

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DOJ 08763

DOUGLAS J. NETTESHEIM,)
)
Petitioner,)
v.)
)
N.C. ALARM SYSTEMS LICENSING)
BOARD,)
)
Respondent.)
_____)

PROPOSAL FOR DECISION

This contested case was heard before Senior Administrative Law Judge Fred G. Morrison Jr. on March 26, 2013, in Raleigh, North Carolina.

APPEARANCES

Petitioner appeared *pro se*.

Respondent was represented by attorney Jeffrey P. Gray.

WITNESSES

Petitioner - Petitioner testified on his own behalf. John Felton, Jeremy Nettesheim, and Donald Nettesheim testified as character witnesses for Petitioner.

Respondent - Alarm Systems Licensing Board Deputy Director Anthony Bonapart testified for Respondent Board.

ISSUE

Whether grounds exist for Respondent to deny Petitioner's application for an alarm systems registration permit based on Petitioner's conviction of a crime involving moral turpitude and a lack of good moral character or temperate habits.

BURDEN OF PROOF

Respondent has the burden of proving that 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.G.S. §§ 74D-2; 74D-6; 74D-8; 74D-10; 12 NCAC 11 .0300, *et seq.*

FINDINGS OF FACT

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing and each stipulated on the record that notice was proper.
2. Respondent Board is established under N.C.G.S. § 74D-4, *et seq.*, and is charged with the duty of licensing and registering individuals engaged in the alarm systems business.
3. By application dated July 26, 2012, Petitioner applied to Respondent Board for an Alarm Registrant Permit. (R. Ex. 1). On the application, Petitioner answered “no” to the following question: “Have you ever pled guilty or been convicted of any crime (Felony or Misdemeanor)?”
4. A criminal record search (R. Ex. 2) from Ohio revealed that on September 8, 2008 Petitioner had been convicted of one (1) count of Misdemeanor Possession of Drugs, and on October 2, 2008, had been convicted of one (1) count of Misdemeanor Attempted, Aggravated Possession of Drugs.
5. By letter dated November 5, 2012, Respondent denied Petitioner’s application for alarm registration “For Cause” based on the above criminal convictions. (R. Ex. 3).
6. Petitioner is 43 years old. Petitioner graduated from high school. His drug offenses followed the break-up of a long-term relationship with his fiancé. Petitioner looked to drugs as a coping mechanism. Petitioner left Ohio in late 2006 to return to Raleigh, live with his parents, and get his life back on track. Petitioner has completed a substance abuse intensive outpatient program and been “clean” or drug-free for over five (5) years.
7. His potential employer, his brother, and his father testified on Petitioner’s behalf. They now recognize him as a responsible person taking care of his own affairs, who is very dependable, a quick learner and hard worker. He helps his parents with household affairs and serves as a handy-man for them.

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings. Conviction of a crime involving illegal possession of drugs is prima facie evidence that the applicant lacks good moral character or temperate habits.

2. Respondent Board presented evidence of Petitioner's conviction of a crime involving moral turpitude and his lack of good moral character and temperate habits through the criminal convictions for illegal possession of drugs.
3. Petitioner presented evidence sufficient to explain the convictions and to rebut the prima facie evidence of lack of good moral character and temperate habits.

Based on the foregoing, the undersigned renders the following:

PROPOSAL FOR DECISION

It is proposed that the Board **REVERSE** its initial decision to deny Petitioner's application for alarm registration on the basis that Petitioner has rebutted the original presumption that he lacks good moral character or temperate habits.

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, NC 27699-6714, in accordance with G.S. §150B-40(e).

NOTICE

The North Carolina Alarm Systems Licensing Board is the agency that will the Final Decision in this case. As the final decision-maker, that agency 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).

This the ____ day of April, 2013.

Fred G Morrison Jr.
Senior Administrative Law Judge

A copy of the foregoing was mailed to:

Douglas J. Nettesheim
6005 Wintergreen Drive
Raleigh, NC 27609
PETITIONER

Jeffrey P. Gray
Bailey & Dixon, LLP
PO Box 1351
Raleigh, NC 27602
ATTORNEY FOR RESPONDENT

This the _____ day of April, 2013.

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