

TEXAS PRIVATE SECURITY BOARD

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,
APRIL 4, 2018**

**TEXAS DEPARTMENT OF PUBLIC SAFETY
6100 GUADALUPE ST, BLDG E
CRIMINAL INVESTIGATIONS BUILDING
AUSTIN, TX 78752**

BOARD MEMBERS PRESENT:

Honorable Patti James, Chairwoman
Honorable Wade Hayden
Honorable C.D. Siems
Honorable Debbra Ulmer

STAFF PRESENT:

RenEarl Bowie, Division Director, Regulatory Services Division;
Valerina Walters, Managing Attorney, Office of Regulatory Counsel;
Chris Sims, Senior Manager, Licensing and Registration Service;
Huel Haynes, Manager, Licensing and Registration Service;
Ryan Garcia, Assistant Manager, Licensing and Registration Service;
Jay Alexander, Major, Regulatory Crimes Service;

MINUTES

These minutes are a summary record of the Board's public meeting. The meeting was audio-recorded and video-taped. For a detailed record of discussions and statements made by persons speaking at this meeting, please consult the DVD recording on file at the Board's office.

The board meeting was called to order at 9:03 a.m.

Agenda Item I: Approval of Minutes for Board Meeting held January 24, 2018

Chairwoman James introduced this agenda item. Upon review, Board member Hayden made a motion to accept the minutes as submitted. Board member Siems seconded the motion and the board voted unanimously in favor.

Agenda Item II: Quarterly Licensing Report from Regulatory Services Division

Lieutenant Melinda Lowery addressed the Board regarding investigations. She went on to read the following activity report for the 1st quarter CY18, January – March 2018:

Region 1 (Dallas area)

- On 1/4/18 Dallas Special Agents were referred a case involving commissioned security guards impersonating police officers. Charges filed, disposition is currently pending.
- On 2/20/18 Dallas Special Agents were referred a case involving an unlicensed armed guard that threatened a woman at a bar in Garland. The suspect was charged by local authorities with Unlawful Carrying of a Weapon on Alcohol Premises. Further investigation of additional violations is on-going.
- On 2/23/18 Dallas Special Agents were referred a case involving a security guard company operating without a license at two (2) residential locations in Dallas. Charges are currently pending.

Region 2 (Houston area)

- On 2/26/18 RSD Houston area investigators were referred a case involving an unlicensed locksmith in the Beaumont area. Investigation revealed these allegations to be unfounded, case closed with no action taken.
- On 3/5/18 RSD Houston area investigators were referred a case involving an unlicensed alarm company operating in the Spring area. Initial investigation is on-going.

Region 3 (Valley area)

- On 2/6/18 Corpus Christi Special Agents conducted an undercover operation on a locksmith suspected of operating without a license. As a result of this operation, the suspect was arrested and charged with Operating a Locksmith Company Without a License.
- On 3/1/18 Corpus Christi Special Agents were referred a case involving four (4) unlicensed security guards employed by two (2) companies with the same qualified manager in the McAllen area. One (1) of the suspects is ineligible for a license due to disqualifying criminal history. Both companies in question were found to be non-compliant during recent DPS inspections. Investigation is on-going.

Region 5 (Panhandle area)

- On 2/1/18 Lubbock Special Agents received information regarding a locksmith allegedly operating without a license. The locksmith in question had been charged in late 2017 with a Class A misdemeanor charge of operating without a license. Agents conducted an undercover operation, and discovered the recent allegations made were false. The suspect had ceased all regulated activity and associated advertising. No action taken.

Region 6 (Central Texas area)

- On 1/8/18 San Antonio Agents were referred a case from RSD HQ regarding a company potentially employing armed guards without a license. Investigation revealed the reported guards to be unarmed, and properly licensed. No action taken.

RCS HQ

- On 1/10/18 RSD HQ completed an investigation involving a security company in San Angelo operating without a qualified manager. A \$1000 administrative penalty was assessed for this violation.
- On 1/26/18 RSD HQ took administrative action on a private investigator operating in the Austin area with a revoked license. The suspect's license was revoked due to a Class A misdemeanor conviction of Assault with Bodily Injury. Additional action is currently pending against the company.
- On 3/30/18 RSD HQ completed investigation involving the shooting of a non-commissioned security guard while on post at a bar in Dallas. No regulatory violations committed.

Assistant Manager Ryan Garcia presented the licensing totals for the second quarter, 12/1/17 to 2/28/18. He stated, for this time period, the Division received 392 original company applications, 1,753 company renewals, 13,119 original individual applications, and 9,009 individual renewals. He went on to say, for the same time period the Division processed the following licenses/registrations:

- 322 original company licenses (258 online, 64 manual),
- 1,710 company renewals (1,667 online, 43 manual),
- 10,363 individual registrations (10,256 online, 380 manual),
- 8,226 individual renewals (8,123 online, 103 manual),
- 6,234 employee information updates (6,121 online, 113 manual).

