

NORTH CAROLINA
WAKE COUNTY

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DOJ 07299

JAYSON ANTHONY RODRIGUEZ,)
)
)
Petitioner,)
)
v.)
)
N.C. PRIVATE PROTECTIVE)
SERVICES BOARD,)
)
Respondent.)

PROPOSAL FOR DECISION

This contested case was heard before the Honorable Fred G. Morrison Jr., Senior Administrative Law Judge, on October 23, 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.G.S. §§ 74C-3(a)(6); 74C-8; 74C-9; 74C-11; 74C-12; 74C-13; 12 NCAC 7D § .0800.

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 unarmed and armed security guards.
2. Petitioner applied to Respondent Board for an unarmed registration permit.
3. Respondent Board denied Petitioner's application.

4. Petitioner requested a hearing on Respondent's denial of Petitioner's application.
5. On August 13, 2012, a Notice of Hearing was mailed via certified mail, return receipt requested, to Petitioner ("Notice of Hearing"). The Notice of Hearing was mailed to 921 Sparrow Valley Way, Charlotte, North Carolina, 28214, Petitioner's last known mailing address on file with Respondent ("Petitioner's Address"). Petitioner failed to claim the Notice of Hearing.
6. On October 4, 2012, the Honorable Administrative Law Judge Fred G. Morrison, Jr. filed a Notice of Hearing ("Second Notice of Hearing") advising that a hearing on the denial of Petitioner's application would be held on October 23, 2012 at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina, 27609 ("Office of Administrative Hearings"). The Second Notice of Hearing was mailed first class to Petitioner's Address. The Second Notice of Hearing was not returned to the Office of Administrative Hearings.
7. Respondent Board attempted on several occasions to contact Petitioner at his last known phone number regarding the hearing on the denial of Petitioner's application. Petitioner did not return any calls and made no attempt to schedule or re-schedule the hearing.
8. Following his filing of appeal, Petitioner has made no attempt to prosecute said appeal.
9. On October 23, 2012, Honorable Administrative Law Judge Fred G. Morrison, Jr., counsel for Respondent, and Anthony Bonapart, witness for Respondent, appeared at the Office of Administrative Hearings for the contested case hearing.
10. 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.
11. Respondent presented sufficient evidence to prove that Petitioner has failed to prosecute this contested case.

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 on August 13, 2012, Respondent mailed, via certified mail, a Notice of Hearing to Petitioner's Address, notifying Petitioner that a hearing would be held in this contested case. Respondent also proved that on October 4, 2012, the Office of Administrative Hearing mailed, via first class mail, a Second Notice of Hearing to Petitioner's Address notifying Petitioner that a hearing would be held on October 23, 2012 at the Office of Administrative Hearings.

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. Respondent Board attempted on several occasions to contact Petitioner at his last known phone number regarding the hearing on the denial of Petitioner's application. Petitioner did not return any calls and made no attempt to schedule or re-schedule the hearing.

7. By failing to appear at this contested case hearing and by failing to take any actions in pursuing his appeal, Petitioner has failed to prosecute this contested case.

8. 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.

9. 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:

PROPOSAL FOR 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 ____ day of December, 2012.

The Honorable Fred G. Morrison Jr.
Senior Administrative Law Judge

A copy of the foregoing was mailed to:

Jayson Anthony Rodriguez
921 Sparrow Valley Way
Charlotte, NC 28214
PETITIONER

Jeffrey P. Gray
Jeffrey D. McKinney
BAILEY & DIXON, LLP
P.O. Box 1351
Raleigh, NC 27602-1351
ATTORNEYS FOR RESPONDENT

This the _____ day of December, 2012.

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Raleigh, North Carolina 27699-6714
919/431-3000

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