

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13DOJ16246

MICHAEL TYLER NIXON PETITIONER, V. NC ALARM SYSTEMS LICENSING BOARD RESPONDENT.	PROPOSAL FOR DECISION
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Pursuant to 26 NCAC 3.0129, for the purpose of correcting a clerical and/or mathematical error, IT IS HEREBY ORDERED that the "PROPOSAL FOR DECISION" issued from this office on November 5, 2013, is AMENDED as follows.

On September 24, 2013, Administrative Law Judge J. Randall May called this case for hearing in Raleigh, North Carolina. A follow-up conference call with counsel was conducted on November 21, 2013. During this call it came to the attention of the undersigned that a clerical and/or mathematical error had occurred in that the time for filing proposed decisions had been extended to November 13, 2013. Therefore, in consideration of Petitioner's proposed decision, the case papers, and arguments of counsel, the Proposal for Decision is AMENDED by substitution of the following:

APPEARANCES

Petitioner appeared *pro se*.

Respondent was represented by attorney Jeffrey P. Gray.

WITNESSES

Petitioner: Petitioner testified on his own behalf.

Respondent: Anthony Bonapart, Alarm Systems Licensing Board Deputy Director, and Kim Odom, Investigator for the Alarm Systems Licensing Board, testified for Respondent Board.

ISSUE

Whether grounds exist for Respondent to deny Petitioner's application for a Burglar Alarm Business License 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 his employment history and driving record.

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. Gen. Stat. §§ 74D-2; 74D-6; 74D-10; 12 NCAC 11.0209(c).

FINDINGS OF FACT

1. Respondent Board is established under N.C. Gen. Stat. § 74D-4, *et seq.*, and is charged with the duty of licensing and registering individuals engaged in the alarm systems business.
2. In an application received by Respondent on January 31, 2013, Petitioner applied to Respondent Board for a Burglar Alarm Business License. Petitioner's application was introduced and submitted as Respondent's Exhibit 1. In the application, Petitioner notes he intends to do business under the name Infinity Alarms, L.L.C. as the qualifying agent and manager.
3. Mr. Bonaparte testified that no reason for denial existed on the face of Petitioner's application but an investigation by Respondent Board revealed a negative employment history and criminal history. Respondent Board cited Petitioner's negative employment and criminal history in a denial letter dated May 23, 2013. Respondent introduced and the court admitted said letter as Respondent's Exhibit 2.
4. Petitioner appealed the denial of his application.
5. Investigator Kim Odom testified on behalf of Respondent Board regarding Petitioner's employment history and criminal background.
6. According to Ms. Odom, Petitioner had been registered, but not licensed, with the Alarm System Licensing Board since 1993. His registration was last renewed on April 10, 2013.

7. Petitioner's criminal history revealed 22 traffic violations between March 6, 1996 and June 15, 2012. According to Ms. Odom, these violations consisted of six speeding infractions, one exceeding a safe speed and fifteen infractions for improper equipment. Ms. Odom admitted that the Respondent Board does not typically deny an application for traffic infractions but may look at a pattern of violations as a disregard for the law.
8. Ms. Odom testified that she spoke with Petitioner's current employer, James Lee, who gave petitioner a favorable review. She also spoke with Petitioner's previous employer at Access Control Consultants. Ms. Odom testified that Petitioner was terminated from Access Control Consultants for excessive and continuous tardiness and falsifying time sheets. Petitioner's employer at Access Control Consultants also cited insubordination and attitude problems as reasons for the termination. Because her investigations only look back ten years, Ms. Odom did not speak with any of Petitioner's other prior employers.
9. Upon Petitioner's termination from Access Control Consultants, Petitioner was asked to leave the premises while his personal effects were removed from the company vehicle. At this point, Petitioner informed his employer that a small handgun was in the company vehicle. According to Petitioner's employers, carrying a weapon in a company vehicle was against company policy. Ms. Odom was not aware of what company rule or policy had been violated and was not shown a company policy. No company policy was submitted for the court's review. Access Control Consultants told Ms. Odom a Guilford County Police officer was on scene when Petitioner was terminated and said officer retrieved the weapon and gave it back to Petitioner. After his termination, Petitioner was emotional about losing his job but was otherwise calm.
10. Access Control Consultants told Ms. Odom they were concerned about Petitioner having a gun in the company vehicle since their firm sometimes serviced schools. Petitioner was not charged or convicted with any crime related to carrying or possessing the weapon.
11. Petitioner testified that he was not given any warning of his termination from Access Control Consultants. Further, no one from Access Control Consultants confronted Petitioner on any matters regarding insubordination or poor attitude. Petitioner testified that he was the only service technician for the entire company and had been asking for help for nearly two years. Petitioner speculated that his asking for help might have contributed to his employer's determination that he had a bad attitude.
12. Petitioner also believed that the GPS records kept by Access Control Consultants were inaccurate. He cited discrepancies in hand-written notes on certain time sheets and the GPS reports and noted that the GPS records indicated he was in certain cities when he knew he had not traveled to those locations.
13. Petitioner testified that around the time he was terminated from Access Control Consultants the company was merging with another company, Brady Services. He was unaware of any policy at Access Control Consultants that prevented him from carrying

