

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
14DOJ04313

David R Beatson Petitioner  v.  N C Private Protective Services Board Respondent	<b>PROPOSAL FOR DECISION</b>
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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 renewal of his unarmed guard registration permit based on Petitioner's lack of good moral character and demonstration of intemperate habits as evidenced by a conviction of misdemeanor Assault & Battery - 3<sup>rd</sup> Degree.

#### **APPLICABLE STATUTES AND RULES**

Official notice is taken of the following statutes and rules applicable to this case:  
N.C.G.S. §§ 74C-3(a)(6); 74C-8; 74C-9; 74C-11; 74C-12; 12 NCAC 7D § .0700.

#### **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 a renewal of his unarmed guard registration permit.

3. Respondent denied the unarmed guard registration permit due to Petitioner's criminal record which showed the following:

A conviction in York County, State of South Carolina, on August 6, 2013 for Assault & Battery - 3<sup>rd</sup> Degree.

4. Petitioner requested a hearing on Respondent's denial of the renewal of his unarmed guard registration permit.
5. By Notice of Hearing dated June 16, 2014, and mailed via certified mail, Respondent advised Petitioner that a hearing on the denial of his unarmed guard 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 the incident happened in March 2013 at his residence in Lake Wylie, SC. He was getting dressed for work and looked out his window. He saw two kids walking a dog. The kids let the dog relieve himself, and then smeared the dog feces on his mailbox and that of his neighbors. Other neighbors had had feces smeared on their doors and cars, but the responsible culprits had not been identified. Petitioner called the police and reported the incident, and then told the dispatcher he was going outside to confront the kids. He was unsure how old the kids were at the time. He related they ranged from 9 to 14 years old. By the time he got outside, the kids had crossed the street and were walking down the other side of the street.
7. Petitioner followed the kids to their residence and began to write down their address. He was standing in the street watching the house when an SUV with a male driver pulled up. The man got out of the SUV and asked Petitioner if there was a problem. Petitioner answered that yes, there was a problem. Petitioner told him that two kids that live in the house had smeared dog feces on Petitioner's mailbox. The man called his sons outside and asked them if they smeared dog feces on Petitioner's mailbox. The older boy said, "No," and the younger said, "Yes." The man became angry and told Petitioner to leave. A short discussion ensued, and then the man became aggressive. Petitioner walked away, and the man followed him. The man then started cleaning the dog feces off the mailboxes. Petitioner started videotaping the man cleaning the mailboxes. The man yelled at him to stop the videotaping. The man started running at him, and Petitioner retreated back towards his house. The man continued to pursue him, and Petitioner reached in his car and grabbed the ASP Baton he carried at work. He told the man not to come on his property because he would defend himself. The man left. Petitioner made no physical contact with the man who pursued him.
8. When the police arrived, a short investigation into the incident was conducted by the responding police officer. After interviewing Petitioner and the man, Petitioner was charged with Assault and Battery - 3<sup>rd</sup> Degree. The reason, according to Petitioner, is because he grabbed his ASP Baton. The police said he offered to injure someone by brandishing the baton, therefore he was charged with Assault and Battery - 3<sup>rd</sup> Degree.

9. A public defender was assigned to Petitioner's case. Petitioner provided video evidence to her, but she did not produce the video of the man threatening him. A witness testified that the baton was extended. Another witness testified that the baton was not extended. The court found him guilty and sentenced Petitioner to pay a \$470.00 fine. He appealed the conviction, but lost the appeal.
10. Petitioner presented a copy of Section 16-3-600 of the General Statutes of South Carolina, "Assault and Battery." Subsection (E)(1) of this statute makes it a violation to "offer...to injure another person with the present ability to do so."
11. Petitioner testified that the ASP Baton was issued by his employer to carry while working as an unarmed guard.
12. Petitioner served in the U.S. Army Reserves from 1995 to 1999. He was a Communication Center Operator. He received a General Discharge under Honorable Conditions due to a foot injury. He serves his community as a volunteer firefighter. He is 41 years old and has no other criminal record.
13. Petitioner testified that he marked "No" to question 1 on the application because the incident had not occurred when he was completing the application in May 2013.
14. Petitioner worked for Metro Security & Investigative Services, Inc. for four months and was assigned to a commercial warehouse to patrol the area to prevent crime.

### **CONCLUSIONS OF LAW**

1. The parties properly are before the Office of Administrative Hearings.
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 act of violence is *prima facie* evidence that the applicant does not have good moral character or demonstrates intemperate habits.
4. Respondent Board presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through his conviction in York County, South Carolina for misdemeanor Assault & Battery - 3<sup>rd</sup> Degree.
5. Petitioner presented evidence sufficient to explain the factual basis for the charge and has rebutted the presumption.

Based on the foregoing, the undersigned makes the following:

**PROPOSAL FOR DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby recommends that Petitioner be issued an unarmed guard registration permit.

**NOTICE AND ORDER**

The N C Private Protective Services 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 4<sup>th</sup> day of September, 2014.

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J. Randolph Ward  
Administrative Law Judge