

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
13 DOJ 9974

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MARCUS TEER BENSON,

Petitioner,

v.

NORTH CAROLINA PRIVATE  
PROTECTIVE SERVICES BOARD,

Respondent.

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**PROPOSAL FOR DECISION  
GRANTING OF SUMMARY  
JUDGMENT**

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**DECISION GRANTING SUMMARY JUDGMENT IN FAVOR OF PETITIONER**

In accordance with N.C. Gen. Stat. § 150B-40(e), Respondent requested the designation of an Administrative Law Judge to preside at the hearing of a contested case on this matter under Article 3A, Chapter 150B of the North Carolina General Statutes. Petitioner filed an Amended Motion to Dismiss as Sanction and the hearing was stayed awaiting ruling on the motion. Due to the substantive nature of the above-cited motion and as matters outside the pleadings have been taken into account, the Undersigned is treating Petitioner's motion as one for summary judgment. The Undersigned makes the following Proposal for Decision finding that in accordance with the applicable law and regulations and the facts specific to this case, Summary Judgment should be granted for Petitioner.

**STANDARD OF REVIEW – SUMMARY JUDGMENT**

Summary judgment is designed to eliminate formal trials where only questions of law are involved. Summary judgment should be used cautiously, with due regard to its purposes and a cautious observance of its requirements. See *Brown v. Greene*, 98 N.C.App. 377, 390 S.E.2d 695 (1990). To entitle one to summary judgment, the movant must conclusively establish a legal bar to the nonmovant's claim or complete defense to that claim. See *Virginia Elec. and Power Co. v. Tillett*, 80 N.C.App. 383, 385, 343 S.E.2d 188, 190-91, *cert denied*, 317 N.C. 715, 347 S.E.2d 457 (1986).

## **FINDINGS OF FACT**

1. Petitioner is a licensed Private Investigator in the State of North Carolina. When he first applied for licensing with the Respondent in 2004, he was approved for an individual license.

2. In 2008, Petitioner discontinued his contractual employment with Cape Fear Investigative Services and started his own company. Upon discontinuing his dealings with Cape Fear, Petitioner learned that sometime during the prior license renewal period process, his license had been transferred under Cape Fear without his knowledge or authorization. When he learned of this, Petitioner immediately renewed his license and filed for corporation status with the North Carolina Secretary of State's Office.

3. In December of 2008, Respondent sent Petitioner a letter of reprimand "for engaging in a private protective services profession under a name other than the name which the license was obtained under."

4. Per appeal instructions from Respondent, Petitioner requested an administrative hearing on February 10, 2009. Respondent acknowledged receipt by letter dated February 16, 2009.

5. Petitioner received a Notice of Hearing some four (4) years later, on March 14, 2013 setting a hearing regarding his 2008 reprimand for April 23, 2013.

**BASED UPON** the above Findings of Fact, the undersigned Administrative Law Judge makes the following:

## **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction of this contested case pursuant to Chapter 150B of the North Carolina General Statutes. N.C.G.S. § 150B-38 requires that "the agency shall give the parties in the case an opportunity for hearing *without undue delay*." (emphasis added)

2. Petitioner's motion effectively challenges Respondent's failure to comply with its statutory appeal process and thus contends that Respondent has now lost jurisdiction to proceed with the present case.

3. Petitioner is a person aggrieved as defined in N.C.G.S. § 150B. Respondent has substantially prejudiced Petitioner's rights by proceeding with this action several years after the request for an administrative hearing. Petitioner has alleged that his rights have been substantially prejudiced by Respondent's decision and that Respondent has violated one or more

of the standards set forth in N.C.G.S. § 150B-38. Petitioner has properly and lawfully stated a claim for relief.

4. Respondent has failed to follow its applicable law which requires that a hearing shall go forward without undue delay. The reasons for this requirement are obvious as they involve the need for accurate and available evidence at or near the time of the action that was proposed by the Respondent. Respondent's delay of some four years conflicts with several comparable three year statutes of limitations. Statutes of limitation serve an important purpose in North Carolina. The purpose of a statute of limitations is to afford security against stale demands. *Congleton v. City of Asheboro*, 8 N.C. App. 571, 574, 174 S.E.2d 870 (1970). The Undersigned does not rely on a statute of limitations specific to this case but uses legislative intent in a statute of limitations as support for the lack of logic and clarity in an agency appeal process that would have no time limitations.

5. To suppose that Respondent is under no time requirement to set a hearing after an appeal has been requested is illogical and a misinterpretation of its responsibilities. If Respondent's appeal process did not impose an obligation to conduct a hearing within a reasonable time of the request, then the result would, in equity be fundamentally unfair, and necessarily be a lack of due process, since it would allow Respondent to postpone indefinitely its obligation to provide a fair and impartial hearing.

6. There are no genuine issues of material fact regarding the issues raised by Petitioner in his Motion and Petitioner is entitled to judgment in his favor as a matter of law. In this case, Respondent has failed to follow its own statutorily mandated process by failing to provide Petitioner with a timely hearing in which Petitioner requested over four years ago. When Respondent failed to provide Petitioner with a timely hearing and now comes forward outside the bounds of any reasonable statute of limitations, it has effectively lost jurisdiction to proceed further. Respondent has acted erroneously, failed to use proper procedure, and failed to act as required by law and rule.

7. Moreover, and/or in the alternative, Respondent has manifested an intention to thwart the progress of this contested case by failing to set an administrative hearing as requested by Petitioner without undue delay. Imposition of sanctions because of the Respondent's failure to prosecute and disposition of this case by default in favor of Petitioner in accordance with N.C. GEN. STAT. § 150B-41 and N.C. GEN. STAT. § 1A-1, Rule 41 of the North Carolina Rules of Civil Procedure is proper and lawful because of the Respondent's failure to notice Petitioner for hearing within a reasonable time as mandated by law.

### **PROPOSAL FOR DECISION**

**WHEREFORE**, based upon the above stated Findings of Fact and Conclusions of Law, the Undersigned Administrative Law Judge proposes the Private Protective Services Board grant Summary Judgment pursuant to Rule 56 of the North Carolina Rules of Civil Procedure in favor

of the Petitioner and set aside the Board's 2008 letters of reprimand and expunge the same from the record of the Petitioner.

### **NOTICE AND ORDER**

The North Carolina Private Protective Services Board will make the Final Agency Decision in this contested case. 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. Gen. Stat. § 150B-40(e).

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed 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.

This the 15<sup>th</sup> day of May, 2013.

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Augustus B. Elkins, II  
Administrative Law Judge