

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
12 DOJ 03457

## PROPOSAL FOR DECISION

## APPEARANCES

Respondent was represented by Jeffrey D. McKinney.

**WITNESSES**

Petitioner – Petitioner testified on his own behalf.

## ISSUES

## **BURDEN OF PROOF**

Respondent has the burden of proving that the Petitioner lacks good moral character or temperate habits. Petitioner may rebut Respondent's showing.

**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; 12 NCAC 7 § .0700

**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. On December 14, 2011, Petitioner's applied to Respondent Board for a new alarm registration permit. Petitioner's application was introduced as Respondent's ***Exhibit 1***. Exhibit 1 was admitted as part of the record.
3. In connection with his application, Petitioner also submitted a Criminal Record Check, which was introduced as ***Exhibit 2***. Exhibit 2 was admitted as part of the record. Exhibited 2 revealed the following criminal conviction for Petitioner:

Westchester Co., NY:            11/25/98 (F) 4<sup>th</sup> Deg. Grand Larceny,  
   1175-97; Guilty
4. Mr. Bonapart testified that pursuant to Petitioner's criminal conviction, Petitioner's application for registration was denied. Respondent Board introduced as ***Exhibit 3***, a "For Cause" denial letter dated March 14, 2012. Exhibit 3 was admitted as part of the record.
5. Petitioner then testified on his own behalf. Petitioner explained that he was living in Yonkers, New York in 1997. He and his girlfriend were at a bar when two other girls starting arguing with his girlfriend's friend. He explained that they tried to leave but were followed by two couples. When they tried to get into their car they were attacked and defended themselves. They were able to get in their car and drive away.
6. Petitioner explained that they were then pulled over and the police stated that one of the other girls claimed that he had taken her cell phone. The police searched him but did not find a cell phone. He was arrested.
7. Petitioner testified that he was represented by a Legal Aid attorney who advised him to plead guilty to grand larceny because he would otherwise possible face up to five years in jail. Petitioner admitted to pleading guilty to the charge.
8. Petitioner further testified that he has never had any other criminal issues since the conviction in 1997. He has worked in several jobs and he already has his alarm systems license in the State of Virginia. Petitioner testified that he attends church and participates in a program working with youths in the church.

9. Petitioner also introduced several letters from his employers speaking highly of petitioner's character and work ethic. These letters were introduced as ***Petitioner's Exhibits***. Petitioner's Exhibits were admitted as part of the record.

### **CONCLUSIONS OF LAW**

1. Pursuant to N.C. Gen. Stat. § 74D-6, Respondent Board may refuse to issue an alarm systems registration permit for lack of good moral character or temperate habits.
2. Pursuant to N.C. Gen. Stat. § 74D-6(a), conviction by a State court for larceny shall be prima facie evidence that the applicant does not have good moral character or temperate habits.
3. Respondent Board presented evidence that Petitioner lacked good moral character or temperate habits through Petitioner's criminal record.
4. Petitioner presented sufficient evidence to rebut the presumption that he lacks good moral character.

Based on the foregoing, the undersigned makes the following:

### **PROPOSAL FOR DECISION**

The North Carolina Alarm Systems Licensing Board will make the final decision in this contested case. It is proposed that the Respondent Board **REVERSE** its denial of Petitioner's application for a registration permit.

### **ORDER**

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714, in accordance with G.S. 150B-36(b).

### **NOTICE**

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact and to present oral and written arguments to the agency pursuant to G.S. 150B-40(e).

The agency that will make the final decision in this contested case is the Alarm Services Licensing Board.

This the 26th day of September, 2012.

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The Honorable Joe Webster  
Administrative Law Judge

Submitted this the 20<sup>th</sup> day of September, 2012

BAILEY & DIXON, LLP

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**CERTIFICATE OF SERVICE**

I, Jeffrey D. McKinney, hereby certify that I have served a copy of the foregoing Proposed Proposal for Decision by depositing a copy with the United States Postal Service, first class mail, and addressed as follows:

Carlito Soler  
3320 Boynton Ct.  
Virginia Beach, VA 27452

This the 20<sup>th</sup> day of September, 2012

BAILEY & DIXON, LLP

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Jeffrey D. McKinney

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