

DEPARTMENT OF STATE
OFFICE OF THE SECRETARY OF STATE

----- X

In the Matter of

Stanley Ford,

Appellant,

**DECISION AND ORDER
17 DOS APP. 01**

-against-

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

Respondent

----- X

Stanley Ford (“Appellant”) appeals from a decision of the Office of Administrative Hearings. The Department of State Division of Licensing Services (“Respondent”) did not file a memorandum in opposition to Mr. Ford’s appeal.

ISSUE

Although Mr. Ford’s appeal consisting of a letter and attached documents forwarded to the Secretary raises several issues, they can be consolidated into two inquiries: 1) did the Administrative Law Judge, as a matter of law, abuse his discretion, or 2) did the denial of an application for renewal of Mr. Ford’s private investigator license “shock the conscience” and was it so manifestly unfair as to require reversal.

FINDINGS OF FACT

The findings of fact in the decision of the Office of Administrative Hearings are adopted to the extent that the evidence adduced at the hearing was accurately summarized. The circumstances surrounding the incident which resulted in Appellant's arrest were unusual to say the least. Appellant's unrebutted version of the facts are accepted despite the fact that several questions surrounding the incident are left unanswered.

Appellant was initially charged and indicted for four criminal offenses, namely 1) an attempt to commit the crime of Assault in the first degree, Penal Law §§ 110/120.10 (1); 2) Assault in the second degree, Penal Law § 120.05 (2); 3) Criminal Possession of a Weapon in the second degree, Penal Law § 265.03 (2) and 4) Criminal Possession of a Weapon in the third degree, Penal Law § 265.02 (4). Appellant in a plea agreement was allowed to plead guilty to only the last charge, to wit: Criminal Possession of a Weapon in the third degree, characterized as an armed felony by possessing a loaded firearm outside of his home or place of business. The Judge who accepted his plea issued Appellant a Certificate of Relief from Disabilities at the time of his plea and sentenced him to four months of weekends in the Manhattan Detention Complex. Appellant served a total of 13 weekends.

OPINION

The review of this record establishes that the Administrative Law Judge did not abuse his discretion as a matter of law. His carefully reasoned opinion cited pertinent provisions of the General Business Law and the Corrections Law, particularly §§ 750, 752 (1)(2) and § 753 (1). The Administrative Law Judge correctly concluded that there was a direct relationship between the crime

for which the Appellant was convicted and his license as a private investigator, noting that “the authorized functions of a private investigator encompass the functions of a watch, guard or patrol agency”, citing General Business Law § 70 (1)(2). In addition he cited several relevant cases, most notably Bonacorsa v Van Lindt 71 N.Y.2d 605, which held, among other things, that “notwithstanding the existence of a direct relationship between the criminal offense and the specific license sought (Correction Law § 752 (1)) in which the employer has discretion to deny the license, that the agency must also consider the eight factors contained in Correction Law § 753 to determine whether a license should in its discretion, issue.” Furthermore, in citing Shaffer v Hughes 154 A.D.2d 467 he correctly noted that although the Relief from Disabilities issued to Appellant at the time of his plea bargain creates a presumption of rehabilitation, that presumption is only one factor, to be considered along with the eight factors found in § 753 (1) Corrections.¹ My review of this record indicates that the Administrative Law Judge did consider these factors in denying the Appellant’s renewal request.

¹ Article 23-A § 753 (1) of Corrections Law lists eight factors to be considered concerning a previous criminal conviction. § 753 (2) concerns the presumption of rehabilitation to be given consideration in a Certificate of Relief from Disabilities.

- (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
- (b) The specific duties and responsibilities necessarily related to the license or employment sought.
- (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
- (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
- (e) The age of the person at the time of occurrence of the criminal offense or offenses.
- (f) The seriousness of the offense or offenses.
- (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
- (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

Several assertions made by Appellant in his letter of appeal should be addressed, if only briefly. First, my review of the record and attached correspondence reveals no evidence of a “witch hunt” by Department of State personnel. Rather, they were following standard procedures and requesting information from the Appellant that is required in all similar hearings. Similarly, I find no evidence of either intimidation or fabrication in the Licensing Division’s investigation or presentation of the case. The Minutes of Hearing reveal that the Department of State, instead of totally ignoring the Relief from Disabilities, as asserted by Appellant, in fact, introduced the same into the record of hearing. Furthermore, Appellant’s assertion that Department of State knew of his conviction in June of 1999 was effectively rebutted by his admission on cross examination that he never notified the Department of State of the conviction as he was unaware that he was required to do so. Finally, Appellant’s complaint of the admission of hearsay against him is without merit, as within appropriate limits as here, hearsay is permitted at administrative hearings. I find other complaints made by appellant in his appeal to also be without merit.

The only issue remaining is whether the failure to review Appellant’s license shocks the conscience and is so manifestly unfair as to require reversal. I am well aware that Appellant is a Marine Corps veteran who was wounded during the Vietnam War and that he has had extensive experience as a policeman and private investigator. The Administrative Law Judge, however, noted several factors which I cannot ignore, namely: the commission of the felony offense itself; the Appellant’s quasi-law enforcement capacity as a private investigator presuming a direct, continuous relationship between the crime of which he was convicted and the license which he wishes to renew; the lack of any other current rehabilitation evidence aside from the Certificate of Relief from Disabilities; and the Judge’s own observations that the Appellant indicated little or no remorse for his conduct and was evasive in answering the Judge’s query concerning the registration of the gun.

DETERMINATION

The Administrative Law Judge properly applied the law in this hearing and also was in the best position to determine Appellant's overall credibility and demeanor. Given the circumstances of this case his denial of the renewal of Appellant's private investigator license does not require reversal on the grounds that it shocks the conscience and is manifestly unfair. Appellant's appeal is therefore denied.

So ordered on:

Randy A. Daniels
Secretary of State