

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
20 DOJ 03887

Homer Owen Weaver

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 Homer Owen Weaver from the revocation of his Burglar Alarm License (“License”) 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 License should be revoked by the Board.

3. Based on the evidence presented at hearing, and for the reasons set forth below, this Tribunal recommends the Board UPHOLD its revocation of Petitioner’s License.

Homer Owen Weaver, pro se.

Balicy & Dixon, LLP by Jeffrey P. Gray. Esq. for Respondent N. C. Alarm Systems Licensing Board.

T.S. Jacobs, Administrative Law Judge.

PROCEDURAL BACKGROUND

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

5. 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

6. Petitioner is the licensee and Qualifying Agent for Safe Home Security, a licensed alarm company with its North Carolina office located in Charlotte, North Carolina. Petitioner has previously been a licensee and Qualifying Agent for other companies licensed in this State.

7. 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.

B. Relevant Facts

8. The Board revoked Petitioner's License and thereby his Qualifying Agent status for failure to correct business practices and dereliction of duties. Petitioner requested a hearing on the Board's decision.

9. At hearing, Paul Sherwin, Director of Respondent Board and its custodian of records, testified to Petitioner's license status, history of complaints and

disciplinary actions by the Board, and the complaints that ultimately gave rise to the revocation of Petitioner's license.

10. Director Sherwin explained that Petitioner came before the Board on two complaints – one from Charlotte, North Carolina and one from Sanford, North Carolina. The complaints were assigned to the investigators for those areas.

11. Investigator Lee Kelly testified he was assigned a complaint from Mr. & Mrs. Rayford Reel in Charlotte. The Reels were a customer of a competing company, Guardian Protection. They were told by two employees who called on them at their home that Safe Home Security had purchased Guardian and they were there to switch out the Reel's equipment, which they did. The Reels learned from Guardian that this statement was false as it had not been acquired by Safe Home Security. Guardian later reinstalled the Reel's equipment.

12. Petitioner was unable to assist Investigator Kelly during his investigation of the Reel's complaint. He was the licensee and Qualifying Agent, but did not know who the two employees were, even though the Reels had provided their names. Neither employee was registered with the Board. Petitioner should have known, or had a record, that the two people were employees and their registration status.

13. Petitioner told Investigator Kelly that he would make inquiry of Safe Home's corporate headquarters in Middletown, Connecticut, but that the Board may need a subpoena to obtain any information.

14. Investigator Nick Ezell was assigned the second complaint from Dallas Lyons of Sanford, North Carolina. Mr. Lyons filed a complaint on behalf of his elderly mother alleging that an employee of Safe Home Security promised to buy out her existing alarm monitoring contract with a competing company in exchange for a new contract and equipment with Safe Home. Safe Home did not pay the existing contract's remaining balance which caused Ms. Lyons's credit score to be damaged.

15. During his investigation, Investigator Ezell learned from Petitioner that he was aware the company hired employees without his knowledge and he had done nothing to stop it. He could not provide any further information claiming "there was a clause in his employment contract that states he cannot provide information that would damage the company." Petitioner never provided a statement or response to the Lyons's complaint.

16. Director Sherwin testified to Petitioner's disciplinary history. While the Qualifying Agent for Alarm Force, LP in 2007, Petitioner entered into a Consent Agreement paying \$1,917.60 for unlicensed activity, unregistered employees, and two late registrations. (Respondent's Ex. 5)

17. In 2008, while also the Qualifying Agent for Alarm Force, the Board accepted a Grievance Committee finding that Petitioner's Alarm Business License be revoked for 1) failure to act as Qualifying Agent as described in 74D-2(c)(2) and 12 NCAC 11.0105(2), 2) failure to correct business practices or procedures that have resulted in a prior reprimand by the Board, 3) failure to properly register employees, 4) allowing non-registered persons access to customer files, 5) failure to maintain a

primary office pursuant to 74D-2,(6), 6) failure to license branch offices pursuant to 74D-7(d), 7) failure to provide NC ASLB staff access in accordance with 12 NCAC 11 .0206(a), 8) doing business in a name other than that in which the company is licensed pursuant to 74D-7(c), and 9) failure to include NC ASLB contact information on customer contracts as required by 12 NCAC 11 .0123. (Respondent's Ex. 3)

18. Petitioner requested a hearing on the 2008 finding and the matter was resolved by entering into a Consent Agreement where Petitioner and Alarm Force admitted the registration violations and paid the back fees and paid a \$2,000.00 civil penalty for failure to correct business practices. The Agreement was signed by Petitioner on 9 December 2009. (Respondent's Ex. 4)

19. In 2013, after Petitioner became the Qualifying Agent for Safe Home Security, a complaint was dismissed but Safe Home Security and Petitioner were sent a non-disciplinary Letter of Warning regarding Petitioner's lack of management control.

