

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
20 DOJ 03899

James Maxwell Smith

Petitioner,

v.

NC Alarm Systems Licensing Board

Respondent.

PROPOSAL FOR DECISION

1. THIS MATTER is before the Office of Administrative Hearings (“OAH” or “Tribunal”) on the appeal of Petitioner James Maxwell Smith from the denial of his Burglar Alarm Registration (“Registration”) by Respondent North Carolina Alarm Systems Licensing Board (“the Board”).

2. Given the nature of Petitioner’s appeal, the issue before this Tribunal in this contested case is whether Petitioner’s Registration should be denied by the Board. Based on the evidence presented at hearing, and for the reasons set forth below, this Tribunal recommends the Board RENEW Petitioner’s Registration.

PROCEDURAL BACKGROUND

3. By Notice of Hearing dated 5 October 2020, and mailed via certified mail, the Board advised Petitioner that a hearing on the denial of his Registration would be held at the OAH in Raleigh, North Carolina on 17 November 2020.

4. On 17 November 2020, this Tribunal called this contested case for hearing. The Board appeared through counsel and Petitioner appeared pro se.

PROPOSED FINDINGS OF FACT

A. The Parties

5. 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.

6. Petitioner is an applicant to Respondent Board for renewal of his alarm installation registration.

B. The Board's Denial of Petitioner's Registration & Related Matters

7. Petitioner has held an alarm registration since August 2009. Since then, he has successfully renewed his alarm registration four times, with the most recent having been received on 23 December 2019.

8. During the most recent renewal process, the Board denied Petitioner's Registration due to Petitioner's criminal record which showed the following:

A conviction in Cabarrus County, State of North Carolina, on March 22, 2012 for one (1) count of a Class H felony Assault with Serious Bodily Injury.

It is unknown as to why the Board renewed Petitioner's Registration in 2011, 2013, 2015 and 2017 considering Petitioner's criminal record.

9. Petitioner requested a hearing on the Board's denial of his Registration.

10. At hearing, the Board introduced Petitioner's Criminal History Record Check which reflected Petitioner's 22 March 2012 conviction. This document was admitted into evidence as part of the Board's Exhibit 1, Petitioner's renewal application.

11. Paul Sherwin, Director of the Board, testified Petitioner's alarm registration renewal was denied due to a lack of good moral character or temperate habits pursuant to subsection (3) of General Statute 74D-6 and in accordance with the Board's policy. Director Sherwin explained that, per the Board's policy a conviction of at least a Class F felony within the previous 20 years is cause for denial. The evidence underlying the Board's denial was Petitioner's 22 March 2012 conviction for felony assault.

12. Director Sherwin further testified that, on 8 September 2020, he interviewed Petitioner on the telephone about this conviction. His father, Charles Smith, who is the license holder for AAA Security, Petitioner's employer, was also on the phone during the interview.

13. During the interview, Petitioner told Director Sherwin that, in 2009, he entered a consensual sexual relationship with a woman. Petitioner said the relationship was "on and off" for about six or seven months and that, at the time, the woman had another boyfriend that she was cheating on with Petitioner. Petitioner said he ended the relationship and about five months later and, thereafter, the woman filed 2nd degree rape charges against him. Petitioner claimed he was not aware of her actions until law enforcement showed up at his house to serve an arrest warrant.

14. Petitioner further told Director Sherwin that the legal proceedings continued for three years and he "just wanted it to be over with." Thus, on 22 March 2012, Petitioner accepted a plea deal – on the advice of his attorney – that required

him to plead guilty to the assault charge in exchange for the rape charge being dismissed. Petitioner said that, in hindsight, accepting the plea deal was a mistake because the conviction has “haunted him” and that he never assaulted or raped the woman who brought these charges against him. Petitioner alleges that the charges were retribution for him breaking up with her and to cover for the fact that she was cheating.

15. At the contested case hearing, Petitioner testified on his own behalf and corroborated Director Sherwin’s testimony as to the events surrounding his plea. He further explained that, at the time of his relationship, he was enrolled in the NASCAR technical school in Concord, North Carolina.

16. During his testimony, Petitioner stated that he was a license holder for several years and that, other than the denial at issue, he never had any problems with the Board. He further explained that he was “flabbergasted” upon receiving the Board’s denial because he explained his circumstances on his applications and thought his actions were “sufficient enough.”

