

**STATE OF NORTH CAROLINA**

**COUNTY OF WAKE**

**IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
13 DOJ 15271**

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JOSE MONSERRATE ACOSTA, )  
 )  
 Petitioner, )  
v. )  
 )  
N.C. PRIVATE PROTECTIVE )  
SERVICES BOARD, )  
 )  
 Respondent. )

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**PROPOSAL FOR DECISION**

**THE ABOVE-ENTITLED MATTER** was heard before the undersigned Augustus B. Elkins II, Administrative Law Judge, in Raleigh, North Carolina. This case was heard pursuant to N.C.G.S. § 150B-40, 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 Respondent submitted proposals and argument on September 25, 2013 which was received by the Undersigned on October 7, 2013. The record was held open for submission by Petitioner, and receiving no further proposal or other materials the record was closed on October 25, 2013.

**APPEARANCES**

Petitioner: Jose Monserrate Acosta, Jr.  
5228 Sunriver Road  
Gastonia, North Carolina 28054

Respondent: Jeffrey P. Gray, Esq.  
Bailey & Dixon, LLP  
P.O. Box 1351  
Raleigh, North Carolina 27602

**ISSUE**

Whether Petitioner should be denied an unarmed guard registration based on Petitioner's lack of good moral character and temperate habits as evidenced by convictions of misdemeanor and felony possession of controlled substances.

## **APPLICABLE STATUTES AND RULES**

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.

## **EXHIBITS**

Respondent's Exhibits 1 and 2 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. §74C-1, *et seq.*, and is charged with the duty of licensing and registering individuals engaged in the armed and unarmed security guard and patrol business.
2. Petitioner applied to Respondent Board for an unarmed guard registration.
3. Respondent denied the unarmed guard registration due to Petitioner's criminal record which showed the following:

A conviction in New York, State of New York, on March 6, 2007 for felony Possession of a Controlled Substance (Heroin), 3<sup>rd</sup> Degree.

A conviction in New York, State of New York, on April 13, 2007 for felony Possession of Controlled Substance (Cocaine), 7<sup>th</sup> Degree.

A conviction in New York, State of New York, on March 28, 2007 for Possession of Controlled Substance (Cocaine), 7<sup>th</sup> Degree.

4. Petitioner requested a hearing on Respondent's denial of the unarmed guard registration.

5. By Notice of Hearing dated July 16, 2013, and mailed via certified mail, Respondent advised Petitioner that a hearing on the denial of his unarmed guard registration would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on August 27, 2013. Petitioner appeared at the hearing.
6. Petitioner testified that in regards to the March 6, 2007 conviction, that in March 2007 he lived in New York City. One day he got high on heroin at a friend's house. He left his friend's house to walk to the store. He was staggering down the street and drew the attention of the police. The police stopped him and saw that he was high on drugs. They searched him and found two (2) bags of heroin on his person. He was arrested and placed in jail. He retained an attorney who recommend that he plead guilty and pay a fine.
7. The March 28, 2007 incident happened in a park called "75<sup>th</sup> Park." He and five (5) friends were hanging out at the park around 10:30 p.m. They were laughing and having fun. The police heard the commotion and advanced towards them to investigate. The police conducted a search of him and his friends and located cocaine on his person or near him. He was arrested and placed in jail. He retained an attorney who recommended that he plead guilty and pay a fine.
8. The April 13, 2007 incident happened at a train station. He and about ten (10) friends were in the train station enroute to a movie. Someone evaded payment by jumping over the turnstile and the person fit his description. The police initiated a manhunt and approached him on the platform and conducted a search. While going through his clothing a bag of heroin fell out of his pocket. He was immediately arrested and transported to jail. He retained an attorney who recommended that he plead guilty and pay a fine.
9. Petitioner was in drug rehabilitation for one and a half years at J-CAP in Queens, New York. He then served as a counselor in the same facility. He ceased using drugs after receiving help for his addiction.
10. Petitioner worked as a bail bondsman in New York and also obtained his pest control license. He obtained a college degree from St. Thomas Aquinas College in New York.
11. Petitioner later lived in Youngstown, OH where he worked as an unarmed security guard.
12. Petitioner has lived in North Carolina for four (4) years. His wife works for the Gaston County Department of Social Services. They have two daughters.
13. Petitioner has worked for Landmark Security, Inc., starting in July 2012 and was assigned to downtown Charlotte and a bowling alley in Gastonia, as well as a chemical plant in Kings Mountain. He patrolled the areas and completed reports on site security.

**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 properly are before the Office of Administrative Hearings.
2. Under G.S. §74C-12(a)(25), Respondent Board may refuse to grant a registration if it is determined that the applicant has demonstrated intemperate habits or lacks good moral character.
3. Under G.S. §74C-8(d)(2), conviction of any crime involving possession or use of an illegal controlled substance is *prima facie* evidence that the applicant does not have good moral character or temperate habits.
4. Respondent Board presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through conviction in New York, New York for two (2) felony and one (1) misdemeanor convictions involving possession of an illegal controlled substance.
5. Petitioner presented evidence sufficient to explain the factual basis for the charges and has rebutted the presumption. The Undersigned is particularly impressed with Petitioner's decision to enter drug rehabilitation and cease the use of illegal drugs, becoming a counselor at the facility and later obtaining a college degree.

**BASED UPON** 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. Based upon the foregoing Findings of Fact and Conclusions of Law, the Undersigned hereby proposes that Petitioner be issued an unarmed guard registration.

### **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 Private Protective Services 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 any attorney of record. It is requested that the agency furnish a copy to the Office of Administrative Hearings.

**IT IS SO ORDERED.**

This the 10th day of December, 2013.

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Augustus B. Elkins II  
Administrative Law Judge