

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DOJ 07612

PROPOSAL FOR DECISION

APPEARANCES

ISSUE

APPLICABLE STATUTES AND RULES

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:

Conviction in Jackson County, State of Oregon, on November 11, 1991
for felony 1st Degree Rape.

4. Petitioner requested a hearing on Respondent's denial of the alarm installation registration permit.
5. By Notice of Hearing dated October 3, 2014, 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 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 1991 he was 30 years old and living in Medford, Oregon. He lived with his girlfriend who was approximately five years older than him. They got into an argument because he was considering moving back to California to find work. His girlfriend had become angry because she felt he was not meeting his obligations to sustain their household because the bills were not getting paid. The argument became heated. Finally, he felt like the argument was over and they had sex.
8. Two days later, his girlfriend went to the police and said she had been raped. In her report she stated that he tried to hold her head to a hot plate and that he smacked her in the eye. She reported that during a scuffle, a window was broken with her body. Photos taken of his girlfriend revealed torn jeans and her eye was swollen.
9. A public defender was assigned to his case and recommended against going before a jury. The public defender advised him he could get 30 years or more if convicted. The lengthy prison sentence scared him so he took a plea deal where he pled guilty to rape and received a three (3) year prison sentence.
10. He testified there was no force and his girlfriend actually helped him during the act of sex.
11. He served 32 of the 36-month sentence in a minimum custody facility and paid the court-ordered restitution while incarcerated by working at an off-site pallet factory.
12. Upon his release, Petitioner moved to North Carolina to be near his parents.
13. The offense was 23 years ago. Petitioner now has an 11-year old son and has been in a stable live-in relationship with his child's mother for 12 years.
14. Petitioner has never been charged or convicted of any other deniable offense.
15. He has worked for MSS Fire & Security, LLC for 10 years installing fire alarms in commercial establishments.

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 violence.
4. Under G.S. §§ 74D-6(2) & 74D-10(a)(4), conviction of any crime involving violence 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 Jackson County, Oregon for 1st Degree Rape, a crime involving violence.
6. Petitioner presented sufficient evidence to explain the factual basis for the charges, established his character since the offense, and 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 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 any 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