF FACT

1) By application dated September 12, 1991 the applicant applied for a license as a private investigator (Dept. Ex. 2). By letter dated June 1, 1992 he was advised by the Division of Licensing Services that he had been credited with 21 months towards the qualifying experience requirement, that upon acquiring an additional 36 (sic) months experience he could reapply, and that he could request an administrative review of that finding. He apparently requested such a review, as by letter dated July 8, 1992 he was again advised by the Division of Licensing Services that it proposed to deny his application, and that he could request a formal hearing. By letter dated July 10, 1992 the applicant was advised that he had been granted credit for 24 months of experience, leaving an experience deficit of 12 months. By letter dated August 12, 1992 he was again advised of the position of the Division. In that letter it was noted that since the letter of June 1, 1992 the applicant had been credited with an additional 3 months experience, as noted in the letter of July 10, 1992. By letter dated September 18, 1992 the applicant requested a hearing (Dept. Ex. 1).

2) The applicant bases his application on a claim of experience gained conducting investigations on behalf of various employers. That experience is divided into two groups: that for which documentation was submitted to the Division of Licensing Services during the period in which the application was under investigation (and for which the 24 months credit was granted), and that for which documentation was submitted (without objection from the Division of Licensing Services) at the hearing. The investigative experience in the first group (Dept. Ex. 3) is as follows:

January 1985 to May 1985: Jamesway, store detective.

1985 to 1989 : Robert W. Mathews (licensed private investigator), investigator.

February 17, 1986 to June 15, 1986: Mac Donald Investigations Ltd., trainee investigator.

October 19, 1988 to May 3, 1989: Pinkerton Security and Investigation Services, investigator.

The investigative experience claimed in the second group (App. Ex. A) is as follows:

May to October 1983: A.G.S. Investigation Associates, Inc., investigator.

October 1988 to May 1989: Pinkerton Security and Investigation Services, investigator. (This claim contained documentation which was not included with the materials previously submitted).

August 1989 to September 1991: Executive Security Service, investigator.

Since the documents regarding this second group of claimed experience were not submitted prior to the hearing, the Division of Licensing Services has not had the opportunity to evaluate and investigate them, and there is insufficient information on which to base an evaluation of the total amount of time, if any, to which the applicant is entitled for the claimed experience.

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).

As noted in the findings of fact, there is insufficient evidence on which to grant credit for the experience which the applicant claims he gained in his employment with A.G.S. Investigation Associates, Inc., Pinkerton Security and Investigation Services, and Executive Security Service. However, inasmuch as the Division of Licensing Services made no objection to the introduction by the applicant of the documents regarding that experience, rather than denying the application and subjecting the applicant to reapplying and paying a new application fee, the matter should be remanded to the Division with a direction that it evaluate and investigate the claimed experience to determine whether a license may, in its opinion, be issued.

ORDER

WHEREFORE, IT IS HEREBY ORDERED THAT the matter is remanded to the Division of Licensing Services with the direction that it evaluate and investigate the experience claimed by the applicant in Applicant's Exhibit A, and that by no later than February 17, 1993 it report back to this tribunal on its findings. Should it be found by the Division of Licensing Services that the experience in question amounts to at least 12 months, which when combined with the 24 months experience credit already granted would amount to the required 36 months, then the matter should be discontinued and the license issued. If, however, the Division of Licensing Services finds that in its opinion the applicant still lacks sufficient qualifying experience, this tribunal will take such action which, in the circumstances, is required, including if necessary, but not limited to, the reopening of the hearing for the purpose of taking additional testimony.

DATED: December 17, 1992

ROGER SCHNEIER
Administrative Law Judge