

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Application of

Jerome Bell

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 September 9 and October 21, 1996 at the office of the Department of State located at 270 Broadway, New York, New York.

The applicant, of 373 Washington Avenue, Apt. 3A, Brooklyn, New York 11238, having been advised of his right to be represented by an attorney, appeared *pro se*.

The Division of Licensing Services (hereinafter "DLS") was represented by Supervising License Investigator William Schmitz.

ISSUE

The issue before the tribunal is whether the applicant has sufficient experience to qualify for licensure as a private investigator.

FINDINGS OF FACT

1) By application dated August 7, 1995 the applicant applied for a license as a private investigator (State's Ex. 2). By letter dated March 25, 1996 he was advised by DLS that it proposed to deny his application for failure to document sufficient qualifying experience, and that he could request an administrative review. By letter dated April 5, 1996 he requested such a review. By letter dated April 17, 1996 he was advised that DLS still proposed to deny the application, and that he could request an administrative hearing. By letter dated May 8, 1996 the applicant requested a hearing, and, accordingly, on May 31, 1996 a notice of hearing was served on him by certified mail (State's Ex. 1).

2) The applicant bases his application on the following claimed employment (State's Ex. 2 through 11, App. Ex. A and C):

12/7/79 to 12/12/82-- United States Army, Military Police Investigation Division. Unspecified duties.

4/18/89 to 6/20/91--Salaub'din Enterprises. Various duties involving the protection of property and responding to alarms, and, starting at a date not stated, conducting investigations of "incidents." The company was never licensed as a private investigator, and the owner was an employee of Esteem Patrol Inc. (see below).

8/20/91 to 3/23/96--Esteem Patrol Inc. Starting in September, 1992 the applicant's duties involved investigations of company employees. The company was first licensed as a private investigator on March 20, 1995. During the same period of time the applicant conducted investigations on behalf of Captial Patrol, also known as Captiol Patrol, an unlicensed entity which was the predecessor of Esteem Patrol Inc.

11/93 to 11/95--Ali Abdul Muid (independent contractor conducting investigations for Gary J. Rothman, Esq.). The applicant transported clients and delivered court papers.

OPINION

I- 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."

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."

The experience for which the applicant claims credit was allegedly obtained in the United States Army, and as an employee of both licensed and unlicensed investigative firms.

II- As the person who requested the hearing, the burden is on the applicant to prove, by substantial evidence, that he has acquired the required qualifying 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).

III- The applicant has offered no evidence as to the nature and extent of his actual duties in the United States Army. He has not, therefore, met the burden of proving that he is entitled to qualifying credit for that experience. Cf, *Matter of the Application of Ruff*, 49 DOS 94.

The applicant has also claimed credit for experience gained conducting investigations for unlicensed entities (Salaah'din Enterprises and Captial Patrol). It would be contrary to public policy to grant that credit, as to do so would be to reward and encourage unlicensed activity. *Matter of the Application of Peter L. Hoffman*, 93 DOS 94, conf'd. sub nom *Matter of Peter Hoffman v Alexander F. Treadwell*, _AD2d_, 635 NYS2d 189 (1995), leave to appeal denied, 80 NY2d 807, 647 NYS2d 164 (1996); *Matter of the Application of Bernstein*, 58 DOS 87.

The experience claimed to have been obtained working for Ali Abdul Muid (transporting clients and delivering court papers), does not fall within the defined functions of a private investigator, and is, therefore, non-qualifying.

All that remains is the experience gained by the applicant while in the employ of Esteem Patrol Inc. Since that corporation first became licensed as a private investigator on March 20, 1995, the applicant does not have sufficient qualifying experience from that employment to qualify for a license as a private investigator.

CONCLUSIONS OF LAW

The applicant has failed to establish by substantial evidence that he has sufficient experience to qualify for a license as a private investigator. Accordingly, his application must be denied. SAPA §306(1); GBL §72.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the application of Jerome Bell for a license as a private investigator is denied.

Roger Schneier
Administrative Law Judge

Dated: November 5, 1996