

NORTH CAROLINA  
WAKE COUNTY

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
12 DOJ 01663

VINCENT TYRON GRIFFIN, )  
)  
Petitioner, )  
)  
v. )  
)  
NORTH CAROLINA ALARM )  
SYSTEMS LICENSING BOARD, )  
)  
Respondent. )  
)

PROPOSAL FOR DECISION

This contested case was heard before the Honorable Administrative Law Judge Joe Webster on August 28, 2012 in Raleigh, North Carolina.

#### **APPEARANCES**

Petitioner, *pro se*, failed to appear.

Respondent was represented by Jeffrey D. McKinney.

#### **ISSUE**

Whether the undersigned should dismiss this contested case for Petitioner's failure to prosecute the contested case?

#### **STATUTES AND RULES APPLICABLE TO THE CONTESTED CASE**

Official notice is taken of the following statutes and rules applicable to this case:

N.C. Gen. Stat. §§ 74D-2; 74D-5; 74D-6; 150B-2(4b); 150B-40(e); 1A-1, Rule 41(b);  
12 NCAC 7 § .0700; 26 NCAC 03 .0101(b)

#### **FINDINGS OF FACT**

1. Respondent Board is established pursuant to N.C. Gen. Stat. § 74D-1, *et seq.*, and is charged with the duty of licensing and registering individuals engaged in the alarm systems business.
2. Petitioner applied to Respondent Board for an alarm systems permit.

3. Respondent Board denied Petitioner's application.
4. Petitioner requested a hearing on Respondent's denial of Petitioner's application.
5. By Amended Notice of Hearing dated July 30, 2012, and mailed via certified mail, return receipt requested, Respondent advised Petitioner that a hearing on the denial of his application would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609. The Amended Notice of Hearing was mailed to 820 Martin Luther King Jr. Pkwy, Apt. 352, Durham, NC, 2771, the address Petitioner had notified Respondent was his.
6. The Amended Notice of Hearing was in fact received by Petitioner as evidenced by the return receipt signed by Petitioner and dated August 1, 2012.
7. Respondent presented sufficient evidence to prove that the Amended Notice of Hearing was delivered to Petitioner.
8. On August 28, 2012, Administrative Law Judge Joe Webster, Counsel for Respondent, and Anthony Bonapart, witness for Respondent, appeared at the Office of Administrative Hearings for the contested case hearing.
9. Petitioner failed to appear at the hearing, and did not attempt to contact the Office of Administrative Hearings or the Respondent to request a continuance.

### **CONCLUSIONS OF LAW**

1. Pursuant to N.C. Gen. Stat. § 150B-40(e), Respondent requested designation of an Administrative Law Judge to preside at a contested case hearing under Article 3A.
2. Respondent is an "occupational licensing agency" pursuant to N.C. Gen. Stat. § 150B-2(4b).
3. Pursuant to 26 NCAC 03 .0101(b), the Rules of Civil Procedure as contained in N.C. Gen. Stat. 1A-1 shall apply in this contested case. Rule 41(b) of N.C. Gen. Stat. 1A-1 authorizes the undersigned to dismiss a contested case, upon Respondent's motion, for failure of the Petitioner to prosecute.
4. In this case, Respondent proved that Respondent mailed, via certified mail, an Amended Notice of Hearing to Petitioner's mailing address, notifying Petitioner that a contested case hearing would be held in this case on August 28, 2012 at the Office of Administrative Hearings. Respondent also proved that on August 1, 2012, Respondent's Amended Notice of Hearing was delivered to Petitioner at the mailing address that Petitioner provided to Respondent.
5. Respondent's counsel, Respondent's witness, and the assigned Administrative Law Judge appeared for the contested case hearing in this matter. However, Petitioner failed to appear at the hearing.

6. By failing to appear at this contested case hearing, Petitioner has failed to prosecute this contested case.

7. Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned dismisses this contested case for Petitioner's failure to prosecute this contested case pursuant to Rule 41(b), N.C. Gen. Stat. § 1A-1.

8. The undersigned has considered actions less drastic for disposing of this contested case and determines that less drastic actions will not suffice. The lack of meaningful response from Petitioner prohibits even an examination by the undersigned of excusable neglect by Petitioner. Therefore, no less drastic action other than disposing of this case by dismissal would best serve the interests of justice.

Based on the foregoing, the undersigned makes the following:

### **FINAL DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby **DISMISSES** this contested case petition without prejudice for Petitioner failing to prosecute this contested case. Pursuant to Rule 41(b), the Petitioner may file a new action, with Respondent based on the same claim. However, a new action must be commenced within one year after this dismissal.

### **NOTICE AND ORDER**

This Final Decision is issued under the authority of N.C. Gen. Stat. § 150B-36(c). Pursuant to N.C. Gen. Stat. § 150B-45, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The party seeking review must file the **petition within 30 days after being served** with a written copy of the Administrative Law Judge's Decision and Order.

N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. N.C. Gen. Stat. § 150B-47 requires the Office of Administrative Hearings to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. To ensure the timely filing of the record, the appealing party must send a copy of the Petition for Judicial Review to the Office of Administrative Hearings when the appeal is initiated.

This the 26<sup>th</sup> day of September, 2012.

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The Honorable Joe Webster  
Administrative Law Judge