

**BEFORE THE NEW MEXICO
PRIVATE INVESTIGATIONS ADVISORY BOARD**

IN THE MATTER OF:

**ERNESTO SOSA,
Respondent**

CAUSE NO. PI-2014-001

FINAL DECISION AND ORDER

THIS MATTER came before Chris J. Martinez, Hearing Officer, on the merits on May 20, 2014 for a decision pursuant to provisions of the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 through 61-1-33 (1957, as amended through 2003) and the Private Investigations Act, Section 61-27B-1 through 61-27B-36.

DECISION

Pursuant to the recommendation of the Hearing Officer, the Private Investigations Advisory Board (“Board”) has revoked Respondent’s Level III Guard Card based on the facts and the requirements listed in NMSA Section 16-27B-7.

FINDINGS OF FACT

The Board adopts the Hearing Officer’s recommended Finding of Facts numbered 1-3 in their entirety. A copy of the Hearing Officer’s Report is attached hereto and incorporated into the decision of the Board.

CONCLUSIONS OF LAW

Based on the findings of fact, the Board enters the following conclusions of law:

1. Respondent was licensed under the New Mexico Private Investigations Act (hereafter “Act”), under license number 35926. As such, Respondent is subject to jurisdiction and licensure authority of the Board.
2. Respondent was provided with all due process as required by law.

3. A formal hearing was held on May 20, 2014 in conformance with the Uniform Licensing Act (“ULA”), NMSA 1978, Sections 61-1-1 through 61-1-33.

4. The usual standard of proof in an administrative proceeding for disciplinary action against a professional license is a preponderance of the evidence. See Matter of D’Angelo, 1986-NMSC-052, ¶ 10, 105 N.M. 391, cert. denied, 479 U.S. 1065, 107 S. Cr. 952 (1987).

5. The Board was presented with a testimonial admission of Respondent that Respondent was not suitable to be licensed as a Level III Security Guard for violation of the Private Investigations Rule 16.48.1.8(B)(1) NMAC. The offenses in question, carrying an unauthorized firearm and negligently mishandling causing a negligent discharge thereof, were sustained by a preponderance of the evidence.

6. Section 61-1-3 of the ULA requires that a licensee be afforded notice and an opportunity to be heard, before the Board has authority to take any action that could, among other remedies, result in a license suspension, revocation, or the imposition of a fine of one-thousand dollars (\$1,000) per violation.

7. Under Sections 61-5A-21(A)(3), 61-5A-21(A)(5), 61-5A-21(A)(7) and 61-5A-21(A)(14) of the Act, the Board may deny, revoke, suspend, stipulate or otherwise limit a license, in accordance with the ULA’s requirements.

FINAL ORDER

Having reviewed the record in this matter, the Board concludes that there is sufficient evidence in the record to prove by a preponderance of the evidence that Respondent violated the Private Investigations Act. Pursuant to § 16-27B-7, and the Board has lawful authority and jurisdiction to revoke Respondent’s license as a Level III Security Guard.

1. Respondent’s license 35926, Level III Security Guard Card, is hereby revoked.

2. Respondent is permitted, notwithstanding the revocation of Respondent's Level II Guard Card, to continue working as a Level II Security Guard.

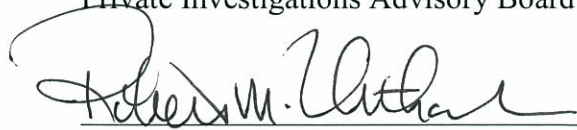
NOTICE OF RIGHT TO APPEAL

Pursuant to Section 61-1-17 of the ULA, a person aggrieved by a final decision or order of the Board may appeal the decision to district court pursuant to the provisions of NMSA 1978, Section 39-3-1.1. To obtain such review, a notice of appeal must be filed in the proper district court within thirty (30) days after the date of this Final Decision and Order.

IT IS SO ORDERED.

