

STATE OF NEW YORK  
DEPARTMENT OF STATE

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In the Matter of the Application of

**JAMES ODDO**

**DECISION**

For a License as a Private Investigator

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Pursuant to the designation duly made by the Hon. Gail S. Shaffer, Secretary of State, the above noted matter came on for hearing before the undersigned, Roger Schneier, on March 31, 1994 at the office of the Department of State located at 270 Broadway, New York, New York.

The applicant, of 160 Floyd Street, Brentwood, New York 11717, having been advised of his right to be represented by an attorney, appeared pro se.

The Division of Licensing Services was represented by Senior License Investigator Michael Coyne.

**ISSUE**

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

**FINDINGS OF FACT**

1) By application dated February 20, 1993 the applicant applied for a license as a private investigator, having taken and passed the examination on January 25, 1993 (Dept. Ex. 2). By letter dated September 15, 1993 he was advised by the Division of Licensing Services that it proposed to deny his application for lack of qualifying experience. By letter dated September 22, 1993 he requested an administrative review, and by letter dated October 14, 1993 was advised that the decision to deny his application stood. By letters dated October 18, 1993 and February 24, 1994 he requested an administrative hearing. In response, a notice of hearing dated March 4, 1994 was served on him by certified mail (Dept. Ex. 1 and 3).

2) The applicant bases his application on experience gained as a member of the police department of the City of New York from November 23, 1967 through July 27, 1990. The details of that experience are as follows:

11/23/67 to 6/5/68- Police Trainee assigned first to the 87th Precinct as a switchboard operator, and then, starting in January, 1968, as a trainee at the Police Academy.

6/5/68-8/13/82- Patrolman. Completed academy training on 7/11/68 and assigned to the 19th Precinct, where he performed preliminary and complete investigations of various crimes, sometimes without referring cases to the Detective Division. Cases included burglaries, robberies, grand larcenies, motor vehicle thefts and accidents, deaths, and missing persons. On 2/18/80 he was assigned to the Police Academy Firearms and Tactics Section, where he was involved in instruction. On 2/7/82 he returned to his former duties at the 19th Precinct.

8/13/82-11/29/89- Sergeant. Assigned to the Patrol Services Bureau in the 75th Precinct. Engaged in and supervised the same type of investigations as previously. Also conducted, and forwarded to the proper divisions, investigations involving allegations made against police officers and the locating of rifle and/or shotgun owners and unregistered weapons. On October 4, 1982 he became Quality of Life Sergeant for the 13th Division. He was reassigned to his former duties in 75th Precinct on June 2, 1983. On January 2, 1985 he was assigned to similar duties in the 104th Precinct.

11/29/89-7/29/90- Lieutenant. Assigned to the 112th Precinct, where he supervised Patrolmen and Sergeants in their investigative assignments and personally investigated any allegations made against Sergeants. He retired on July 29, 1990.

#### 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 criteria 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 has been as a New York City Police Officer of various ranks over a period of more than twenty two years. During that time he conducted numerous investigations of various crimes and occurrences of the type conducted by a private investigator. It is the position of the Division of Licensing Services, however, that unless the applicant can establish that the conducting of investigations constituted his primary duties he cannot receive credit for that experience. That position results from misplaced reliance on 19 NYCRR 172.1, the regulation which sets forth the standards for equivalent position and experience.

The applicant does not seek to qualify with equivalent experience. He relies on his experience as a police officer in a city police department, a type of experience for which neither the statute nor the regulations establish a "primary duties" requirement.

An applicant for a license as a private investigator is entitled to credit for experience gained as a police officer in a position other than that of Detective. Investigations do not have to have been the primary duties of the position, so long as over the course of employment a sufficient amount of experience is accumulated. Application of Langevin, 37 DOS 81; Application of Murphy, 4 DOS 87; Application of Molow, 56 DOS 85; Application of Aqugliaro, 24 DOS 84; Application of Palmore, 1 DOS 81.

The applicant has established that for at least nineteen years he spent a substantial amount of his time conducting investigations of the type engaged in by a private investigator.<sup>1</sup> While the evidence does not clearly establish the actual amount of time spent in investigative, as opposed to non-investigative, work, I find that given that the conducting of investigations constituted a substantial part of his duties, and in light of the long period of time involved, it is reasonable to conclude that the applicant has the required three years of experience.

#### **CONCLUSIONS OF LAW**

The applicant has established by substantial evidence that he has sufficient experience to qualify for a license as a private investigator. SAPA §306[1]; GBL §72.

#### **DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** the application of James Oddo for a license as a private investigator is granted.

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:

GAIL S. SHAFFER  
Secretary of State  
By:

James N. Baldwin  
Executive Deputy Secretary of State

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<sup>1</sup> Investigation does not appear to have been substantially involved in the applicant's assignments to the Police Academy and as Quality of Life Sergeant.