

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DOJ 17997

JIMMY WAYNE FORD,

Petitioner,

v.

N.C. ALARM SYSTEMS
LICENSING BOARD,

Respondent.

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 the renewal of his alarm systems registration based on Petitioner's lack of good moral character and temperate habits as evidenced by a conviction felony Possession with Intent to Manufacture, Sell or Deliver a Schedule III Controlled Substance.

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. 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. §74D-1, *et seq.*, and is charged with the duty of licensing and registering individuals engaged in the alarm systems installation business.
2. Petitioner applied to Respondent Board for a renewal of his alarm systems registration.
3. Respondent denied the renewal due to Petitioner's criminal record which showed the following:

A conviction in Rowan County, State of North Carolina, on November 11, 2013 for Felony Possession with Intent to Manufacture, Sell or Deliver a Schedule III Controlled Substance.
4. Petitioner requested a hearing on Respondent's denial of the renewal.
5. By Notice of Hearing dated September 23, 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 October 29, 2012. Petitioner appeared at the hearing.
6. Petitioner testified that in June 2012 he lived in Landis, NC. He and his wife were going through a separation and he was depressed over their failed relationship. One night he was at a bar and purchased some pills (hydrocodone) from a person at the bar. He stated that he felt that he had lost everything so he started drinking and

taking the pills. He left a bar and was pulled over by the police for DWI. The police asked to search his vehicle. He stated that the hydrocodone pills were lying loose in the console of his vehicle. The pills were found by the police and he was immediately arrested and charged.

7. Petitioner retained a criminal defense attorney. The attorney recommended that he enter a plea of guilty to avoid a possible conviction of drug trafficking, which carried a stiffer sentence. He entered a plea of guilty.
8. Petitioner no longer has a drinking or prescription drug problem.
9. Petitioner's employer Phillip D. "Skip" Cashion, Jr. testified to Petitioner's good work ethic and character. Mr. Cashion was aware of Petitioner's marital problems but was not aware the Petitioner had begun drinking heavily to cope with them. Petitioner informed him of the criminal charge. Mr. Cashion stated that Petitioner was very honest, always on time and never posed a security risk.
10. The applicant stated that he has worked for CRS Building Automation Systems, Inc. for three years. Petitioner admitted that he had made a bad mistake and would not repeat it. He stated he wanted to be a good father to his children and wanted to work in this field to support himself and children.

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 N.C. Gen. Stat. §74D-1, *et seq.*, Respondent Board may deny registration for an Alarm Registrant Permit if it is determined that the applicant has demonstrated intemperate habits or lacks good moral character.
3. Under G.S. §74D-2, conviction of any crime involving 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 Rowan County, North

Carolina for a Felony Possession with Intent to Manufacture, Sell or Deliver a Schedule III Controlled Substance.

5. Petitioner presented evidence sufficient to explain the factual basis for the charge, established 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's alarm systems registration be renewed.

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 Alarm Systems Licensing 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 24th day of January, 2014.

Augustus B. Elkins II
Administrative Law Judge