

STATE OF NEW YORK  
DEPARTMENT OF STATE  
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Application of

**THOMAS EVANGELISTA**

**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 April 7, 1998 at the office of the Department of State located at 270 Broadway, New York, New York.

The applicant, of 3106 Eagle Avenue, Medford, New York 11763, was represented by David Shotten, Esq., 1707-26 Veterans Highway, Islandia, New York 11722.

The Division of Licensing Services (hereinafter "DLS") was represented by License Investigator III Richard Drew.

**ISSUE**

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

**FINDINGS OF FACT**

1) By application received by DLS on or about January 30, 1997 the applicant applied for a license as a private investigator (State's Ex. 2). Subsequently, in response to DLS's request for additional documentation as to his claimed qualifying experience, the applicant submitted various documents and supporting statements (State's Ex. 3 and 4).

2) By letter dated August 22, 1997 DLS advised the applicant that it proposed to deny his application for failure to prove the requisite three years of lawful experience, and that he could request an administrative review, which he did. By letter dated January 12, 1998 the applicant was advised by DLS that after review it continued to propose to deny his application, and that he could request an administrative hearing, which he did by letter received on February 10, 1998. Accordingly, the matter having been referred to this tribunal on February 25, 1998, notice of hearing was served on the applicant by certified mail delivered on March 25, 1998 (State's Ex. 1).

3) The applicant bases his application on the following claimed experience: Commencing in late 1979 or early 1980, the applicant was employed as a store detective by TSS Seedmans Corporation d/b/a Times Square Stores. His duties involved the apprehension of persons who where engaged in shoplifting and employees who were pilfering merchandise. Within six months he was promoted to assistant security manager, and six to eight months later he was promoted to security manager, in which capacities he was responsible for posting and scheduling guards, investigating check fraud, and auditing store inventory. In both of those positions his primary function was the supervision of security personnel. In late 1982 he was given the title "investigator", which he held until late 1985. In that capacity he was responsible for keeping tabs on pilferage, safe and bank audits, answering alarm calls, and supervision of security managers and assistant security managers in various stores. Since January 1997 he has been employed by B.V. Eye Investigations, a licensed private investigator. In that full time employment he has investigated the causes of accidents. In addition to that employment, since sometime in 1995 he has conducted surety investigations for various bail bondsmen as a independent contractor.

#### 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).

II- 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.*" (emphasis added).

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 applicant's experience was obtained as an employee of a licensed private investigator for approximately 16 months, and in various store security positions and. For the later experience to be used to enable the applicant to be licensed as a private investigator, that experience would have to constitute "equivalent positions and experience", defined in 19 NYCRR 172.1 as:

"...investigations as to the identity, habits, conduct, movements, whereabouts, affiliations, reputation, character, credit, business or financial responsibility of any person, group of persons, association, organization, society, firm or corporation, or as to the origins or responsibility for crimes and offenses, the location or recovery of lost or stolen property, the cause or origin of or responsibility for losses or accidental damage or injury to persons or to real or personal property, or to secure evidence to be used before any authorized investigation committee, board of award, board of arbitration or in the trial of civil or criminal cases

including as to the credibility of any witnesses. Such investigations shall be have performed for a period of three years, for an employer, firm, organization or governmental agency, whether subject to the provision of Article 7 of the General Business Law or otherwise, which required such investigations in the course of its regular operations, and which such investigations were conducted on a full-time basis in a position the primary duties of which were to conduct investigations and same comprised the major portion of the applicant's activities therein...."

The applicant has established that as part of his store security duties he conducted investigations. He has not, however, proved by substantial evidence that the conducting of such investigations was the primary duty of his various positions. As a store detective, most his duties involved the prevention of theft and the unlawful taking of goods, wares and merchandise, a function which falls under the GBL §71[2] definition of "watch, guard or patrol agency." The fact that he performed those duties in plain clothes rather than in uniform is irrelevant. In his other store security positions he conducted some investigations, but, according to his testimony, most of his duties involved supervising guards, and conducting inventory audits, which is essentially an accounting function.

The applicant also claims credit for his work as an independent contractor for bail bondsmen. Even had he presented evidence as to the amount of time expended in that occupation, which he did not, he still would not be entitled to experience credit for that work. This tribunal held as early as 1983 that a license as a private investigator is required to engage in the business of apprehending bail jumpers. *Matter of the Application of Stanley Rivkin*, 28 DOS 83. Any investigations conducted prior to the issuance of surety bonds also would not qualify, as either the applicant was acting unlawfully by conducting the investigations as an independent contractor on behalf of several employers, and, therefore, is not entitled to credit for that work, *Matter of the Application of Marsico*, 16 DOS 93, or, if a license was not required, the work, being specifically excluded from the statute, fell outside of the parameters of qualifying experience. In any case, according to the applicant's testimony, the bail bondsmen/surety experience was obtained at the same time as his full time employment with B.V. Eye Investigations, and therefore could not serve to provide an additional period of qualifying experience.

#### 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 and, accordingly, his application should be denied. GBL §72; SAPA §306[1].

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** the application of Thomas Evangelista for a license as a private investigator is denied.

Roger Schneier  
Administrative Law Judge

Dated: May 12, 1998