

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DOJ 06134

MALINDA McCRAY McCULLUM,)
)
) Petitioner,)
)
 v.)
)
) N.C. ALARM SYSTEMS)
) LICENSING BOARD,)
)
) Respondent.)
 _____)

PROPOSAL FOR DECISION

On October 28, 2014, Chief Administrative Law Judge Julian Mann, III 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 registration permit based on Petitioner's lack of good moral character and temperate habits as evidenced by conviction for 44 counts of felony Embezzlement.

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

Conviction in Robeson County, State of North Carolina, on August 8, 1995, for 44 counts of felony Embezzlement.

4. Petitioner requested a hearing on Respondent's denial of the alarm registration permit.
5. By Amended Notice of Hearing dated September 30, 2014, and mailed via certified mail, Respondent advised Petitioner that a hearing on the denial of her alarm registration permit would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on October 28, 2014. Petitioner appeared at the hearing.
6. Petitioner's Criminal History Record Check, which showed the above, was admitted into evidence as part of Respondent's Exhibit 1, Petitioner's application.
7. Petitioner testified that in 1994 she was living in Rowland, North Carolina and was employed at the Robeson County Water Department where she took payments in the business office from citizens for their water bills. Allegations were made that money was missing in the Department. The County Commissioners ordered an investigation. The investigation was conducted by the Robeson County Sheriff's Department and took a year to complete. She was indicted for 44 counts of embezzlement. She hired an attorney and entered a plea of not guilty. Her case was adjudicated by a judge who found her guilty. The court ordered her to pay a \$6,000.00 fine and fees and sentenced her to two years' probation and 250 hours of community service.
8. Petitioner denies that she took any money. She testified that she was never interviewed by the Sheriff's Department or told how much money was missing.
9. Her attorney tried to get her to plead guilty, but she would not since she was innocent of the charges.
10. She testified that as a result of the charges she received threats against her life and her house was burned down. Since her conviction, her husband passed away.
11. She has been employed by Time Warner Cable for 17 years, working first for one (1) year as a temporary employee and then 16 years as a permanent employee. Time Warner Cable performed a background check on her prior to hiring her; she presumed that Time Warner Cable was aware of the convictions.
12. Petitioner has worked the counter for Time Warner Cable for years where she takes customer orders as well as payments in cash and other forms of payment. Her "drawer" has balanced every day.

13. The convictions occurred almost 20 years ago. She has raised three (3) daughters and has five (5) grandchildren. She has obtained an Associate's degree, is working on a Bachelor's degree, and has plans to obtain a Master's degree.
14. She has never been charged with any other criminal offense.

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 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 registration permit if it is determined that the applicant has been convicted of a crime involving larceny and/or fraud.
4. Under G.S. §§ 74D-6(2) & 74D-10(a)(4), conviction of any crime fraud is *prima facie* evidence that the applicant does not have good moral character or temperate habits.
5. Respondent Board presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through conviction in Robeson County, North Carolina for 44 counts of Embezzlement, crimes involving larceny and/or fraud.
6. Petitioner presented sufficient evidence to explain the factual basis for the charges, that she has never been charged with any other criminal offense, that her employer was likely aware of these charges at the time of her hiring, and her accomplishments over the intervening 20 years.

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 alarm 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 is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

This the 21st day of November, 2014.

Honorable Julian Mann, III
Chief Administrative Law Judge