

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE DENIAL OF
THE RENEWAL OF THE LICENSE OF
E. TIMOTHY SCHOMBURG
TO PRACTICE AS AN UNARMED PRIVATE
SECURITY OFFICER IN THE STATE OF UTAH

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: **O R D E R**
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Case No. DOPL-2008-270

The attached Findings of Fact, Conclusions of Law and Recommended Order are hereby adopted by the Director of the Division of Occupational and Professional Licensing of the State of Utah

Dated this 12 day of March, 2009




F. David Stanley
Director

Agency review of this Order may be obtained by filing a request for agency review with the Executive Director, Department of Commerce, within thirty (30) days after the date of this Order. The laws and rules governing agency review are found in Section 63G-4-301 of the Utah Code, and Section R151-46b-12 of the Utah Administrative Code

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IN THE MATTER OF THE DENIAL	.	
OF THE RENEWAL OF THE LICENSE OF	.	FINDINGS OF FACT
E. TIMOTHY SCHOMBURG		CONCLUSIONS OF LAW
TO PRACTICE AS AN		AND RECOMMENDED ORDER
UNARMED PRIVATE SECURITY OFFICER	:	Case No. DOPL-2008-270
IN THE STATE OF UTAH	:	
	:	

Appearances:

E. Timothy Schomburg for Applicant

Laurie Noda for the Division of Occupational and
Professional Licensing

BY THE BOARD:

A February 12, 2009 hearing was conducted in the above-entitled proceeding before J. Steven Eklund, Administrative Law Judge for the Department of Commerce, and the Security Services Licensing Board. Members of the Board present were Johnny W McCoy, Paul K. Rothe, Perry Rose and Alan Conner. The remaining two Board members (Clayton A Merchant and Sheriff Jeff Merrell) were absent. F David Stanley, Director of the Division of Occupational and Professional Licensing, joined the hearing in progress.

Evidence and argument was offered and received. The Board took the matter under advisement at the close of the hearing. The Board, having concluded its deliberations, now enters its

Findings of Fact, Conclusions of Law and submits the following Recommended Order to the Division for its review and action

FINDINGS OF FACT

1 Applicant became licensed on October 6, 2004 to practice as an unarmed private security officer. Applicant has been employed at Davis Security, CBI Security, AT Security and Allied Barton Applicant commenced full time employment with The Wackenhut Corporation in January 2008.

2 There is no evidence of any complaints as to Applicant's performance with any of the just stated companies Applicant's license has not been subject to any disciplinary action since that license was issued in 2004

3 Applicant's license was due for renewal by November 30, 2008. Applicant submitted a license renewal application to the Division on October 28, 2008 A questionnaire with that application included an inquiry whether Applicant had pled guilty to any felony or misdemeanor in any jurisdiction since the last renewal or issuance of his license

4. Applicant replied "no" to that inquiry. Pursuant to a November 13, 2008 letter, the Division informed Applicant that his request for license renewal was denied That denial was based on Applicant's entry of a guilty plea on June 5, 2007 in Sandy Justice Court proceedings to the charge of Disorderly Conduct, a Class C Misdemeanor Based on that conviction,

Applicant was ordered to pay a \$500 fine Applicant had paid that fine in its entirety by July or August 2008.

5 Applicant's conviction arose from a vehicular altercation with another driver which occurred at approximately 10.40 p m on May 8, 2007. After driving in extremely close proximity, Applicant and the other driver both stopped and exited their vehicles They then engaged in a verbal confrontation, which escalated to mutually aggressive physical contact witnessed by various members of the public

6 Police authorities arrived at the scene of the altercation and investigated the incident Neither Applicant nor the other driver wanted to press charges in the matter. Accordingly, both Applicant and the other driver were cited for disorderly conduct.

