

DEPARTMENT OF STATE
OFFICE OF THE SECRETARY OF STATE
-----X

In the Matter of the Complaint of

**DEPARTMENT OF STATE
DIVISION OF LICENSING SERVICES,**

Appellant,

-against-

JAMES E. BALES

Respondent
-----X

DECISION AND ORDER

10 DOS APP 00

(192 DOS 00)

Division of Licensing Services (Appellant) appeals to the Secretary of State from a decision of the Office of Administrative Hearings that overruled the decision of the Appellant denying James E. Bales (Respondent) a private investigator's license.

Appellant submitted a Memorandum of Appeal objecting to the determination below.

ISSUE

This appeal considers whether the Office of Administrative Hearings committed error in determining that Respondent should be granted a private investigator's license.

SUMMARY OF THE EVIDENCE

In deciding this appeal, the following documents were considered:

A) Pleadings, consisting of a notice of hearing, a notice of appearance, Appellant's Memorandum of Appeal and Respondent's Memorandum in Opposition.

B) The Respondent's application for a private investigator license and the Appellant's letter of denial.

C) Copy of the hearing transcripts, with the exhibits appended.

FINDINGS OF FACT

Paragraphs 1, 2, 3 and 4 in the decision of the OAH are adopted in total for purposes of this appeal.

OPINION

Having reviewed the record and the briefs submitted by both parties, I find that the Administrative Law Judge (ALJ) made an error of law by granting the application for license as a private investigator. The ALJ determined that Respondent's volunteer position as a fire investigator was equivalent to that of a full-time employee. This is in direct contradiction to section 72 of the General Business Law (GBL) and ' 172.1 of the New York Codes, Rules and Regulations (NYCRR).

Section 72 of the GBL was established to govern the area of private investigator licenses. This law mandates certain requirements before an individual may obtain a private investigator license:

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)

According to the record, the Respondent's relevant experience is as a volunteer fire investigator. As a result, in order for Mr. Bales to obtain a license he would have to meet the requirements of "an equivalent position and experience." According to ' 172.1 of the NYCRR:

[t]o qualify for equivalent position and experience . . . an applicant for licensure as a private investigator shall have performed investigations as to the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, efficiency, loyalty, reputation, character, credit, business or financial responsibility or 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 have been 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;

In order to determine whether Mr. Bales should receive a license, one must determine two things: 1) does Mr. Bales perform in an equivalent position or have the equivalent experience; and 2) is the experience conducted on a full-time basis? Although Mr. Bales may be performing the type of investigation that would allow him to meet the requirements of the statute, under the plain meaning of "full-time" Mr. Bales has not satisfied the statute. According to Webster's, full-time is defined as: "of or engaged in work, study, etc. that takes up all of one's regular working hours."¹ That is not the situation in this case. While Mr. Bales is a volunteer fire investigator he has a full-time career as a service manager of a car dealership.² Due to this full-time job, on several occasions, he was not able to respond to arson calls.³ Clearly, Mr. Bales' full-time profession is **not** as an investigator.

¹ Webster's New World Dictionary and Thesaurus 251 (1996).

² See Record at 9.

³ See Record at 11. "There are occasions where I cannot get out of my employment which case if I can't make arrangements for coverage, I have someone handle it under me."

Moreover, assuming the legislature did not intend to give "full-time" the above meaning, Mr. Bales has not performed the requisite number of investigatory hours. As provided in the Findings of Fact, Mr. Bales averages 40 fires a year and spends approximately three hours investigating each fire.⁴ Over the past 18 years, Mr. Bales has performed approximately 720 investigations. Upon calculation, this would result in 2,160 hours of investigation time. On the other hand, if Mr. Bales was a full-time investigator for three years, as the statute requires, he would have logged 6,240 hours of investigative time. Thus, for the past 18 years, the Respondent has failed to work the equivalent of a full-time investigator.

CONCLUSIONS OF LAW

Based on the foregoing, Mr. Bales has failed to establish by substantial evidence that he has sufficient experience as mandated in the statute to qualify for a license as a Private Investigator and therefore his application is denied. GBL ' 72.

The statute plainly states that an individual must work at least full-time, commonly a minimum of 35 hours per week for three years or supervise three employees on a full-time basis. The reason for this was simple; the State Legislature wanted to prevent the demise of the private investigative field and to protect the public from inexperienced investigators. Less than full-time experience can not, and will not, be viewed as sufficient to meet the clearly articulated statutory requirements.

⁴Ulster County Arson Task Force letter to the State from the Chairman, Kenneth G. Blundell.

DETERMINATION

The determination of the Administrative Law Judge is reversed.

Alexander F. Treadwell
Secretary of State