June 27, 2014
Date

For the New Mexico
Private Investigations Advisory Board


Superintendent Robert M. Unthank
Regulation and Licensing Department
State of New Mexico

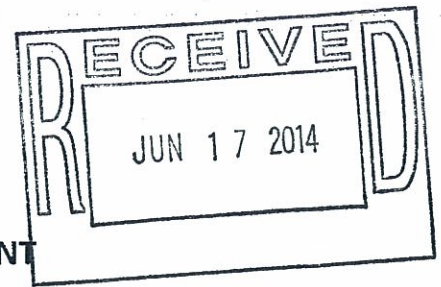
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing, via certified mail, was sent to the following this 30th day of June, 2014:

Ernesto Sosa
87505 Black Stallion RD SW
Albuquerque, NM 87121



STATE OF NEW MEXICO
REGULATION AND LICENSING DEPARTMENT
BOARDS AND COMMISSIONS DIVISION
PRIVATE INVESTIGATIONS ADVISORY BOARD



IN THE MATTER OF:

Ernesto Sosa

CASE No. PI-2014-001

HEARING OFFICER'S REPORT

This matter came before Chris J. Martinez, Hearing Officer, on the merits on May 20, 2014, at Regulation and Licensing Department Office, 5200 Oakland Avenue NE, Albuquerque, New Mexico. The Boards and Commissions Division ("Division") was represented by Justin Wolfe, Administrative Prosecutor ("Prosecutor"). Ernesto Sosa ("Respondent") represented by Aaron Jones.

Preliminary Matters

On April 1, 2014, the Private Investigations Advisory Board ("Board") issued a Notice of Revocation to Respondent in Case No. PI-2014-001 Pertaining to the Respondent's Level III Guard Card. The Notice of Revocation stated the Department and the Board had sufficient evidence which, if not rebutted or satisfactorily explained at a formal hearing, would justify the Department in Revoking Respondent's Level III Guard Card in the State of New Mexico, citing applicable legal authority for the Revocation and denial of licensure found in the Private Investigations Act [Chapter 61,

Article 27B NMSA 1978]. The Revocation citing a specific incident that occurred on March 27, 2014, the information is as follows:

- Respondent while in uniform and employed by International Protective Services, dropped .22 magnum pistol while attempting to retrieve it from his cargo pocket causing the firearm to discharge inside the Camping World Building.

The Revocation cited Respondent's right to a hearing, which he subsequently requested in writing on April 18, 2014.

The Hearing

Witnesses testifying at the hearing for the Division- Michelle Medina and Amos Padilla

Witnesses testifying at the hearing for the Respondent-none called.

Admitted exhibits:

Mr. Wolfe and Mr. Estrada stipulated on the following exhibits:

1. Respondent's Revocation Letter of Level III Guard Card
2. Respondent's Request for hearing
3. Notice of Hearing
4. Amended notice of hearing
5. Training and Certificates/ Email

Find of Facts

1. Mr. Sosa was working in uniform on March 27, 2014, at camping world while employed as a full time security guard
2. Mr. Sosa admitted to having a .22 magnum pistol in his cargo pocket of his uniform pants that was not authorized by his company or RLD
3. While showing a customer his pistol inside Camping World Mr. Sosa dropped the pistol causing it to discharge

Analysis and Discussion

The issue being addressed is Respondent's suitability to be licensed as a Level III Security Guard in the state of New Mexico. The Private Investigations Rule 16.48.1.8(B)(1) NMAC states, in part :

- C. To accept the responsibility and fulfill the obligations of my role: protecting life and property; preventing and reducing crimes against my employer's business, or other organizations and institutions to which I am assigned; upholding the law; and respecting the constitutional rights of all persons...

The offenses in question, carrying an unauthorized firearm and negligently mishandling causing a negligent discharge is in direct violation of 16.48.1.8(B)(1) NMAC.

Conclusion

Respondent admitted to his wrong doing and was very professional and honest with all information requested. The respondent did complete the necessary training to be a

certified level III guard but openly admitted after this incident he does not have a desire to carry a firearm on post any longer. He did state he enjoys his job and without it he would have a hard time financially sustaining himself and would like an opportunity to continue working as a security guard with IPS. According to the owner of IPS Aaron Jones, Mr. Sosa has been reprimanded internally but he is one of his best workers and he will continue to have a job with his company pending the hearing's outcome but not as a level III guard. I believe Mr. Sosa's incident was truly an accident and was not done with any intent and feel he knows he made a poor decision when he decided to bring the firearm to work.

Recommendation

The Respondent admitted his actions were negligent and that he violated Rules and Regulations. Although his honesty and integrity were much appreciated, it is my duty to make a decision based on the facts and the requirements listed in 61-27B-7. Therefore, it is recommended that the New Mexico Regulation and Licensing Department Revoke the Respondent's Level III guard card but allow him to continue working as a level II guard, while noting that 61-27B-26 allows for complete revocation in this case, but also allows for probation, if deemed appropriate.

Respectfully submitted,

Chris J. Martinez


Hearing Officer