

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DOJ 09863

COUNTY OF WAKE

JESSE ALAN TYNER,)
)
 Petitioner,)
)
 v.)
)
 NORTH CAROLINA ALARM)
 SYSTEMS LICENSING BOARD,)
)
 Respondent.)

PROPOSAL FOR DECISION

THE ABOVE-ENTITLED MATTER was heard before the undersigned Augustus B. Elkins II, Administrative Law Judge, on April 23, 2012 in Raleigh, North Carolina. This case was heard pursuant to N.C.G.S. § 150B-40(e), designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes. The record was left open for the parties’ submission of further materials, including but not limited to supporting briefs, memorandums of law and proposals. The Petitioner filed a letter on May 28, 2013 stating that character references would be forth coming and “should arrive within the 30 days.” Three letters were attached to a second Notice of Hearing that was filed on May 28, 2013. Respondent filed proposals with the Clerk’s Office on June 21, 2013 which was received by the Undersigned on June 25, 2013. The record was closed on June 25, 2013.

APPEARANCES

Petitioner, *pro se*.

Respondent was represented by Jeffrey D. McKinney.

WITNESSES

For Respondent – Anthony Bonapart, Deputy Director, testified for Respondent Board.

For Petitioner – Petitioner testified on his own behalf.

ISSUE

Whether grounds exist for Respondent to deny Petitioner's application for an alarm systems registration permit pursuant to N.C. Gen. Stat. § 74D-1 *et seq.* based on Petitioner's lack of good moral character and temperate habits as evidenced by Petitioner's criminal record.

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-6; 74D-8;
12 NCAC 07 SubChapter D

EXHIBITS

Petitioner's three letters from various sources

Respondent's Exhibits 1-3 were introduced and admitted.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following Findings of Fact by a preponderance of the evidence. In making these Findings of Fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in this case.

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. The Notice of Hearing sent out by the Board incorrectly labeled the Respondent as the NC Private Protective Services Board. The Parties agreed that the North Carolina Alarm Systems Licensing Board was the correct Respondent as evidence in Respondent Exhibit 3.
2. On December 10, 2013, Petitioner applied to Respondent Board for a new alarm systems registration. Petitioner's application was introduced and admitted as Respondent's Exhibit 1. Attached to Petitioner's application was Petitioner's criminal record.

3. Respondent Board also introduced Petitioner's "Offender Information" from the North Carolina Sex Offender Registry as Respondent's Exhibit 2. Exhibit 2 was admitted as part of the record.

4. Petitioner's criminal record showed the following:

(1) Moore County	8/28/00	(F)	Indecent Liberties with Child	Guilty
(2) Moore County	8/28/00	(F)	Indecent Liberties with Child	Guilty

5. 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 January 16, 2013. Exhibit 3 was admitted as part of the record.

6. Petitioner testified on his own behalf. Petitioner admitted to the criminal convictions on his record. Petitioner explained that in 1997 while visiting a friend of his father's, he fondled the friend's six (6) year old daughter. The daughter later told her parents about the incident. During a subsequent investigation by the police, Petitioner confessed to the crime. Petitioner was approximately 18 years old at the time of the offense. Some thirteen years have passed since his conviction.

7. Petitioner explained that he was placed on the North Carolina Sex Offender Registry. He explained that he has complied with every requirement. Petitioner also explained that he received his electrical license with certain stipulations as a result of his criminal record.

8. Petitioner submitted an "Amendment to Hire" from his employer providing that Petitioner would not work on any premise for any customer without the presence of another person with him at all times.

9. Carol Damone submitted a letter on behalf of Petitioner stating that Petitioner had the qualities one wished to see in an employee including "courtesy, respect for himself and others, and a sense of responsibility." Ms. Damone has known the Petitioner for more than 12 years and they have worked together on "a number of community activities." In a second character letter dated May 1, 2013, Kristin M. Hazelton, has known Petitioner since 2006 and finds him to be "intelligent, capable, dedicated, and a personable young man." A third letter, dated May 3, 2013, is from Uwe Hagedorn, Director of Customer Care & Installation for Trident Marketing. He states the Petitioner "has been a member of his staff for almost a year and has proven himself to be a valuable asset to the business." Mr. Hagedorn describes Petitioner as professional, patient, "unfailingly courteous," and one who "has demonstrated the highest level of both compassion and professionalism during his employment." Of note is that all three letters sent by the individuals were signed in front of a Notary Public.

BASED UPON the foregoing Findings of Fact and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following:

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings. Respondent is an “occupational licensing agency” pursuant to N.C. Gen. Stat. § 150B-2(4b).
2. Under G.S. § 74D-2(d)(2) and G.S. § 74D-6(3), Respondent Board may refuse to grant a registration if it is determined that the applicant lacks good moral character or has demonstrated intemperate habits. Acts that are prima facie evidence of intemperate habits or lack of good moral character are found under both statutes. They include conviction of any crime involving the illegal use, carrying, etc. of a firearm; illegal use, sale, etc. of a controlled substance; conviction of a crime involving felonious assault or other act of violence; conviction of burglary, larceny, etc.; or any offense involving moral turpitude; or a history of addiction.
3. Under G.S. § 74D-6(3), conviction of any crime involving moral turpitude is *prima facie* evidence that the applicant does not have good moral character or temperate habits.
4. Good moral character has been defined as “honesty, fairness, and respect for the rights of others and for the laws of state and nation.” See *Daniel Brannon Gray v. N.C. Sheriffs Education and Training Standards Commission*, 09 DOJ 4364 (March 15, 2010 citing *In Re Willis*, 299 N.C. 1, 10 (1975).
5. Respondent Board presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through his criminal record.

BASED ON the foregoing Findings of Fact and Conclusions of Law, the Undersigned makes the following:

PROPOSAL FOR DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. The weight of the evidence in this case sustains the holding of the Respondent to deny Petitioner’s application for an alarm systems registration permit. As Petitioner’s character letters were submitted after the hearing with no chance for Respondent to see their contents, the Board should review and explore their contents with Petitioner and Respondent before issuing a final decision.

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. N.C.G.S. § 150B-40(e). The agency that will make the final decision in this contested case is the North Carolina Alarm Systems Licensing Board.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addresses to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record. N.C.G.S. § 150B-42(a). It is requested that the agency furnish a copy to the Office of Administrative Hearings.

IT IS SO ORDERED.

This is the 8th day of August, 2013.

Augustus B. Elkins II
Administrative Law Judge