

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DOJ 03788

JOSHUA REID LOMAX,)
)
Petitioner,)
v.)
)
N.C. PRIVATE PROTECTIVE)
SERVICES BOARD,)
)
Respondent.)
_____)

PROPOSAL FOR DECISION

On May 24, 2016, 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 armed guard registration based on Petitioner's lack of good moral character and temperate habits as evidenced by a conviction of misdemeanor Larceny in Davidson County, North Carolina.

APPLICABLE STATUTES AND RULES

Official notice is taken of the following statutes and rules applicable to this case:
N.C.G.S. §§ 74C-8; 74C-12(a)(2) and (25); 14B NCAC 16 .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 and the private investigation profession.
2. Petitioner applied to Respondent Board for an armed guard registration.

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

A conviction in Davidson County, State of North Carolina, on February 2, 2012 for misdemeanor Larceny.

4. Petitioner requested a hearing on Respondent's denial of the armed guard registration.
5. By Notice of Hearing dated April 14, 2016, and mailed via certified mail, Respondent advised Petitioner that a hearing on the denial of his armed guard registration would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on May 24, 2016. Petitioner appeared at the hearing.
6. Petitioner's Criminal History Record Check with conviction shown above, was admitted into evidence as part of Respondent's Exhibit 1, Petitioner's application. Petitioner's Criminal History Record Check shows the date of offense as August 15, 2010.
7. Petitioner testified that he was at a Food Lion grocery store to purchase some items. He was standing in the checkout line waiting his turn to pay when he became thirsty. He opened a drink container he was going to purchase and drank from the container. Petitioner was confronted by the Store Manager and was informed that drinking from an unpurchased drink container was larceny. Local law enforcement was called and subsequently Petitioner was arrested for larceny.
8. Approximately a year and a half later, on February 2, 2012, Petitioner was found guilty of misdemeanor Larceny. He stated that the judge in the case just went along with Food Lion's allegation that by drinking an unpurchased drink that he intended to pay for he was committing a larceny.
9. Petitioner had no idea that consuming the drink was larceny and remained incredulous even up to this hearing. The undersigned recognizes that it is unfortunately a rather common occurrence for shoppers to consume food or drink items in grocery stores; however, it is in fact a larceny. The undersigned reiterated to Petitioner that consuming an item even though he may have had the full intention of paying for it is in fact considered larceny under North Carolina law.
10. Petitioner's Supervisor, Duane Fulp, testified as a character witness. He described petitioner as a hard worker who has not had any complaints against him. He was assigned as a guard at a Food Lion store, but not the one where he was charged. Mr. Fulp was aware of Petitioner's conviction at the time he was employed.

CONCLUSIONS OF LAW

1. The parties are properly 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 larceny is *prima facie* evidence that the applicant does not have good moral character or temperate habits.
4. Respondent Board presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through a conviction in Davidson County, North Carolina for misdemeanor Larceny.
5. Petitioner presented sufficient evidence to explain the factual basis for the charge, which is now more than five years ago, and through his testimony and that of a character witness, 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 armed guard registration.

NOTICE AND ORDER

The North Carolina Private Protective Services Board 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).

The undersigned hereby orders that agency serve a copy of its Final Decision in this case on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This the 21st day of June, 2016.

Donald W Overby
Administrative Law Judge