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BenchNOTES

Last Month's OATH Decisions

Personnel

Storing pornographic images and video clips on an agency computer cause for termination.

ALJ Julio Rodriguez recommended termination for a paralegal aide who used his agency computer to store thousands of unauthorized images and video clips, many of which were sexually explicit, as well as other programs and files.

The evidence also showed that the respondent was insubordinate and committed multiple time and leave violations. *Human Resources Admin. v. Vila*, OATH Index No. 1578/08 (June 10, 2008).

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Licensing

Suspension should be lifted where evidence rebuts assault charge.

At a summary suspension hearing, petitioner relied solely upon proof of respondent's arrest for assault in the third degree, while respondent presented overwhelming exculpatory evidence to show that the charges were unfounded.

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Therefore, petitioner failed to prove that continued suspension of respondent's license to drive for-hire vehicles was necessary or appropriate. ALJ Kevin Casey found that respondent did not pose a threat to public health or safety and recommended reinstatement of his license.

Taxi & Limousine Comm'n v. Riano, OATH Index No. 2554/08 (June 11, 2008).

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Loft Law

Diligent efforts to contact former tenants among the factors favoring abandonment finding.

In an abandonment application, no former tenants appeared at the hearing. The evidence showed that the building was delivered to the petitioner in 1996 with no residential tenants.

Prior to the hearing, the petitioner contacted former owners as well as their attorneys and managing agents in an effort to identify and locate former tenants.

ALJ Salzman recommended that the application be granted in light of these diligent efforts and proof by a preponderance of the evidence that the departure of the tenants was voluntary and not due to coercion.

Matter of Legend Corp, OATH Index No. 2024/08 (June 12, 2008).

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Practice and Procedure

Respondent's failure to appear at hearing insufficient basis to allow counsel's withdrawal.

Under OATH's rules, an attorney who has filed a notice of appearance may not withdraw from representation without the client's permission or as delineated in the Code of Professional Responsibility.

ALJ Ingrid Addison denied an attorney's motion to withdraw based on respondent's failure to

The ALJ found no indication that the attorney had taken steps to avoid prejudice to the respondent, including giving due notice of her intention to withdraw. The hearing continued in the respondent's absence.

Health & Hospitals Corp. (Lincoln Medical & Mental Health Center) v. Wolf, OATH Index No. 2153/08 (June 3, 2008).