

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 08970

DAVID ANTONIO BOWMAN,)
)
Petitioner,)
v.)
N.C. ALARM SYSTEMS LICENSING BOARD,)
)
Respondent.)
_____)

PROPOSAL FOR DECISION

On December 29, 2015, Administrative Law Judge Donald W. Overby 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 based on Petitioner's lack of good moral character and temperate habits as evidenced by a conviction of felony Forgery in the State of South Carolina.

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; 14B NCAC 16 .0300. *et seq.*

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 due to Petitioner's criminal record which showed the following:

A conviction in Orange County, State of South Carolina, on June 21, 2007 for felony Forgery, Value Less Than \$5,000.00.

4. Petitioner requested a hearing on Respondent's denial of the alarm installation registration.
5. By Notice of Hearing dated December 1, 2015, 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 December 29, 2015. Petitioner appeared at the hearing.
6. Petitioner testified that in early 2000 he was living in Orangeburg, South Carolina. One day in 2000 or 2001 his cousin gave him a signed blank check to pay his cousin's auto insurance. He was supposed to fill in the correct amount once he received it from the insurance company. When he arrived at the insurance agency the lady at the counter said his cousin's insurance was not due at that time. Based on that statement from the insurance representative he did not pay the insurance, but kept the signed blank check.
7. Shortly thereafter he and his cousin's relationship soured. His cousin owed him some money so the Petitioner filled in the check, made payable to himself for \$200.00, and cashed it at a gas station in Orangeburg, SC. At some time between when Petitioner received the check and when he presented it for payment, the applicant's cousin had closed the account and moved to Atlanta, Georgia.
8. Approximately six (6) years later, the Orangeburg Police contacted his cousin's mother and she in-turn contacted her son (his cousin) in Atlanta. His cousin contacted the Orangeburg Police and informed them that he did not authorize Petitioner to write and cash the check.
9. Petitioner contends that he uttered the check for his own benefit in 2001 or maybe a little later. The record check shows that the date of offense was in 2007, the same year that he was charged. There is not sufficient evidence to be able to discern when the check was actually presented for payment to Petitioner's benefit.
10. Petitioner has a history of bad checks, having been adjudicated guilty ten times prior to the occasion before the Commission.
11. He was arrested, "taken downtown," and charged.
12. He appeared before a judge later that day and was released. He received a summons to appear before the court to respond to the charge of forgery. He later appeared and the solicitor took him in front of a judge. His cousin had actually sent him the \$200.00 to pay off the check so he paid the \$200.00, signed some documents, and was released.

He was told by the solicitor that everything was taken care of, so he left the court not knowing he had plead guilty to a felony.

13. Since 2000 Petitioner worked for Alert Security in South Carolina selling ADT systems. (No registration is required in that state for sales.)
14. Petitioner worked for Affinity Integrated Solutions, Inc. in North Carolina for about two months. He was a salesman and went house to house selling systems to customers.

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings.
2. Under G.S. § 74D-6(3), Respondent Board may refuse to grant an alarm installation registration 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 if it is determined that the applicant has been convicted of a crime involving fraud.
4. Under G.S. §§ 74D-6(2) & 74D-10(a)(4), conviction of any crime involving an act of fraud is *prima facie* evidence that the applicant does not have good moral character or intemperate habits.
5. Respondent Board presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through a conviction in Orange County, South Carolina, for felony Fraud, Value Less Than \$5,000.00.
6. While there are some concerns, Petitioner presented sufficient evidence to explain the factual basis for the charge and, in light of Petitioner's clean record and work history in the industry, 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 alarm installation registration.

NOTICE

The agency making the final decision in this contested case 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. N.C.G.S. § 150B-40(e). The agency that will make the final decision in this contested case is the N.C. Alarm Systems Licensing Board.

This the 2nd day of February, 2016.

Donald W Overby
Administrative Law Judge