

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13DOJ15507

CHARLES ROBERT AUSTIN JR. PETITIONER, V. N C ALARM SYSTEMS LICENSING BOARD RESPONDENT.	PROPOSAL FOR DECISION
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On September 24, 2013, Administrative Law Judge J. Randall May called this case for hearing in Raleigh, North Carolina.

APPEARANCES

Petitioner appeared *pro se*.

Respondent was represented by attorney Jeffrey P. Gray, Bailey & Dixon, LLP, P. O. Box 1351, Raleigh, North Carolina 27602.

ISSUE

Whether the Petitioner's application for an alarm systems registration permit should be denied for convictions of Conspiracy to Sell Marijuana, and Use, Possession, Distribution of a Schedule III Drug (Steroids) while in the U. S. Navy.

APPLICABLE STATUTES AND RULES

Official notice is taken of the following statutes and rules applicable to this case:
N.C.G.S. §§ 74D-2; 74D-6; 74D-8; 12 NCAC 11 .0300.

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 system business.
2. Petitioner applied to Respondent Board for an alarm system registration permit.
3. Respondent denied the alarm registration due to Petitioner's criminal record which

showed the following:

Convictions at the Washington Navy Yard on October 15, 2004 for Conspiracy to Sell Marijuana and Use, Possession, Distribution of a Schedule III Drug (Steroids).

4. Petitioner requested a hearing on Respondent's denial of the alarm registration by letter received June 14, 2013.
5. By Notice of Hearing dated July 22, 2013, and mailed via certified mail, Respondent advised Petitioner that a hearing on the denial of his alarm registration would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on September 24, 2013.
6. Petitioner testified that he joined the United States Navy in 2000. He was a body builder or fitness enthusiast and was always searching for a way to improve his body mass. When he got stationed in Thailand he started hanging out with the wrong crowd. He started using steroids, first orally, and then by injection. He entered body building competitions in Thailand.
7. In 2002 the Navy transferred him to Japan. The small needles used to inject steroids were very difficult to obtain in Japan. He approached a Merchant Seaman who wanted his assistance in distributing marijuana worth approximately \$50,000.00. Petitioner testified that he never actually sold the marijuana, but was the "middle man". He connected the Merchant Seaman with an individual who could assist him with the sale. He basically traded assistance with the sale in order to acquire needles and never saw the marijuana.
8. There was a base "sting" underway and all three of the conspirators were eventually arrested. All three were brought up on charges for selling marijuana. The Navy opted to convene an article 15 UCMJ Hearing (referred to as Captain's Mast in the Navy) in lieu of a court martial.
9. Petitioner received a reduction in rank, but did not spend any time in jail. In October 2004 he was discharged from the United State Navy under Other than Honorable Conditions.
10. Petitioner admitted his mistake and lamented how he lost this career. He wanted to serve his country in the U.S. Navy. He always received good evaluations from 2000 through 2004 and received notations for consistently exceeding expectations, being a team player, and having pride in his appearance in uniform. He was always recommended for advancement and retention.
11. Petitioner submitted, without objection, letters of recommendation including one from Father F. R. Daniel of the Romanian Orthodox Church and one from a friend, Darren Brandon, his U.S. Navy evaluations manager, evaluations from his previous

employers, and his resume.

12. Petitioner has been previously employed with Southern Global, Sprint/Nextel and Gateway. He has been Employee of the Month with two separate prior employers. He has also been Employee of the Month with his current employer, Time Warner Cable.
13. Petitioner is married and has two children ages five and twelve.
14. Petitioner has worked for Time Warner Cable since 2007. He started working for Time Warner in Rochester, New York. In 2011 he moved to North Carolina where he was eventually promoted to an inbound sales supervisor position.

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings.
2. Under G.S. § 74D-6, 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. § 74D-2(d)(2), conviction of any crime involving use or possession 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 convictions in the U. S. Navy for drug related offenses.
5. Petitioner presented evidence sufficient to explain the factual basis for the charges, his good character, and positive employment history, thereby rebutting the presumption.

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 recommends that Petitioner be issued an alarm registration.

NOTICE AND ORDER

The North Carolina Alarm Systems Licensing Board is the agency that will make the Final Decision in this contested 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. Gen. Stat. § 150B-40(e).

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, N.C. 27699-6714.

This the 30th day of October, 2013.

J. Randall May
Administrative Law Judge