

STATE OF NEW YORK
DEPARTMENT OF STATE

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In the Matter of the Application of

RICHARD J. ESPOSITO

DECISION

For a License as a Watch, Guard or
Patrol Agency

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on January 3, 1995 at the office of the Department of State located at 270 Broadway, New York, New York.

The applicant, of 78 Searingtown Road, Searingtown, New York 11507, 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 Bernard Friend.

ISSUE

The issue before the tribunal is whether the applicant has sufficient experience to qualify for a license as a watch, guard, or patrol agency.

FINDINGS OF FACT

1) By application dated February 18, 1994 the applicant applied for a license as a watch, guard or patrol agency on behalf of Metro Medical Maintenance Service Systems Inc. (State's Ex. 2). He bases his application upon experience obtained in screening, hiring, training, and placing fire safety guards and fire safety directors in commercial buildings in New York City on behalf of Metro Fire Safety Guards, Inc. (Metro) (State's Ex. 3, 4, and 6). Neither the applicant nor Metro is licensed as a watch, guard, or patrol agency or as a private investigator.

2) By letter dated September 28, 1995 the applicant was advised by DLS that it proposed to deny his application for want of qualifying experience, but that he could request an administrative review. Specifically, the letter stated:

- "1. Supervision of Fire Safety Guards is non-qualifying experience.
2. Fire Safety Guards engaged in Security Services without a Watch, Guard or Patrol license, applicant is engaged in unlicensed activity." (State's Ex. 1).

The applicant requested a review, and by letter dated November 1, 1995 he was advised that DLS continued to propose to deny the application, and that he could request a hearing, which he did by letter dated November 7, 1995. Accordingly, notice of hearing was served on him by certified mail on December 6, 1995 (State's Ex. 1).

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); General Business Law (GBL) §72[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- An applicant for a license as a watch, guard or patrol agency must establish that he or she

"has been regularly employed, for a period of not less than two years, performing such duties or providing such services as described as those performed or furnished by a watch, guard or patrol agency in subdivision two of section seventy-one of this article, as a sheriff, police officer in city or county police department, or employee of an agency of the state, county or United State government, or licensed private investigator or watch, guard or patrol agency, or has had an equivalent position and experience...." GBL §72[1].

Equivalent experience credit is awarded to applicants who

"shall have performed services (of security guards) as described in Article 7-A Section 89-f(6).¹ Such services shall have been performed for a period of two years for an employer, firm, organization or governmental agency, whether subject to the provisions of Article 7 of the General Business Law or otherwise...; an applicant may substitute two

¹ Security guards perform the following functions: protection of individuals and/or property from harm, theft or other unlawful activity; deterrence, observation, detection and/or reporting of incidents in order to prevent any unlawful or unauthorized activity; street patrol; response to but not installation or service of a security alarm installed and/or used to prevent or detect unauthorized intrusion, robbery, burglary, theft, pilferage and other losses and/or to maintain security of protected premises. GBL § 89-f[6].

year's experience supervising and reviewing the work of at least three persons performing such services obtained in a position with such an employer, firm, organization or governmental agency, the primary duties and activities of which were such guard supervision and review." 19 NYCRR 172.2.

Since it is unlawful to engage in the business of watch, guard or patrol agency without a license to do so (GBL §70[2]), unless the equivalent experience obtained while working for an entity which was not licensed under GBL Article 7 was gained in some activity which is exempt from licensure, it was gained unlawfully. The applicant must, therefore, establish that the activities which he supervised are the same as those engaged in by a licensed watch, guard or patrol agency but, because of some provision of law, did not require a license as such. Cf. Matter of the Application of Peter L. Hoffman, 93 DOS 94, conf'd. sub nom Matter of Peter Hoffman v Alexander F. Treadwell, NY Law Journal p. 27, col. 1, 12/11/95, A.D. 1st Dept.

The fire safety guards and directors which the applicant supervises are employed pursuant to the requirements of New York City Local Law 5 of 1973, which requires that certain office buildings prepare a fire safety plan and employ a fire safety director, one or more deputy fire safety directors, and at times a building evacuation supervisor. That statute is augmented by Title 3, Rules of the City of New York, Chapter 6.

Essentially, the statute and rules provide that fire safety guards and directors are responsible for conducting fire drills and evacuations and related training; the development of a fire prevention and protection program; the uncovering and correction hazards relative to exits and the maintenance thereof; seeing to it that fire protection equipment and facilities are in proper condition; and supervision of the storage and use of combustible or flammable materials. Those functions are not the same as those of security guards working for a licensed watch, guard, or patrol agency.

While both the persons whom the applicant supervises and security guards perform functions designed to protect persons and property from harm, the duties of fire safety personnel, as set out by statute and regulation, do not deal with the detection and prevention of unlawful activities, i.e., arson. The statutory functions of security guards, on the other hand, are clearly focused on the prevention and detection of unlawful activity. Accordingly, the activities and functions engaged in under the New York City statute and rules which the applicant supervises are not equivalent to the activities and functions of security guards under GBL Article 7.

To the extent that, as testified to by the applicant, the fire safety personnel are on the alert for suspicious persons, those personnel are engaged in activities beyond those provided in the New York City statute and regulations. In those instances they are, in fact, performing the functions of security guards. However, as noted

above, since neither the applicant nor the firm by which he is employed is a licensed watch, guard or patrol agency or private investigator, such activities are unlawful and, therefore, the applicant cannot receive experience credit for their supervision.

CONCLUSIONS OF LAW

The applicant has failed to establish by substantial evidence that he has sufficient lawful experience to qualify for a license as a watch, guard, or patrol agency, and, accordingly, his application should be denied. SAPA §306; GBL §72[1].

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the application of Richard J. Esposito for a license as a watch, guard, or patrol agency license is denied.

These are my findings of fact together with my opinion and conclusions of law. I recommend the approval of this determination.

Roger Schneier
Administrative Law Judge

Concur and So Ordered on:

ALEXANDER F. TREADWELL
Secretary of State
By:

Michael E. Stafford, Esq.
Chief Counsel