7. Applicant obtained a license to practice as a real estate sales agent from the Utah Division of Real Estate on August 4, 2008 Applicant also obtained a concealed firearm permit from the Utah Department of Public Safety on October 28, 2008. This record does not reflect when Applicant filed the applications to become a licensed real estate agent and to obtain the concealed weapons permit

8. Based on the substantial and credible presented, and the reasonable references drawn therefrom, Applicant disclosed his disorderly conduct conviction to both the Utah Department of Real

Estate and the Utah Department of Public Safety when he sought to obtain the license and permit in question.

9. Applicant informed The Wackenhut Corporation of the denial of his request to renew his unarmed private security officer license when he received the November 13, 2008 notice of that denial. Richard A Smith, general manager for The Wackenhut Corporation, submitted a November 21, 2008 letter to the Division. That letter recites Applicant "has been an outstanding employee" and he has "always been willing to work extra when requested"

10 Mr Smith's letter also recites Applicant "performs all of his post duties in a professional manner" and that Mr. Smith has "never had any reason to doubt Timothy's integrity". This record does not reflect whether Applicant informed Mr Smith that his license renewal application was denied due to both the criminal conviction and Applicant's failure to have disclosed that conviction to the Division when he applied to renew his license

CONCLUSIONS OF LAW

Applicant contends the conduct which led to his conviction reflects an isolated incident and he has never engaged in any other criminal conduct Applicant also asserts his employment history as an unarmed private security officer is exemplary, he paid the fine entered in the criminal proceeding in its entirety

and he has attempted to put the criminal matter entirely behind him

Applicant also contends he mistakenly failed to disclose the conviction when he sought to renew his license Applicant urges he believed the criminal proceeding was resolved in 2006 and he thus replied on the renewal application form that there had been no felony or misdemeanor entered during the prior two (2) years

Applicant pointedly urges that he disclosed the criminal conviction regarding his application for a real estate sales agent license and a concealed weapons permit Applicant strenuously contends that he should be allowed to move forward, finally place the criminal matter behind him and maintain his license to practice as an unarmed private security officer

Utah Code Ann. §58-1-401(2) provides the Division may refuse to renew the license of any licensee who.

(a) . has engaged in unprofessional conduct as defined by statute or rule under this title.

§58-1-501(2) generally defines unprofessional conduct to include:

. . .
(c) engaging in conduct that results in conviction . . . or a plea of guilty . . . with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license . . . is to be issued . . . bears a reasonable relationship to the . . . applicant's ability to safely or competently practice the occupation or profession

(h) practicing an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent.

Applicant has been convicted of a crime which directly reflects his lack of both good judgment and self restraint in avoiding a verbal confrontation and a resulting physical altercation. Given the nature of Applicant's misconduct, the Board readily concludes he engaged in unprofessional conduct violative of §58-1-501(2)(c)

Any security officer may become involved in a disputed matter with a member of the public, which necessarily requires that the officer remain in control of any potentially disruptive incident. Accordingly, it is critical that a security officer continuously maintains a well measured demeanor and exercises good judgment to avoid any response which could worsen the situation.

The Board readily finds and concludes Applicant became a willing participant in the verbal confrontation and physical altercation with the other driver. The Board duly notes Applicant was not performing any duties as a private security officer when the May 28, 2007 incident occurred. Nevertheless, the nature and seriousness of Applicant's conduct during the incident in question raises significant concerns whether

potentially disruptive circumstances in the workplace would prompt Applicant to respond in a similarly unwarranted fashion.

It is obvious Applicant submitted a false application to the Division and he thus engaged in unprofessional conduct violative of §58-1-501(2)(h) when he failed to disclose the conviction in question. The Board questions Applicant's suggestion that he simply forgot when the criminal matter arose. Applicant apparently had no such lack of memory when he submitted his application for licensure as a real estate sales agent and sought to obtain a concealed weapons permit.

Those applications were most likely submitted within 3-6 months of Applicant's request to renew his unarmed private security officer license. Applicant's failure to similarly disclose his conviction when he sought to renew that license is inexcusable. The Board seriously doubts the nondisclosure was simply due to the fact that Applicant had paid the fine on his conviction approximately three (3) months earlier and he wanted to simply forget that criminal proceeding.