20. In 2016, Petitioner and Safe Home entered into a Consent Agreement for registration violations in the amount of \$1,652.40 and a \$2,000.00 civil penalty. It was also agreed Petitioner and Safe Home be issued a Letter of Reprimand for failure to correct business practices.

21. Petitioner did not testify, per se, but instead read into the record a prepared statement which was admitted into evidence as Petitioner's Exhibit 1.

22. By his own admission Petitioner admitted he had appeared before the Board eight times in the past nine years regarding complaints against employees and the company and management failures, including the registration of employees.

PROPOSED CONCLUSIONS OF LAW

1. A business entity that engages in the alarm systems business is required to employ a Qualifying Agent. N.C. Gen. Stat. § 74D-2(c).

2. A Qualifying Agent “is an individual in a management position who is licensed under” Chapter 74D of the North Carolina General Statutes – otherwise known as the Alarm Systems Licensing Act (“the Act”) – and “whose name and address have been registered with the Board.” Id. This position is ultimately responsible for all duties for a licensee, including the registration of employees, as proscribed in the Act. See generally id.

3. The Board has the authority to “suspend or revoke a license or registration issued” thereunder if “it is determined that the licensee or registrant has,” among other things, “failed to correct business practices or procedures that have resulted in a prior reprimand by the Board.” N.C. Gen. Stat. § 74D-10(a)(5). It may also take such action if it is determined that the licensee has engaged in conduct that constitutes a dereliction of duty. N.C. Gen. Stat. § 74D-10(a)(19).

4. Here, the preponderance of the evidence presented by the Board reveals Petitioner failed to correct business practices following numerous prior disciplinary actions and warnings and his failure to do so is a dereliction of duties.

5. Petitioner disagrees with the Board's decision and insists that he has "always pursued compliance with State Statutes (74-D) when performing the Q/A duties of [his] employment." (Petitioner's s Ex. 1) This Tribunal respectfully disagrees.

6. In his written statement, Petitioner admits that he has appeared "before this Board 8 times in 9 years to answer complaints that dealer persons have generated." (Id.) A further review of Petitioner's written statement details a lack of control to effectively carry out the duties proscribed in the Act for a Qualifying Agent, which, again, is a management position.

7. Petitioner has noted in this proceeding the various health issues and ailments he suffered over the last few years. (Id.) While this Tribunal is certainly sympathetic to such matters, it does not excuse Petitioner's conduct which, not only indicates a lack of management control, but also a clear pattern of failing to follow the statutorily proscribed duties of a Qualifying Agent. The Board has given Petitioner numerous opportunities to take corrective action, yet Petitioner's pattern of non-compliance persists.

8. Considering the foregoing, this Tribunal concludes that Petitioner has failed to present sufficient evidence to refute the Board's showing that he violated provisions of the Act that support the revocation of his License. Thus, while revocation is admittedly a serious action, it is one that is proper here given the facts of this case demonstrating Petitioner's continued failure to correct business practices and dereliction of duties.

PROPOSAL FOR DECISION

9. For the reasons set forth above, this Tribunal recommends the Board UPHOLD its revocation of Petitioner's License.

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 North Carolina Alarm System 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 22nd day of February, 2021.

A handwritten signature in blue ink that reads "Tenisha S. Jacobs". The signature is written in a cursive style and is positioned above a solid blue horizontal line.

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:

Homer Owen Weaver
5900 Royal Coach Court
Raleigh NC 27612
Petitioner

Jeffrey P Gray
Bailey & Dixon, LLP
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Attorney For Respondent

This the 22nd day of February, 2021.



Daniel Chunko
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