17. Charles Lynn Smith, Petitioner’s father, testified as a character witness on behalf of his son. He stated he was not only his father but his “boss.” Mr. Smith is the licensee and owner of AAA Security. Petitioner is and has been a good employee for eight years; customers tell him what a great job his son does and “ask for Max by name.” He wants his son to inherit the family business. He testified that his son’s case drug on for three years because the girl’s family was affluent and connected to NASCAR. The Assistant District Attorney refused to dismiss the charges. Petitioner

told his attorney he would not plead to anything related to sexual activity. There was no “rape,” and no “assault,” much less an assault inflicting serious injury. His son pled guilty to the only thing the Assistant District Attorney would agree to “get it over with.”

18. Donna Rigsby Smith, Petitioner’s mother, also testified on behalf of her son. She felt he should be judged considering the circumstances.

PROPOSED CONCLUSIONS OF LAW

Based on the proposed Findings of Fact, this Tribunal makes the following proposed Conclusions of Law:

1. North Carolina Alarm Systems Licensing Act (“the Act”), N.C. Gen. Stat. § 74D-1 et. seq., requires any person engaging in an alarm systems business to be licensed in accordance with its provisions. N.C. Gen. Stat. § 74D-2(a).

2. The Act requires an applicant seeking licensure under its provisions meet various requirements, including demonstrating that they are “of good moral character and temperate habits” as determined by a background investigation conducted by the Board. N.C. Gen. Stat. § 74D-2(d).

3. Upon finding that the applicant meets the requirements for licensure or registration thereunder, the Board must “determine whether the applicant shall receive the license or registration applied for.” N.C. Gen. Stat. § 74D-6(3). Grounds for denial include a “lack of good moral character or temperate habits.” Id. The Board may also “suspend or revoke a license or registration” for similar grounds. See N.C. Gen. Stat. § 74D-10(a)(4) (allowing suspension or revocation if licensee or registrant

has “[b]een convicted of any crime involving moral turpitude or any other crime involving violence or the illegal use, carrying, or possession of a dangerous weapon.”)

4. The terms “good moral character” and “temperate habits” are undefined in the Act. However, the Act does enumerate those acts that demonstrate the lack thereof:

The following shall be prima facie evidence that the applicant does not have good moral character or temperate habits: conviction by any local, State, federal, or military court of any crime involving the illegal use, carrying, or possession of a firearm; conviction of any crime involving the illegal use, possession, sale, manufacture, distribution or transportation of a controlled substance, drug, narcotic, or alcoholic beverages; conviction of a crime involving felonious assault or an act of violence; conviction of a crime involving unlawful breaking or entering, burglary, larceny, or of any offense involving moral turpitude; or a history of addiction to alcohol or a narcotic drug; provided that, for purposes of this subsection, “conviction” means and includes the entry of a plea of guilty, plea of no contest, or a verdict rendered in open court by a judge or jury.

N.C. Gen. Stat. § 74D-6(3) (emphasis added); see also N.C. Gen. Stat. § 74D-2(d)(2).

5. The undisputed evidence in this contested case demonstrates Petitioner was convicted of a crime that gives rise to a presumption of temperate habits or lack of good moral character under the Act. See, ¶ 4 supra. The Board was therefore acting within its statutory authority in denying Petitioner’s Registration.

6. At hearing, Petitioner presented evidence of his character and explained the circumstances surrounding his guilty plea in rebuttal to the Board’s prima facie evidence. Additionally, in his post-hearing submission, Petitioner reiterates that he

has “learned many valuable lessons from [his] past experiences,” including “how important it is to be a good, law abiding citizen, not only in general, but . . . in this industry,” and that “he will continue to uphold the standards, laws and guidelines” of the Board.

7. Based on Petitioner’s evidence at hearing, this Tribunal concludes Petitioner has presented sufficient evidence to rebut the presumption arising from the prima facie evidence of his temperate habits or lack of good moral character. Considering the foregoing, as well as the fact that Petitioner has been working in the industry for several years without incident, this Tribunal further concludes that the Board should reconsider its decision in this action.

PROPOSED FINAL DECISION

8. For the reasons set forth above, this Tribunal recommends the Board RENEW Petitioner’s 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.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to any attorney of record. N.C.G.S. § 150B-42(a).

SO ORDERED, this the day of February, 2021.



Tenisha S Jacobs
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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Petitioner

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This the 18th day of February, 2021.



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