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STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Application of

PAUL MRNACAJ

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 December 8, 1998 at the office of the Department of State located at 270 Broadway, New York, New York.

The applicant, having been advised of his right to be represented by an attorney, chose to represent himself.

The Division of Licensing Services 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) The applicant has applied for a license as a private investigator (State's Ex. 2). By letter dated July 22, 1998 he was advised by the Division of Licensing Services that it proposed to deny his application because he did not have sufficient qualifying experience, and that he could request an administrative review. By request form dated August 6, 1998 the applicant requested such a review, and on August 24, 1998 the Division of Licensing Services responded that it had conducted the review and that it still proposed to deny the application. The applicant was advised that he could request an administrative hearing, and by letter dated September 2, 1998 he did so. Accordingly, a notice of hearing was served on the applicant by certified mail on October 15, 1998 (State's Ex. 1).

2) The applicant bases his claim to sufficient qualifying experience on his activities as a Deputy City Marshal in the City of Yonkers since December 8, 1991, and as a Deputy City Marshal in the City of Mt. Vernon since March of 1992, to which positions he

was appointed by the administrative officials of the Yonkers and Mt. Vernon City Courts.

In his capacity of Deputy City Marshal, to which he devotes from 8 to 12 hours a day, 6 days a week, the applicant is required to execute Family Court orders of support, income executions, property executions, orders of eviction, and serve bank information subpoenas. In order to perform those duties he must conduct numerous investigations to locate defendants, debtors, and property.

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 a Deputy City Marshal. He was not employed by a licensed private investigator or as a sheriff, police officer, or employee of a licensed private investigator, nor is his application supported by a claim of experience or evidence regarding employment as a government investigator.¹ 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

¹ As a Deputy City Marshal the applicant works on a fee for services basis, and is compensated by plaintiffs' attorneys according to an established schedule. The tribunal has been unable to locate any statute granting the City Courts of Yonkers and Mt. Vernon the authority to appoint Marshals. However, there is reference in legislative enactments to Marshals of various cities as being non-judicial employees of the Unified Court System. See, e.g., L. 1996 c. 582. As an appointee of the courts performing duties assigned by those courts, the applicant's activities should not be deemed the unlawful conduct of an unlicensed business as a private investigator.

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 the major part of his duties as a Deputy City Marshal is comprised of investigations as to the location of persons and property, and that he has performed those duties for more than three years. He is, accordingly, qualified to be licensed as a private investigator.

CONCLUSIONS OF LAW

The applicant has established by substantial evidence that he has sufficient experience to qualify for a license as a private investigator and, accordingly, his application should be granted. GBL §72; SAPA §306[1].

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the application of Paul Mrnacaj for a license as a private investigator is granted.

Roger Schneier
Administrative Law Judge

Dated: December 9, 1998