

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

In the Matter of:

JAMES CARLISE
Application,

Case No. PI-7-2014-APP

Respondent.

DECISION AND ORDER

THIS MATTER came before a quorum of the Private Investigations Advisory Board ("Board") during a hearing on May 27, 2015 for a decision in the above referenced case.

FINDINGS OF FACT

The Board, having familiarized themselves with the record of the proceedings, including the Hearing Officer's Report, hereby makes the following findings of fact:

1. Department of Public Safety Records, shows Respondent was found guilty of Possession of a Controlled Substance (Cocaine) a Felony and was placed on eighteen months intensive supervised probation.
2. Department of Public Safety records also show Respondent was found guilty of Residential Burglary, a felony and was imprisoned for three years.
3. Respondent did not attend the hearing to argue the Board's decision to deny his application for Level One Guard Card.

A copy of the Hearing Officer's Report is attached hereto.

CONCLUSIONS OF LAW

Based on the findings of fact, the Board's Conclusions of Law, are as follows:

1. The Private Investigations Act, NMSA 1978, § 61-27B-7, Private Investigator Licensure; requirements states, in part:

A. The department shall issue a license as a private investigator to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant has met all requirements set forth by the department in rule, including that the applicant:

1. Is at least twenty one years of age;
2. Is of good moral character;
3. Has successfully completed an examination as required by department rule;
4. Has not been convicted of a felony or an offense involving dishonesty, an offense involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards;

2. The offenses in question, Possession of a Controlled Substance and Residential Burglary were all adjudicated as felony convictions.

3. The offense, themselves are relative to the registration requirement that a Level one applicant be a person of good moral character, who has not been convicted of a felony or an offense involving dishonesty, an offense involving an intentional violent

actor the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards.

4. Respondent's criminal history shows two potentially disqualifying convictions of concern to the Division that occurred over twenty-two (22) years ago.

5. Although these convictions were over twenty-two (22) years ago, the requirements listed in Section 61-27B-7 are clear and do not have a statute of limitations.

6. In this case, there is tangible evidence (DPS Background) the elements of the crimes committed would be considered an offense of dishonesty, not of good moral character and a violation of professional ethical standards.

As such, the Board finds that Respondent is not eligible to be licensed under the New Mexico Private Investigators Act.

ORDER

Based on the Findings of Fact and Conclusions of Law, the Board votes in the affirmative and renders this Decision and Order:

IT IS SO ORDERED as follows:

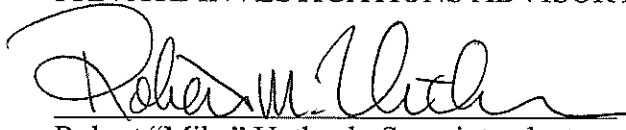
1. The New Mexico Regulation and Licensing Department DENY the Respondent's application for licensure as a Level One Guard, while noting that NMSA 1978, § 61-27B-7 allows for denial in this case, but also allows for probation, if deemed appropriate.

This Decision and Order shall be served upon Respondent in accordance with law. Pursuant to NMSA 1978, § 61-1-17, a person aggrieved by a final decision or

order of a board may appeal the decision to district court by filing in district court a notice of appeal with proof of service, within thirty (30) days of the date of this order.

DATE: August 25, 2015

REGULATION AND LICENSING DEPARTMENT
PRIVATE INVESTIGATIONS ADVISORY BOARD


Robert "Mike" Unthank, Superintendent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Decision and Order was mailed by certified mail to:

James Carlisle
3512 La Fayette Drive NE Apt B
Albuquerque, NM 87107

Certified Mail # 7013 0600 0001 8696 0836



Randy Perez
Compliance Liaison
Regulation and Licensing Department
P.O. Box 25101
Santa Fe, NM 87505

Dated this 25th day of August, 2015.

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James Carlisle
3512 La Fayette Drive NE Apt B
Albuquerque, NM 87107

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BEFORE THE NEW MEXICO PRIVATE INVESTIGATIONS ADVISORY BOARD

**IN THE MATTER OF,
JAMES CARLISLE
License No. (Pending).**

Case No. PI-7-2014-APP

Respondent.

NOTICE OF CONTEMPLATED ACTION

YOU ARE HEREBY NOTIFIED that the New Mexico Private Investigations Advisory Board (“Board”) has before it sufficient evidence which, if not rebutted or satisfactorily explained at a formal hearing, will justify the Board denying the registration application for JAMES CARLISLE.

APPLICABLE LAW

Under the Private Investigations Act (“the Act”), “it is unlawful for an individual to...act as...a security guard...to make any representation as being a licensee or registrant unless the individual is licensed by the department pursuant to [the Act].” NMSA 1978, § 61-27B-3(A). “Every individual seeking employment or employed as a level one security guard shall file an application for registration.” NMSA 1978, § 61-27B-16(A).

The Regulation and Licensing Department (“the Department”) has the power to enforce and administer the Act, and adopt rules for registering security guards. NMSA 1978, § 61-27B-5. An applicant for registration as a level one security guard must file a completed application, including fees, and “satisfactory evidence that the applicant...is of good moral character.”

