

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Application of

WILLIAM LA SHOMB

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 March 3, 1998 at the office of the Department of State located at 41 State Street, Albany, New York.

The applicant, of 111 Willard Road, Massena, New York 13662, having been advised of his right to be represented by attorney, chose to represent himself.

The Division of Licensing Services (hereinafter "DLS") was represented by Supervising License Investigator Richard G. 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 July 28, 1997 the applicant applied for a license as a private investigator (State's Ex. 2).

2) By letter dated July 30, 1997 DLS advised the applicant that it was conducting an investigation of his application, and that he was required to submit documentation regarding his claimed experience with the Massena Village Police (State's Ex. 3).

3) By letter dated September 3, 1997, after having considered materials submitted by the applicant in response to its letter of July 30, 1997, DLS advised the applicant that it proposed to deny his application because he had failed to satisfactorily prove three years of qualifying experience in a primarily investigative position, and that he could request an administrative review. On October 12, 1997 the applicant requested such a review, and, by letter dated November 24, 1997 he was advised that DLS continued to propose to deny his application and that he could request a hearing, which he did by letter dated November 30, 1997. Accordingly, notice

of hearing was served on the applicant by certified mail delivered on December 13, 1997 (State's Ex. 1).

4) The applicant bases his application on the following claimed experience: Unspecified dates from 1987 to 1992, store detective employed full time by Ames Department Stores Inc. and Jamesway Department Stores Inc.; May 8, 1991 to July 16, 1992, store detective employed full time by Hills Department Stores Inc.; January 11, 1993 to date, patrolman employed full time by the Massena Police Department (State's Ex. 3 and 4).

In his work as a store detective, which he claims covered a period of approximately three and one-half years, 90% of the applicant's time was spent in detecting and apprehending shoplifters. As a police officer the applicant had both patrol and investigative duties.

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 whatso-

ever, 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 a store detective and as a police officer employed by a town police department. He was not employed as a sheriff, police officer in a city¹ or county police department or the division of state police, investigator in an agency of the state, county or United States government, or by a licensed private investigator. Therefore, for his 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 investi-

¹ The tribunal takes official notice there is both a Town and a Village of Massena, but no City of Massena.

gation 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 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 jobs. As a store detective, 90% of 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." He failed to establish what percentage of this time as a police officer was spent conducting investigations.²

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 William LaShomb for a license as a private investigator is denied.

Roger Schneier
Administrative Law Judge

Dated: March 24, 1998

² The applicant testified that he spends 70 to 75% of his time as a police officer conducting investigations. According to the Chief of Police the correct figure is 15% (State's Ex. 3). In light of that conflict, and in view of the extremely limited details of his investigative experience provided by the applicant, the applicant has not met his burden of proving that the conducting of investigations was the primary duty of his employment as a police officer.