

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

-----X

In the Matter of the Application of

EMANUEL RODRICK

DECISION

For a License as a Private Investigator

-----X

The above noted matter came on for hearing before the undersigned, Roger Schneier, on January 9, 1998 at the office of the Department of State located at 270 Broadway, New York, New York.

The applicant, of 348 Seneca Avenue, Mount Vernon, New York 10550, having been advised of his right to be represented by an attorney, chose to represent himself.

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

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 on June 5, 1997 the applicant applied for a license as a private investigator (Dept. Ex. 2). By letter dated July 30, 1997 he was advised by DLS that it proposed to deny his application because he had failed to satisfactorily prove that he had three years of qualifying experience, and that he could request an administrative review, which he did on August 6, 1997. By letter dated October 15, 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 3, 1997. Accordingly, a notice of hearing was served on him by certified mail delivered on November 15, 1997 (Dept. Ex. 1).

2) The applicant bases his application on experience gained as a New York State Police Trooper from October 19, 1981, when he was appointed, until November 26, 1985, when he resigned. During that period time the applicant engaged in some investigatory activities. The evidence is insufficient, however, to determine the extent of, or the amount of time extended on, those activities.

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."

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, organiza-

tion, 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."

An applicant for a license as a private investigator is entitled to credit for investigative experience gained as a New York State Police Trooper. 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 Agugliaro*, 24 DOS 84; *Application of Palmore*, 1 DOS 81.

The applicant has established that he was employed as a New York State Trooper for a period of approximately four years. During that time his duties included certain investigatory functions. He has failed, however, to present any substantial evidence regarding the amount of time spent conducting investigations. It is, therefore, impossible for the tribunal to conclude that he has sufficient 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. SAPA §306[1]; GBL §72.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the application of Emanuel Rodrick for a license as a private investigator is denied.

Roger Schneier
Administrative Law Judge

Dated: January 12, 1998