NMSA 1978, § 61-27B-16(B)(2). An applicant must also provide “satisfactory evidence that [he]...has not been convicted of a felony or an offense involving dishonesty, an offense involving an intentional violent act or the illegal use or possession of a deadly weapon.” Section 61-27B-16(B)(4). In accordance with the procedures in the Uniform Licensing Act (“the ULA”), NMSA 1978, Sections 61-1-1 through 61-1-34, the department may deny...a registration...applied for under the Act...upon the grounds that the...applicant...has been convicted of a felony or any crime involving dishonesty or illegally using, carrying or possessing a deadly weapon.” NMSA 1978, § 61-27B-26(D).

The Act also created the Private Investigations Advisory Board (“the Board”), NMSA 1978, Section 61-27B-6, which is authorized, in pertinent part, to “assist the department...as requested by the superintendent of the department or as provided by the rules of the department.”

Based on the fact that you have three felony convictions, the Board voted and the Superintendent of the Department approved the Board’s vote to deny your application for registration as a level one security guard.

NATURE OF THE EVIDENCE AGAINST THE RESPONDENT

On July 14, 2014, the Department received your application to be registered as a Level One Security Guard in the State of New Mexico. In your application you admitted that you had been arrested and convicted of a felony. Further, you authorized the officials of the Regulation and Licensing Department and the Private Investigations Advisory Board to conduct a comprehensive background investigation and authorized the release of any and all information pertinent to “any arrest...and/or other information on general qualifications for fitness to practice as a licensee/registrant.”

Between the information you provided and a background investigation, it appears that you have been arrested and convicted of a number of felonies, including:

- Burglery (convicted on one count in 1982),
- Escape from a Police Officer (convicted on one count in 1981),
- Forgery (convicted on one count in 1982),
- Trafficking (convicted on one count in 1990),
- Possession of a Controlled Substance (convicted on one count in 1991),
- Unlawful Taking of a Motor Vehicle (convicted on one count in 1991),
- Burglary (convicted on two counts in 1994)

While the pardon from Governor Toney Anaya that you provided in your application precludes the Board from denying you a license based on felony convictions that pre-date the pardon (for example, any conviction before April 1, 1986), it has no effect on any subsequent convictions (for example the conviction of Trafficking, Possession, and Unlawful Taking of a Motor Vehicle).

The Act provides that you may not have “been convicted of a felony or an offense involving dishonesty, an offense involving an intentional violent act or the illegal use or possession of a deadly weapon.” Section 61-27B-16(B)(4). There is no limit on how far into the past the Board may look to disqualify an applicant based upon a felony conviction. As such, you have three felony convictions that justify denying your registration.

RIGHTS OF THE RESPONDENT

You have a right to request a formal hearing in this matter. In order to exercise that right, **you must respond to this Notice of Contemplated Action with a request for a hearing**

within twenty (20) days of the service of this Notice. NMSA 1978, Section 61-27B-27(A). The ULA, NMSA 1978, Sections 61-1-1 through 61-1-34, governs the procedures for conducting this hearing to the extent that those procedures do not conflict with the Act. See NMSA 1978, § 61-27B-27(A). As such, **the hearing request must be made in writing, sent to the Board by certified receipt requested letter to the address provided below.** See NMSA 1978, § 61-1-4(B). Failure to respond in this prescribed manner (requesting a hearing) will result in the Board taking the contemplated action; and, such action shall be final, without any opportunity to appeal for judicial review. Please send any request for a formal hearing to:

John Francis
Board Administrator
Private Investigation Advisory Board
Toney Anaya Building
2550 Cerrillos Road, Second Floor
Santa Fe, NM 87505
(505) 476-4634

If that hearing is requested, it will be conducted in accordance with the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 through 61-1-31, to the extent that those procedures do not conflict with the Act. NMSA 1978, Section 61-27B-27. With respect to any formal hearing, as the respondent you have the following rights under NMSA 1978, Section 61-1-8:

A. A person entitled to be heard under the Uniform Licensing Act shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefor to the board or hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the board or the hearing officer. All notices issued pursuant to Section 61-1-4 NMSA 1978 shall


contain a statement of these rights.

B. Upon written request to another party, any party is entitled to: (1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and (2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing. The party to whom such a request is made shall comply with it within ten days after the mailing or delivery of the request. No request shall be made less than fifteen days before the hearing.

C. Any party may take depositions after service of notice in accordance with the Rules of Civil Procedure for the District Courts. Depositions may be used as in proceedings governed by those rules.

Dated on this 25th day of February, 20 15.

STATE OF NEW MEXICO PRIVATE INVESTIGATION ADVISORY BOARD

By: 
Superintendent
New Mexico Regulation and Licensing Department

Administrative Prosecutor

Brian Parrish, Assistant Attorney General
New Mexico Attorney General's Office
P.O. Drawer 1508
Santa Fe, NM 87504-1508
(505) 827-6624
bparrish@nmag.gov


Certification of Service

I, RANDY PEREZ, do hereby certify that a true and correct copy of the this Notice of Contemplated Action was mailed to Respondent, James Carlisle, at his last known address as shown by the records of the New Mexico Private Investigation Advisory Board on this 26 day of FEBRUARY, 2015.

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RANDY PEREZ
Print the Name of Individual Certifying Service

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