

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14DOJ04129

Ossie James Adkins Petitioner v. N C Alarm Systems Licensing Board Respondent	PROPOSED DECISION
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On July 29, 2014, Administrative Law Judge J. Randolph Ward 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 Petitioner should be denied an alarm installation registration permit based on Petitioner's lack of good moral character and demonstration of intemperate habits as evidenced by convictions of misdemeanor Negligent Assault, felony DUI (3rd Offense), and felony Possession of Cocaine.

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

FINDINGS OF FACT

1. Respondent Board is established pursuant to N.C. Gen. Stat. § 74D-2, *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 an alarm installation registration permit.
3. Respondent denied the alarm installation registration permit due to Petitioner's criminal record which showed the following:
 - a. A conviction in Columbus, State of Ohio, on February 24, 2003 for misdemeanor Negligent Assault;
 - b. A conviction in Pinellas County, State of Florida on November 22, 2010, for felony DUI (3rd offense); and
 - c. A conviction in Pinellas County, State of Florida on November 22, 2010, for felony Possession of Cocaine.
4. Petitioner requested a hearing on Respondent's denial of the alarm installation registration permit.
5. By Notice of Hearing dated June 9, 2014, and mailed via certified mail, Respondent advised Petitioner that a hearing on the denial of his alarm installation registration permit would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on July 29, 2014. Petitioner appeared at the hearing.
6. Petitioner testified that in March 2010, he lived in St. Petersburg, Florida. He stopped at a service station one night where there were several drug dealers selling illegal drugs in front of the store. As he exited the store, they surrounded him, pressing him to buy their drugs, and he purchased a small amount of cocaine for \$20.00 from one of the dealers. When he drove away, police watching the store the surrounded him, and he was charged with felony Possession of Cocaine. He testified that he does not know why he bought the cocaine, because he was not a user.
7. Petitioner was charged with driving under the influence (DUI) five months later. He was still living in St. Petersburg, Florida in August 2010. One night he was at a bar with a married couple who were friends of his. He stated that all three of them were drinking. When his friends were ready to leave, Petitioner drove and exceeded the speed limit in a construction zone. He was pulled over by the police and arrested for DUI. He retained an attorney.
8. Petitioner's attorney had the March 2010 and August 2010 charges consolidated and both heard by the court on November 22, 2010. The court found him guilty of felony Possession of Cocaine and felony DUI. He served four months in jail for both convictions. The court also sentenced him to one and a half years of probation after he was released from jail. Petitioner had to pay \$3,200.00 in court costs and complete a

substance abuse course.

9. In regards to the 2003 assault conviction, Petitioner was living in Columbus, Ohio at the time. He was married, but he and his wife were experiencing marital problems. At approximately 7:00 a.m. one morning, he and his wife started arguing. He had to go to work, but his wife blocked the front door and would not allow him to leave the house. He grabbed his wife and sat her on the floor. He rode to work with a co-worker who had been waiting outside in his car ready to leave. Petitioner's wife told the police that Petitioner hit her. He was arrested and later retained an attorney to represent him.
10. Petitioner spent three days in jail. When he appeared before a judge, the court found him guilty of misdemeanor Negligent Assault. He was ordered to complete a domestic violence class and was placed on probation for three years. He and his wife eventually divorced. Petitioner's use of force resulted from an anomalous domestic situation, and his record does not show a propensity for violence.
11. Petitioner's Exhibits 1, 2 and 3 were the court documents for his convictions in the State of Florida.
12. Petitioner had been previously registered with Respondent Board after moving from Ohio to North Carolina and before moving from North Carolina to Florida. He was approved for registration after being convicted of the misdemeanor Negligent Assault.
13. Petitioner testified on his own behalf. He stated that he is an alcoholic, but has been sober for two to three years. In relapse episodes, he is a "binge drinker"--engaging in intense but short bouts of drinking--and thus has managed to stay gainfully employed. The third offense DUI was indicative of his problem.
14. Petitioner has worked for Charlotte Sounds and Visual Systems, Inc. since September 2013. He installs camera systems in schools and businesses.
15. Petitioner's employer, David James LaRoach, testified on his behalf. He first employed Petitioner in 2007, and Mr. LaRoach stated that Petitioner was a dependable employee for one and a half years before moving to Florida. He further stated that Petitioner is a good employee and gets along well with fellow employees. Mr. LaRoach credibly testified that Petitioner is honest, truthful, and trustworthy. Mr. LaRoach is fully aware of Petitioner's criminal history and alcohol problem, but had no reservations about trusting and relying on Petitioner as an employee.
16. Petitioner acknowledged that a four-month active sentence was a harsh punishment in the State of Florida.

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings.

2. Under G.S. § 74D-6(3), Respondent Board may refuse to grant an alarm installation registration permit if it is determined that the applicant has demonstrated intemperate habits or lacks good moral character.
3. Under G.S. § 74D-6(2), Respondent Board may refuse to grant an alarm installation registration permit if it is determined that the applicant has been convicted of a crime involving an act of violence or the possession or use of illegal drugs.
4. Under G.S. §§ 74D-6(2) & 74D-10(a)(4), conviction of any crime involving the possession or use of illegal drugs is *prima facie* evidence that the applicant does not have good moral character or demonstrates intemperate habits.
5. Under G.S. §§ 74D-6(2) & 74D-10(a)(4), conviction of any crime involving an act of violence is *prima facie* evidence that the applicant does not have good moral character or demonstrates intemperate habits.
6. Respondent Board presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through conviction in Columbus, Ohio for misdemeanor Negligent Assault and convictions in the State of Florida of felony DUI (3rd offense) and felony Possession of Cocaine.
7. Petitioner presented sufficient evidence to explain the factual basis for the charges and 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:

PROPOSED DECISION

The undersigned hereby recommends that Petitioner be issued an alarm installation registration permit.

NOTICE AND ORDER

The N C 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 hereby is 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 29th day of August, 2014.

J. Randolph Ward
Administrative Law Judge