He also stated this time period showed 5,930 active company licenses, 418 active school licenses, and 143,279 active individual registrants.

Agenda Item III: Reports from Board Committees

There were no reports at this time.

Agenda Item IV: Public Comment

There were no public comments at this time.

Agenda Item VI: Administrative Hearings on Licensing and Disciplinary Contested Cases

Chairwoman James called roll to determine which individuals with cases before them, were present. She further stated that in the interest of time for those who were present for their hearing, she would hear them first.

- Stephen R. Messa- Docket No. 405-18-0117
- Adrian Macias- Docket No. 405-18-0114
- Seth W. Scruggs- Docket No. 405-18-0511
- Carlos Benitez- Docket No. 405-18-0858
- Jason Dyer- Docket No. 405-18-0850
- Alejandro Soria- Docket No. 405-18-0859

- Alberto Fuentes- Docket No. 405-18-0438

Direct Appeal to the Board

- Regan V. Welborn- Admin. No. Z00275911, Z00275893

Attorney for the Department, Rebecca Burkhalter, presented the following cases to the board.

Stephen R. Messa - Docket No. 405-18-0117:

Mr. Messa was present to address the board on this matter, but did not have counsel present on his behalf. Ms. Burkhalter stated Mr. Messa's renewal applications for registration as an alarm installer and an electronic access control device installer were summarily denied based on his Class A misdemeanor conviction for driving while intoxicated with blood alcohol concentration over 0.15 or more. He also made a material misstatement in his application.

Mr. Messa addressed the board stating that his material misstatement was a result of a mistake made by the clerical person in the company's office. He explained that while his boss was aware of his conviction, she was not and she was the person to fill out the paperwork. He went on to say he did not review the paperwork before signing it, but he has completed everything that was required of him and will be off probation on Friday, April 7, 2018.

The following questions were asked of Mr. Messa:

- Was this a paper application that was filled out and submitted? – yes
- Were there any errors you found in the Findings of Fact? – no
- Do you agree with everything in the Findings of Fact? – yes
- This is regarding a renewal. How long were you licensed before this? – 5 years
- Was this your first criminal offense? – not since I have been in this line of work
- What type of work have you been doing since being suspended? – working on the voice side of the company, nothing with control access
- Do you concur with the Conclusions of Law? – I think it was interpreted correctly. It was a mistake and overlooked by me. Our company policy has changed as a result of this.
- How has your company's policy changed? – the clerical person was filling out the renewal applications, which is not the correct way to do it.

Board member Hayden then asked Ms. Burkhalter if he was correct in understanding that the ALJ was in favor of granting Mr. Messa a license for a probationary period, which is not allowed under the Occupations Code and after you pointed that out to them, the judge changed their conclusion and then denied the registration. She stated that was correct.

Board member Hayden made a motion to affirm the ALJ's decision and deny Mr. Messa's renewal application as an alarm installer and an electronic access control device installer. Board member Ulmer seconded the motion. The motion passed with Hayden, Siems, and Ulmer voting for the motion and James voting against.

Adrian Macias- Docket No. 405-18-0114:

Mr. Macias was present to address the board on this matter, but did not have counsel present on his behalf. Ms. Burkhalter stated Mr. Macias' application for registration as an alarm installer

was summarily denied based on his pending second degree felony offense for possession of marijuana. On November 19, 2015, Mr. Macias pled guilty to the offense and received deferred adjudication probation for a period of ten years. The Private security Act does not consider deferred adjudication to be a conviction, but Mr. Macias' application was denied because the offense remains "pending."

Mr. Macias addressed the board stating that he made a mistake in trusting someone and was driving a car not knowing that there was marijuana in the car. He went on to say that he made another mistake by pleading guilty. He stated that since 1996 this is the only livelihood he has known.

The following questions were asked of Mr. Macias:

- What type of work have you been doing since having your license suspended? – IT and Fire alarm technician
- Did you not have counsel representation? – I had a court appointed lawyer and that changed 5 times during the course of the case.
- When does your Fire alarm license expire? – In two years
- Did you answer the questions on the application and they did not suspend that license? – yes, I even send in a criminal history report
- The company you work for does Fire alarms and IT services? – yes

Board member Siems asked Ms. Burkhalter if anyone else was charged in this case with Mr. Macias. She stated she did not know, as it did not come up in the SOAH hearing. She went on to say that Mr. Macias pled guilty in 2015 and received deferred adjudication, however the Private Security Act does not consider deferred adjudication to be a conviction, but rather leaves the charge as pending. Board member Hayden asked how long his probation was for and when he would be off probation. Ms. Burkhalter stated that the probation was for 10 years and he would be released when all terms were successfully completed, but in the meantime this will stay as a pending charge. Board member Hayden asked if his time begins only after the deferred adjudication ends, to which Ms. Burkhalter stated that if the deferred adjudication was completed successfully the Department would not have a reason to deny his application as it would be as if the charge never occurred.