R156-1-302 provides as follows.

if an applicant or licensee has been involved in unprofessional conduct which when considered with the duties and responsibilities of the license to be held, demonstrates a threat or potential threat to the public health, safety or welfare, the Division may consider various relevant factors in determining what action to take regarding licensure including the following

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(1) aggravating circumstances, as defined in Subsection R156-1-102(2);

(2) mitigating circumstances, as defined in Subsection R156-1-102(17);

(3) the degree of risk to the public health, safety or welfare;

(4) the degree of risk that a conduct would be repeated,

(14) any other information the Division or the board reasonably believes may assist in evaluating the degree of threat or potential threat to the public health, safety or welfare

R156-1-102(2) defines "aggravating circumstances" as

any consideration of factors that may justify an increase in the severity of an action to be imposed upon an applicant Aggravating circumstances include.

(b) dishonest or selfish motive;

(j) illegal conduct, including the use of controlled substances

R156-1-102(17) defines "mitigating circumstances" as

any consideration or factors that may justify a reduction in the severity of an action to be imposed upon the applicant ..

R156-1-102(17) (a) provides mitigating circumstances include.

(1) absence of prior record of disciplinary action, unlawful conduct or unprofessional conduct,

(viii) remorse

There are two aggravating circumstances which should be duly considered in this case Applicant's failure to disclose his criminal conviction to the Division when he applied to renew his license was borne of a selfish motive to avoid adverse action on his application which could terminate his continued employment as an unarmed private security officer It is obvious such an economic consideration was the paramount factor which influenced Applicant's nondisclosure to the Division, whereas Applicant's disclosure of his conviction to the Utah Division of Real Estate and Utah Department of Public Safety would not have jeopardized his primary and ongoing livelihood.

Moreover, Applicant was engaged in illegal conduct as reflected by his criminal conviction. Applicant was a willing participant in that conduct and his role in that incident should not be minimized

There are two mitigating factors which should also be considered No prior disciplinary action has been taken regarding Applicant's license and there is no evidence he has been involved in other unlawful or unprofessional conduct. Moreover, Applicant acknowledges he mistakenly become involved in the altercation with the other driver and he should have

disclosed the conviction which arose from that altercation when he requested the renewal of his unarmed private security officer license.

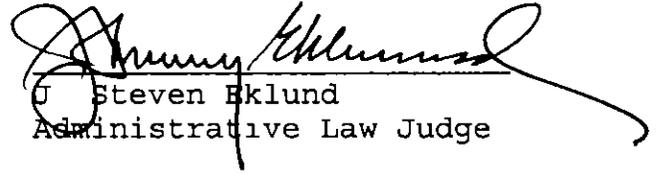
The Board recognizes Applicant's misconduct did not occur while he was providing services as an unarmed private security officer. However, there is an open question whether Applicant might engage in similar misconduct in the future due to a failure to remain calm and respond in a measured manner if a potentially explosive situation were to arise during the course of his employment.

Accordingly, there is a lack of sufficient assurance Applicant would not engage in entirely dubious, aggressive and/or confrontational behavior in any troublesome workplace setting as to dutifully maintain the health and safety of the public when Applicant provides services as an unarmed private security officer. The Board thus finds and concludes there is no proper basis at this time to renew Applicant's license.

RECOMMENDED ORDER

WHEREFORE, IT IS ORDERED Applicant's October 28, 2008 request to renew his license as an unarmed private security officer shall be denied, effective the date this Recommended Order may be adopted by the Division of Occupational and Professional Licensing.

On behalf of the Security Services Licensing Board, I hereby certify the foregoing Findings of Fact, Conclusions of Law and Recommended Order were submitted to F David Stanley, Director of the Division of Occupational and Professional Licensing, on the 12th day of March, 2009 for his review and action


J Steven Eklund
Administrative Law Judge