

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
21 DOJ 00672

Julius Jamaal Mckinney

Petitioner,

v.

NC Private Protective Services Board

Respondent.

**PROPOSAL FOR DECISION**

1. THIS MATTER is before the Office of Administrative Hearings (“OAH” or “Tribunal”) on the appeal of Petitioner Julius Jamaal McKinney from the suspension of his Unarmed and Armed Guard registrations, Trainer Certifications, Courier License, and Qualifying Agent status by Respondent, the North Carolina Private Protective Services Board (“the Board”).

2. Given the nature of Petitioner’s appeal, the issue before this Tribunal in this contested case is whether the Board erred in suspending Petitioner’s various registrations, certifications, licenses, and Qualifying Agent status and taking other action against Petitioner. Based on the evidence presented at hearing, and for the reasons set forth below, this Tribunal recommends that the Board MODIFY its decision for the reasons explained below.

*Julius Jamaal McKinney, pro se.*

*Bailey & Dixon, LLP by Jeffrey P. Gray, Esq. for Respondent, North Carolina Private Protective Services Board.*

T.S. Jacobs, Administrative Law Judge.

## PROCEDURAL HISTORY

3. By correspondence dated 15 January 2021, the Board notified Petitioner that it was taking the following action against him:

Suspend all licenses, registrations, and certifications held by [Petitioner] for violation of NC G.S. 74C-12(a)(25) & NC G.S. 74C-12(a)(31) until all pending criminal charges are resolved.

(R's Ex. 4) Additionally, the Board stated that "the screening committee [would] take no action on any application submitted for a replacement of qualifying agent during the suspension of [Petitioner]." (Id.)

4. Petitioner subsequently requested a hearing on the actions delineated in the Board's 15 January 2021 correspondence (collectively "Challenged Board Actions") and, by Notice of Hearing dated 12 February 2021, the matter was scheduled for hearing on Tuesday, 23 February 2021 at the Office of Administrative Hearings ("OAH") in Raleigh, North Carolina.

5. On 23 February 2021, the Undersigned called this contested case for hearing. Because of the ongoing COVID-19 pandemic, this Tribunal conducted a hybrid contested case hearing in which parties appeared virtually via Microsoft Teams and in-person at the OAH in Raleigh, North Carolina.

6. Both parties were present at the contested case hearing and presented evidence, testimonial and/or documentary, in support of their respective cases.

## PROPOSED FINDINGS OF FACT

### A. The Parties

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.

2. Petitioner is the licensee and Qualifying Agent for 4 Seasons Agency, LLC a security guard and patrol business. He also holds a courier license, an armed guard registration, an unarmed guard registration, a firearms trainer certificate and a long-gun instructor certificate, all issued by Respondent Board.

3. Petitioner, at hearing, explained that he has a 1/3 interest in 4 Seasons Agency, LLC and has two (2) other business partners, one of which is also licensed with another security company. Petitioner has done security for over 20 years and previously served in the United States Army.

### B. The Challenged Board Actions & Related Matters

4. On 26 October 2020, staff of Respondent Board received information that Petitioner, along with another armed guard registered with his company, had been charged with two counts of felony Assault with a Deadly Weapon with Intent to Kill Inflicting Serious Injury arising out of a shooting incident in the parking lot of a gas station and convenience store adjacent to a nightclub where Petitioner and the other guard had been hired as security.

5. On 3 November 2020, Paul Sherwin, Director of Respondent Board, summarily suspended all licenses, registrations and certificates held by Petitioner

pursuant to N.C. Gen. Stat. § 74C-13(g) and N.C. Gen. Stat. § 150B-3(c). A hearing on the summary suspension was scheduled before the OAH for 26 January 2021.

6. However, prior to the summary suspension being heard before the OAH, the Board's Grievance Committee noticed the matter to be heard before it, which was held on 16 December 2020. Petitioner was present for the Committee's meeting and was allowed to address the members and answer questions. The Grievance Committee recommended that all of Petitioner's licenses, registrations, and certificates be suspended until such time as the pending criminal felony charges are resolved. It also recommended that the Screening Committee take no action on any application submitted for a replacement Qualifying Agent for 4 Seasons Agency, LLC.

7. At its full meeting on 17 December 2020, Respondent Board accepted the Grievance Committee's recommendation and suspended Petitioner's security guard and patrol license, courier license, armed guard registration, unarmed guard trainer certification, firearms instructor certification, and long-gun instructor certification. Petitioner subsequently requested a hearing on Respondent's denial of the licenses, registrations, and certifications.

8. At the contested case hearing held before this Tribunal on the Challenged Board Actions, Director Sherwin testified to all of Petitioner's licenses, registrations and certifications, the reporting of Petitioner's criminal charges to the Board staff, his initial Order of Summary Suspension, and the withdrawal of the summary suspension following the suspension by the Board. Petitioner's two

Warrant for Arrest, which showed the above criminal charges, were admitted into evidence as Respondent's Exhibit 1.

9. Ray Bullard, Investigator and Training Officer for Respondent Board, conducted the initial investigation and obtained the Warrants (i.e. Respondent's Exhibit 1.) He also presented his findings to the Grievance Committee after which it recommended suspension pending adjudication of the charges.

10. The Board also voted that "the screening committee [would] take no action on any application submitted for a replacement of qualifying agency during the suspension of [Petitioner]." Director Sherwin, at hearing, testified that he understood this language to mean that, if any one from Petitioner's company applied to be a Qualifying Agent, the screening committee was not to review it. He further stated that he could not speculate as to "why the Board decided to go that route" and that, in his time with PPSB, he has not seen the Board take this action in other cases. Director Sherwin could not identify any statutory provision in Chapter 74C of the General Statutes addressing this particular action taken by the Board nor could he identify any policies or procedures of the Board discussing how they deal with such circumstances.