a weapon in a company vehicle but admitted that Brady Services may have had such a policy. In any case, Petitioner was never told to operate under Brady Services Policies. Petitioner has had a concealed weapon permit since 1998. Petitioner also testified that he made his own service schedule and avoided carrying the weapon when he knew he would be at a school. He admitted to taking the weapon on school grounds on one occasion during an emergency call but the weapon remained locked in the vehicle.

14. Petitioner claimed no officer was present when he was terminated from Access Control Consultants as evidenced by a letter from Guilford Metro 9-1-1 introduced and admitted as Petitioner's Exhibit 1. However, Petitioner was asked to leave the premises of Access Control Consultants upon his termination and did not see the weapon being retrieved.
15. Petitioner did not carry the weapon on his person while at Access Control Consultants. Petitioner has not carried the weapon in a company vehicle since his termination from Access Control Consultants.
16. Petitioner's current employer, James Lee, president of Alarmguard Security, wrote a letter dated September 23, 2013 recommending Petitioner for licensure. Petitioner introduced said letter as Petitioner's Exhibit 2. The letter was admitted and read into the record as Petitioner's Exhibit 2.
17. Petitioner admitted that his driving record reflected twenty-two traffic violations over a sixteen-year period. Petitioner could not recall whether the violations on his record were reductions from more serious offenses. Petitioner did testify that all of the violations occurred in company vehicles and that he retained an attorney for every violation.

CONCLUSIONS OF LAW

1. Pursuant to N.C. Gen. Stat. § 74D-6(3), Respondent Board may refuse to issue an alarm systems registration permit for lack of good moral character or temperate habits.
2. Pursuant to N.C. Gen. Stat. § 74D-6(3) conviction of any crime involving the illegal use, carrying, or possession of a firearm; conviction of any crime involving a controlled substance, drug, narcotic, or alcoholic beverages; conviction of a crime involving felonious assault or an act of violence; conviction of a crime involving unlawful breaking or entering, burglary or larceny or of any offense involving moral turpitude; or a history of addiction to alcohol or a narcotic drug shall be prima facie evidence that the applicant does not have good moral character or temperate habits.
3. Pursuant to 12 NCAC 11.0209(c), it shall be prima facie evidence of good moral character if a director of officer of a company applying for a Burglar Alarm Business License has not been convicted of any crime involving the illegal use, carrying, or possession of a firearm; conviction of a crime involving a controlled substance, drug, narcotic, or alcoholic beverages; conviction of a crime involving felonious assault or an

act of violence; conviction of a crime involving unlawful breaking or entering, burglary or larceny or of any offense involving moral turpitude; or does not have a history of addiction to alcohol or a narcotic drug.

4. The evidence presented by Respondent Board at the hearing failed to establish by a preponderance of the evidence that Petitioner lacked a good moral character and temperate habits as defined under N.C. Gen. Stat. § 74D-6(3) and 12 NCAC 11.0209(c).

BASED ON THE FOREGOING, the undersigned makes the following:

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned proposes that Respondent REVERSE its decision to deny Petitioner's application for a burglar alarm business license, and issue Petitioner an individual burglar alarm business license.

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 25th day of November, 2013.

J. Randall May
Administrative Law Judge