

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DOJ 18445

VERNON L. RODDEN,)	
Petitioner,)	
)	
v.)	PROPOSAL FOR DECISION
N.C. ALARM SYSTEMS LICENSING)	
BOARD,)	
Respondent.)	

On November 26, 2013, Administrative Law Judge Melissa Owens Lassiter conducted a hearing in Raleigh, North Carolina in this contested case pursuant to N.C. Gen. Stat. 150B-40(e). On January 2, 2013, Respondent filed a Proposal for Decision with the Office of Administrative Hearings.

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

Should Respondent deny Petitioner's alarm installation registration application based on Petitioner's lack of good moral character and temperate habits as evidenced by two (2) convictions of misdemeanor Obtaining Property by False Pretenses?

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; 74C-8; 74D-10; 74D-12; 12 NCAC 11 .0300.

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 alarm installation business.

2. Petitioner applied to Respondent Board for an alarm installation registration.
3. Respondent denied the alarm installation registration due to Petitioner's criminal record which showed the following:

Two (2) convictions in Gaston County, State of North Carolina, on January 6, 1999 for misdemeanor Obtaining Property by False Pretense.
4. Petitioner requested a hearing on Respondent's denial of the alarm installation registration.
5. By Notice of Hearing dated November 1, 2013, and mailed via certified mail, Respondent advised Petitioner that a hearing on the denial of his alarm installation registration would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on November 26, 2013.
6. At hearing, Petitioner explained that he was living in Charlotte, NC in 1997. One day in 1997, he received a letter from BB&T informing him that two payroll checks from David Watts Drywall of Gastonia NC had bounced. The two payroll checks totaled \$600.00 and \$500.00 respectively. The bank advised him that the checks had been returned due to insufficient funds, and needed to be paid.
7. Petitioner was not employed by David Watts Drywall, and did not bank at BB&T. However, someone had cashed these payroll checks at BB&T, and endorsed his name on the back of the checks. Upon receiving the letter, Petitioner went to BB&T, and talked with them.
8. Petitioner also reported the incident to the police department. The police initiated an investigation, and determined that Petitioner cashed the checks. Petitioner submitted a handwriting sample to the police to prove his innocence. He further explained at hearing that the person who cashed the checks came through the drive-through of the bank, but the police could not definitively identify the person due to the poor quality of the picture.
9. Petitioner obtained a lawyer and went to trial on those charges in 1999. At trial, Petitioner's lawyer recommended that Petitioner accept a plea deal from the District Attorney. Petitioner pled guilty, and the Court found him guilty of two counts of misdemeanor Obtaining Property by False Pretense. Petitioner received 2 years probation, community service, and was required to pay back the money. Petitioner paid the money back, plus court costs, within the 2-year probation period.
10. Petitioner pled guilty solely on the advice of his attorney. He understood that after the restitution was paid, and the probation ended, his record would be expunged. He did not know the convictions were on his record until notified by the Respondent Board.
11. Petitioner had no other criminal charges except speeding citations.

12. The applicant stated that he has worked for Simplex Grinnell, LP for four years, where he was hired to install fire alarms. Currently, Petitioner works in that company's warehouse.

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings, and received proper Notice of Hearing for this case.

2. Under G.S. §74D-6(3), 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-6(2), conviction of any crime involving an act of fraud is *prima facie* evidence that the applicant does not have good moral character or temperate habits.

4. In this hearing, Respondent Board presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through two (2) convictions in Gaston County, North Carolina for misdemeanor Obtaining Property by False Pretense.

5. In this hearing, Petitioner presented insufficient evidence to explain the factual basis for the charge, and rebut the presumption.

PROPOSAL FOR DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby recommends that Petitioner's application for an alarm installation registration be denied.

NOTICE AND ORDER

The NC Alarms System 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).

The undersigned hereby orders the Respondent agency serve a copy of its Final Decision in this case on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This 13th day of January, 2014.

Melissa Owens Lassiter
Administrative Law Judge