

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
13 DOJ 17940

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ALEJANDRO MAURENT,

Petitioner,

v.

N.C. PRIVATE PROTECTIVE  
SERVICES BOARD,

Respondent.

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**PROPOSED 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 December 6, 2013 which was received by the Undersigned on December 9, 2013. The record was held open for submissions by Petitioner if he desired, and receiving no further proposal or other materials the record was closed on December 16, 2013.

**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 Petitioner should be denied an armed guard registration based on Petitioner's lack of good moral character and temperate habits as evidenced by a conviction of felony Possession of a Controlled Substance in the State of Florida in 1998.

## **EXHIBITS**

Respondent's Exhibits 1 and 2 were introduced and admitted.

## **APPLICABLE STATUTES**

Notice is taken of the following statutes applicable to this case: N.C.G.S. §74C-1, *et seq.*

**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. In making the FINDINGS OF FACT, the undersigned Administrative Law Judge 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 witness, 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 the 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 armed guard registration.
3. Respondent denied the armed guard registration due to Petitioner's criminal record which showed the following:  
A conviction in Orange County, State of Florida, on July 19, 1998 for Possession of a Controlled Substance.
4. Petitioner requested a hearing on Respondent's denial of the armed guard registration.
5. By Notice of Hearing dated September 20, 2013, and mailed via certified mail, Respondent advised Petitioner that a hearing on the denial of his armed guard registration would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on October 29, 2012. Petitioner appeared at the hearing.

6. Petitioner testified that in 1998 he was living in Orlando, Florida. One day while washing clothes he went across the street to a local bar. A couple of his friend came in later. While walking back across the street from the Laundromat to the bar after checking on his clothes, he saw an ex-girlfriend with whom he had had a bad break-up. Shortly after seeing the ex-girlfriend the police suddenly showed up at the bar and asked him to step outside. He asked the police what this was about and the police said he looked suspicious. They ran his driver's license. The police found his license was suspended and said they could arrest him for having a suspended license; they then searched him.
7. While conducting the search, the police looked down and found a straw lying near his foot. He told the police he did not know who the straw belonged to. Although the police could not prove the straw belonged to him they arrested him for possession of a controlled substance after further investigation revealed the straw contained cocaine.
8. His employer retained an attorney for him. He could not attend the court hearing because of work and asked his attorney to handle the case. He wanted the attorney to enter an innocent plea but the attorney entered a plea of no contest. The court sentenced him to one year probation. As a condition of probation he had to take monthly urine tests which he passed.
9. Petitioner has had no other criminal charges or convictions in the past fifteen (15) years.
10. Petitioner worked for Gate City Security Agency, Inc. since April 2013. He worked for FEMA in the 2004-05 time frames and passed all security requirements. He has been a patrol officer assigned to a bank. He further did environmental work and passed all background checks for transporting chemicals and hazardous materials.

**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. To the extent that certain portions of the foregoing Findings of Fact constitute mixed issues of law and fact, such Findings of Fact shall be deemed incorporated herein by reference as Conclusions of Law.
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 an the illegal use, possession, sale manufacture, distribution or transportation of a 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 Orange County, Florida for Possession of a Controlled Substance some fifteen years ago.
5. Petitioner presented evidence sufficient to explain the factual basis for the charge, establish his good character, and has rebutted the presumption.

**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 granted registration for an Armed Permit.

### **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 29th day of January, 2014.

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Augustus B. Elkins II  
Administrative Law Judge