

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DOJ 05041

PROPOSAL FOR DECISION

APPEARANCES

Respondent was represented by attorney Jeffrey D. McKinney.

Petitioner testified on his own behalf.

BURDEN OF PROOF

STATUTES AND RULES APPLICABLE TO THE CONTESTED CASE

Official notice is taken of the following statutes and rules applicable to this case:
N.C.G.S. §§ 74C-3(a)(6); 74C-8; 74C-9; 74C-11; 74C-12; 12 NCAC 7D § .0700.

FINDINGS OF FACT

1. Respondent Board is established pursuant to N.C.G.S. 74C-1 *et seq.*, and is charged with the duty of licensing and registering individuals engaged in the private protective services profession, including armed and unarmed security guards.
2. On March 9, 2012, Petitioner applied to Respondent for an unarmed security guard registration. A copy of Petitioner's application was introduced as **Exhibit 1**.
3. The Petitioner provided a Florida statewide criminal record search with his application. The criminal record search revealed that he was charged with a misdemeanor on October 4, 2000; a misdemeanor carrying a concealed weapon and felony drug possession on August 1, 2002; and a misdemeanor underage possession of alcohol on November 27, 1997. This record reflects "Adjudication Withheld" for all of the charges.
4. On May 10, 2012, Respondent received further documents from Petitioner regarding Petitioner's application. Copies of these documents were introduced as **Exhibit 3**. Included in those documents was an Order of Supervision from Broward County, Florida, which indicated that Petitioner had entered a plea of nolo contendere (sic) in connection with the charge of Drugs-Possess-Poss Sell Deliver Alprazolam, the felony listed above.
5. Petitioner testified that when he was 15 or 16 years old he was prescribed Alprazolam for Attention Deficit Disorder. Years later, around 2002, he was at a bowling alley when a fight broke out, in which he was not involved. The police arrived and searched him and found 15 tablets of Alprazolam on his person. At that time he was no longer being prescribed Alprazolam.
6. Petitioner testified that he did not enter a guilty plea and was not convicted of the crime, but that under Florida law, adjudication was withheld. Under North Carolina law, a plea of nolo contendere is equivalent to a plea of "no contest." The "adjudication withheld" is basically equivalent to "prayer for judgment continued" (PJC). In North Carolina, entry of a plea of no contest and receiving a PJC is considered a conviction for purposes herein.
7. Petitioner testified that he is currently licensed in Florida, Indiana and Illinois and he is still employed by Brink's, Inc. He also produced evidence that he has a concealed weapons permit in Florida and that North Carolina grants reciprocity for such a weapons permit. He has even been permitted to carry weapons on airplanes.
8. Petitioner had been counseled and believed that he had not been "convicted" of any criminal offenses. He has received all of his licenses including his conceal-carry at times subsequent to the listed offenses. He was not aware that North Carolina treated the nolo contendere as the same as a plea of guilty and that the "adjudication withheld" would be treated as a conviction—much the same as the majority of North Carolina's population.

CONCLUSIONS OF LAW

1. Under N.C.G.S. §74C-12(a)(25), Respondent Board may refuse to grant a registration if it is determined that the applicant lacks good moral character.
2. Respondent Board presented evidence that Petitioner lacked good moral character through his plea of guilty/nolo contendere in connection with his felony charge for possession of a controlled substance.
3. Petitioner presented sufficient evidence to rebut Respondent's evidence as to Petitioner's lack of good moral character; however, Petitioner should be placed on probationary status for a one year period.

Based on the foregoing, the undersigned makes the following:

PROPOSAL FOR DECISION

The North Carolina Private Protective Services Board will make the final decision in this contested case. It is proposed that the Board **REVERSE** its initial decision to deny Petitioner's application for unarmed security guard registration, provided, however, that Petitioner shall be placed on probationary status for a period of one year.

NOTICE AND ORDER

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 N.C.G.S. §150B-40(e).

The agency that will make the final decision in this contested case is the North Carolina Private Protective Services Board.

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, NC 27699-6714, in accordance with G.S. §150B-36(b).

This the 27th day of August, 2012.

The Donald W. Overby
Administrative Law Judge