11. Amanda Rolle, Deputy Director of Respondent Board, interviewed Petitioner on October 26, 2020 when he orally reported the discharge of a firearm as required by 14B NCAC 16 .0110. Petitioner explained that the incident occurred at approximately 2:30 a.m. on October 25<sup>th</sup> at the Star Bar in Raleigh, North Carolina. He was working security for the Star Bar along with two other of his employees. One

of the other employees notified him that he was observing four to six men arming themselves in the parking lot of the Speedway, a gas station and convenience store where patrons of the Star Bar frequently park. He arrived at his employee's location and initially was not going to get involved however a bullet flew by his employee and him so each engaged separate targets; he fired six shots and his employee fired five. Petitioner declined to answer when asked if any of his shots struck anyone.

12. Petitioner stated he had been told by the Raleigh Police Department during a meeting with security guard and patrol companies that perform services at bars and nightclubs in the City that they are also responsible for security in any parking area where patrons park. On cross-examination, Investigator Bullard, who was in attendance at this meeting, confirmed that this is what company owners were told.

13. His employees and he assisted the first police patrol officer to arrive with securing the crime scene, but later (Petitioner) had his weapon confiscated and was charged by detectives.

### **PROPOSED CONCLUSIONS OF LAW**

1. The Private Protective Services Act ("Act"), N.C. Gen. Stat. § 74C-1, et. seq., requires any "private person, firm, association, or corporation" engaging in a private protective services profession or activity in this State to be licensed in accordance with its provisions.

2. The Board is authorized to “deny, suspend or revoke a license, registration, or permit” when a licensee has committed certain enumerated acts. N.C. Gen. Stat. § 74C-12.

3. Here, the Board has suspended Petitioner’s various licenses, registrations and certificates and, as support, cites various provisions of General Statute 74C-12 as support for its actions. Of particular relevance is subsection (a)(25), which authorizes the Board to suspend a license or registration where the licensee has “[d]emonstrated intemperate habits or a lack of good moral character.” N.C. Gen. Stat. § 74C-12(a)(25).

4. Petitioner has been charged with two counts of felony Assault with a Deadly Weapon with Intent to Kill Inflicting Serious Injury. Although the two felony charges have not been adjudicated in the criminal courts of Wake County, the evidence in this contested case does raise sufficient questions regarding the intemperate habits and moral character of Petitioner so as to warrant suspension of Petitioner’s various licenses, registrations, and certificates at this time.

5. This Tribunal, however, can not reach a similar conclusion with regards to the Board’s decision to simply not perform its statutory duties.

6. As explained, the Board, in addition to its suspension action against Petitioner, took the additional step of prohibiting the screening committee from acting on “any application submitted for a replacement of qualifying agency during the suspension of [Petitioner].” Other than citing General Statute 74C-12, which, again, only authorizes the Board to “deny, suspend or revoke,” the Board has not

identified any specific support – statutory or otherwise – that authorizes it to take this particular action.

7. “The purpose of [the Act] is to increase the level of integrity, competency, and performance of Private Protective Service Professions in order to safeguard the public health, safety, and welfare.” N.C. Gen. Stat. § 74C-1. The Board plays a significant part in effectuating the Act’s purpose as it is charged with “administer[ing] the licensing and set educational and training requirements for persons, firms, associations, and corporations engaged in a private protective services profession within this State.” N.C. Gen. Stat. § 74C-4(a). And, while the Board has numerous powers, it is not *carte blanche*.

8. Entitled “Powers of the Board,” General Statute 74C-5 provides that, in addition to the powers conferred elsewhere in the Act, the Board shall have those powers specifically enumerated therein. N.C. Gen. Stat. § 74C-5 (1)-(12). These powers include:

- “Conduct investigations regarding alleged violations and to make evaluations as may be necessary to determine if licensees and trainees are complying” with the provisions of the Act.
- “Approve individual applicants to be licensed or registered” according to the Act.
- “Deny, suspend, or revoke any license or trainee permit issued or to be issued under” the Act “to any applicant, licensee, or permit holder who fails to satisfy the requirements of [the Act] or the rules established by the Board.”

N.C. Gen. Stat. § 74C-5(3), (5) and (6). Nowhere in General Statute 74C-5, is the Board given the power to decide that it will not act on an application before it.

9. In reaching this conclusion, this Tribunal is not rendering an opinion as to how the Board should resolve any qualifying agent applications that it may receive in connection with Petitioner’s business but simply that the Board must act on such applications. Ultimately, the decision as to whether to approve or deny such applications lies with the Board subject to any review as provided by the Act.

10. Accordingly, based on the foregoing Proposed Findings of Fact and Conclusions of Law, this Tribunal concludes that the Board’s decision should be modified as proposed below.

**PROPOSED FINAL DECISION**

11. For the reasons set forth above, this Tribunal recommends that the Board UPHOLD its suspension of Petitioner’s security guard and patrol license, courier license, armed guard registration, unarmed guard trainer certification, firearms instructor certification, and long-gun instructor certification and RESCIND its decision that “the screening committee take no action on any application submitted for a replacement of qualifying agent during the suspension of [Petitioner].”

**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 Private Protective Services 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 8th day of April, 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:

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Raleigh NC 27609  
Petitioner

Jeffrey P Gray  
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jgray@bdixon.com  
Attorney For Respondent

This the 8th day of April, 2021.



Daniel Chunko  
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