

STATE OF NEW YORK  
DEPARTMENT OF STATE  
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Application of

**JOHN PALMA**

**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 September 9, 1996 at the office of the Department of State located at 270 Broadway, New York, New York.

The applicant, of 84-20 153 Avenue, Apartment 3H, Howard Beach, New York 11414, having been advised of his right to be represented by a attorney, appeared pro se.

The Division of Licensing Services (hereinafter "DLS") was represented by Supervising License Investigator William Schmitz.

**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 dated April 8, 1996 the applicant applied for a license as a private investigator (State's Ex. 2).

2) By letter dated June 12, 1996 the applicant was advised by DLS that it proposed to deny his application because the employment used as qualifying experience allegedly fails to meet the investigative standards set forth in General Business Law (GBL) Article 7, and that he could request an administrative review, which he did on a form dated June 18, 1996. By letter dated July 3, 1996 he was advised that after review DLS continued to propose to deny the application, and that he could request an administrative hearing, which he did by letter dated July 17, 1996. Accordingly, notice of hearing was served on the applicant by certified mail on August 22, 1996 (State's Ex. 1).

3) The applicant bases his application on experience gained as an employee of the New York City Department of Corrections, first in the rank of Captain from March, 1983 to December, 1986, and then

as a Warden Level I from December, 1986 to July, 1987, when he retired (State's Ex. 2 and 3). In both of those positions his duties included, among many other things, the conducting of investigations (State's Ex. 4; App. Ex. A).

### 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 has been as a Captain and a Warden in the New York City Department of Corrections. 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.<sup>1</sup> 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" as 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

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<sup>1</sup> It would be illogical to conclude that the fact that a government employee's duties included the conducting of some investigations means that such person was employed as a government investigator, as such employment is contemplated by the statute. To have been employed as an investigator it is necessary that one's duties in the subject position were primarily investigative.

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...." (emphasis added).

The applicant's employment with the Department of Corrections involved many duties. While those duties included the conducting of some investigations, the record is entirely void of any evidence as to whether the conducting of such investigations was the applicant's primary duty, and as to whether those investigations comprised the major portion of his activities in that employment.

#### **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. Accordingly, his application should be denied. SAPA §306(1); GBL §72.

#### **DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED** that the application of John Palma for a license as a private investigator is denied.

Roger Schneier  
Administrative Law Judge

Dated: September 10, 1996.