

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Application of

STEPHEN DALY

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 June 3, 1997 at the office of the Department of State located at 270 Broadway, New York, New York.

The applicant, of 441 East 20th Street, New York, New York 10010, 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 Compliance Officer William Schmitz.

ISSUE

The issue before the tribunal is whether the applicant should be denied a license as a private investigator because the facts underlying his prior dismissal from the New York City Police Department (hereinafter "NYPD") demonstrated a lack of the trustworthiness and character required for such licensure. DLS concedes that the applicant has sufficient qualifying experience.

FINDINGS OF FACT

1) By application dated March 5, 1996, having passed the licensing examination on December 11, 1995, the applicant applied for a license as a private investigator (State's Ex. 2).

2) By letter dated January 8, 1997 the applicant was advised that because an investigation disclosed that on November 2, 1995 he had been found guilty in a disciplinary proceeding that resulted in his dismissal from the NYPD, and had thus demonstrated a lack of the trustworthiness and good character required for licensure as a private investigator, DLS proposed to deny his application, and that he could request an administrative review, which he did by letter dated February 10, 1997. By letter dated March 11, 1997 the applicant was advised that after review DLS continued to propose to deny the application, and that he could request an administrative hearing, which he did by letter dated April 17, 1997. Accordingly,

the matter having been referred to this tribunal on April 23, 1997, notice of hearing was served on the applicant (State's Ex. 1).

3) On November 2, 1995 the applicant was dismissed from his position as a sergeant in the NYPD based on a finding that he was guilty of sexually harassing a rookie female officer assigned to him for training (State's Ex. 3, App. Ex. C). His petition for review pursuant to CPLR Article 78 is pending.

4) The applicant was appointed to the NYPD on January 25, 1982. During his nearly 14 years on the police force he made 1307 arrests, received 84 medals, was named "Cop of the Month" 7 times, and received the New York City Police Foundation Award of Excellence in 1988. On the date of his dismissal from the NYPD he was its most decorated sergeant. All of his annual performance evaluations were either Well Above Standards (8 times) or Above Standards (six times) (highest and second highest levels) (App. Ex. B). Other than for the matter which resulted in his dismissal, the applicant supervised hundreds of female police officers without incident.

5) From 1975 through 1981 the applicant was employed by Wells Fargo Protective Services, a licensed private investigator. For the first two years he operated armored cars, transporting large sums of money. Starting in 1977 he was assigned to conduct loss control internal audits and security surveys nationwide (State's Ex. 6) There is no evidence that he was involved in any misconduct during that employment.

OPINION

I- As the person who requested the hearing, the burden is on the applicant to prove, by substantial evidence, that the circumstances behind his dismissal from the police department do not establish that he is not sufficiently trustworthy to be licensed as a private investigator. State Administrative Procedure Act (SAPA), §306(1); General Business Law (GBL) §72. 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- Accepting, as I must, the truth of the allegations as confirmed by the decision of the police department, the issue of the applicant's dismissal from the police department clearly reflects on his trustworthiness. *Matter of the Application of Boyle*, 45 DOS 93.

The applicant was dismissed from the NYPD based on a finding that he sexually harassed a female police officer assigned to him for training. Although he had previously supervised hundreds of other female police officers, this is the only such incident on an otherwise exemplary record as a police officer and, prior to that, as an employee of a licensed private investigator.

The applicant was dismissed from the NYPD because of a finding of serious misconduct. As a licensed private investigator he might have future opportunities for such misconduct with regards to his own employees. Such opportunities are, however, not unique to private investigators, and sexual harassment of an employee is not directly related to the functions of a private investigator. The tribunal does not see how, in light of the totality of the applicant's record of service with the NYPD and with Wells Fargo Protective Services, the NYPD finding of misconduct reflects so negatively on the applicant's character as to justify a finding that he is not sufficiently trustworthy to be licensed as a private investigator. According to the NYPD findings the applicant made a serious mistake. Under the circumstances of this applicant, however, the misconduct found by the NYPD should not foreclose him from pursuing a career for which he would seem to have a high level of competence.

CONCLUSIONS OF LAW

The applicant has established by substantial evidence the fact of his dismissal from the New York City Police Department should not disqualify him from being licensed as a private investigator. GBL §72; SAPA §306(1).

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Stephen Daly has established that he is qualified to be licensed as a private investigator, and the Division of Licensing Services is directed, upon completion by the applicant of any remaining prerequisites, to issue such license to the applicant forthwith.

Roger Schneier
Administrative Law Judge

Dated: June 27, 1997