

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Application of

GEORGE H. BUDNIK

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 November 23, 1999 at the office of the Department of State located at 41 State Street, Albany, New York.

The applicant did not appear.¹

The Division of Licensing Services (hereinafter "DLS") was represented by Legal Assistant II Thomas Napierski.

ISSUE

The issue before the tribunal is whether the applicant's application for renewal of his license as a private investigator should be denied because he engaged in business practices that demonstrated untrustworthiness and incompetence, and because he engaged in private investigation activity without a license.

FINDINGS OF FACT

1) By application received on September 29, 1997 the applicant applied for renewal of his license as a private investigator which had expired on May 14, 1997 (State's Ex. 3 and 4).

2) By letter dated April 10, 1998 the applicant was advised by DLS that it proposed to deny his application because he engaged in business practices that demonstrated untrustworthiness and

¹ At 7:39 am on the morning of the hearing the applicant telefaxed a request for an adjournment to the Hon. Felix Neals, the Administrative Law Judge originally designated to hear the matter. In the telefax, which was sent to New York City and was not received by me until the day after the hearing, the applicant claimed that he could not attend the hearing because he had started a new job on November 21, 1999. He did not explain why he had waited until the morning of the hearing to request the adjournment, and the documents attached to the request did not, as the applicant asserted, provide any support for his claim that he had just started a new job.

incompetence, and because he engaged in private investigation activity without a license, and that he could request an administrative review, which he did on May 15, 1998. By letter dated December 15, 1998 the applicant was advised by DLS that having conducted a review it continued to propose to deny his application, and that he could request a hearing, which he did by letter received on February 11, 1999. Accordingly, notice of hearing calendared for May 20, 1999 was served on him by certified mail delivered on May 12, 1999 (State's Ex. 1). At the applicant's request the matter was adjourned to August 4, 1999, and it was then subsequently adjourned again to November 23, 1999 (State's Ex. 2).

OPINION AND CONCLUSIONS OF LAW

Notwithstanding the applicant's untimely and inadequate request for an adjournment (19 NYCRR 400.11), which was not received by me until the day after the hearing, the holding of an ex parte quasi-judicial administrative hearing was permissible, inasmuch as there is evidence that notice of the place, time and purpose of the hearing was properly served. General Business Law §79(2); *Patterson v Department of State*, 36 AD2d 616, 312 NYS2d 300 (1970); *Matter of the Application of Rose Ann Weis*, 118 DOS 93.

A hearing on an application for licensure or registration is held at the request and instance of an applicant who has been notified of the proposed denial of the application. 19 NYCRR 400.4[b]. At the hearing it would have been the applicant's burden to establish that he is qualified to be licensed as a private investigator. General Business Law §72; State Administrative Procedure Act §306.

The applicant made a timely request for a hearing, but, although properly notified, failed to appear at the appointed time and place. He is, therefore, deemed to have withdrawn with the request for a hearing and, more than 35 days having elapsed since he was advised of the proposed denial, the decision to deny the application is final. *Matter of the Application of Delroy Antonio*, 79 DOS 95, *Matter of the Application of Edward Davis*, 58 DOS 94; *Matter of the Application of Jeffery H. Mintz*, 35 DOS 94.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the application of George H. Budnik for a license as a private investigator is denied.

Roger Schneier
Administrative Law Judge

Dated: November 29, 1999