Chairwoman James made a motion to overturn the ALJ's decision and summarily deny Mr. Macias' application for registration as an alarm installer, based on the ALJ's application of factors of Chapter 53. Board member Ulmer seconded the motion. The motion passed unanimously.

Carlos Benitez- Docket No. 405-18-0858:

Mr. Benitez was present to address the board on this matter, but did not have counsel present on his behalf. Ms. Burkhalter stated Mr. Benitez's application for registration as a commissioned security officer was summarily denied based on his two felony convictions for endangering a child and driving while intoxicated- third.

Mr. Benitez stated that he knew what he did was wrong driving the car drunk with a child in the car. He stated that the police stopped him because of a light being out, not because he had been drinking. When the officer asked him to open the window he smelled alcohol.

Chairwoman James asked if the child was in the front or back seat, to which he stated the child was in the back seat. She asked if he understood that he is not allowed to be a commissioned security guard because he is not allowed to carry a gun. Board member Hayden went on to explain that the laws of the United States do not allow him to carry a gun, nor even hold one due to his felony convictions.

Board member Hayden made a motion to affirm the ALJ's decision and deny Mr. Benitez' application for registration as a commissioned security guard. Board member Siems seconded the motion. The motion passed unanimously.

Alejandro Soria- Docket No. 405-18-0859:

Mr. Soria was present to address the board on this matter, but did not have counsel present on his behalf. Ms. Burkhalter stated Mr. Soria's application for registration as a noncommissioned security officer was summarily denied based on his July 31, 2002 felony conviction for injury to a child with intentional bodily injury. On December 17, 2002, Mr. Soria was placed on community supervision probation. Mr. Soria was dismissed from probation on December 17, 2009. The Department alleges Mr. Soria also made a material misstatement in his application.

Board member Hayden asked Ms. Burkhalter what the board's rule is regarding community supervision and when does the 10 years begin to run. Ms. Walters stated that there is nothing in rules regarding community supervision. Board member Hayden asked if there were a rule on probation after conviction. Ms. Burkhalter stated that in prior Proposals for decision she has always considered completion of sentence to be when they are completely finished to include paying fines, etc., but that is not what this ALJ concluded.

Mr. Soria stated that this was a case of disciplinary action against his step son. Chairwoman James asked how he has been making a living during this time, to which he responded that he has been doing odd jobs. He went on to explain that he is raising a daughter and is trying to get back into the security field. He stated that his prior employer is willing to hire him back if he can get a license. Board member Ulmer asked if he is still involved in the child's life. Mr. Soria stated that he is not involved in his life, as he and the child's mother are divorced.

Chairwoman James asked what the material misstatement was on the application. Ms. Burkhalter stated that Mr. Soria put the wrong date for when he completed the sentence. Chairwoman James asked if he would be eligible to reapply in December 2019. Ms. Burkhalter stated that that is the Department's position but that the ALJ determined that his completion of sentence was when he was released from prison, not community supervision. Board member Hayden stated that the records indicated that Mr. Soria's community supervision was terminated unsatisfactorily in 2009. Board member Ulmer asked why his community supervision was terminated unsatisfactorily, to which Mr. Soria stated he was unable to pay all of the fines related to this conviction. Board member Siems asked the age of his step son at the time of the incident and the extent. Mr. Soria stated that the child was 12 years old and he spanked him.

Agenda Item V: Executive Session as authorized under §551.071, if necessary

The Board chose to take an Executive Session at 9:57am

The Board reconvened the meeting at 10:09am

Chairwoman James made a motion to affirm the ALJ's decision and grant Mr. Soria's application for registration as a non commissioned security officer. Board member Siems seconded the motion. The motion passed unanimously.

Seth W. Scruggs- Docket No. 405-18-0511:

Mr. Scruggs was not present to address the board on this matter, nor did he have counsel present on his behalf. Ms. Burkhalter stated Mr. Scruggs' renewal applications for registration as an owner and manager were summarily denied based on his Class A misdemeanor conviction for assault causing bodily injury.

Board member Hayden made a motion to overturn the ALJ's decision and deny Mr. Scruggs' application for registration as an owner and manager, based on 2001.058 (e) and the ALJ's failure to properly apply the factors of Chapter 53. Board member Ulmer seconded the motion. The motion passed unanimously.

Jason Dyer- Docket No. 405-18-0850:

Mr. Dyer was not present to address the board on this matter, nor did he have counsel present on his behalf. Ms. Burkhalter stated Mr. Dyer's application for registration as an alarm systems installer was summarily denied based on his third degree felony convictions for driving while intoxicated- felony repetition.

Board member Hayden made a motion to affirm the ALJ's decision and deny Mr. Dyer's application for registration as an alarm systems installer. Board member Ulmer seconded the motion. The motion passed unanimously.

Alberto Fuentes- Docket No. 405-18-0438:

Mr. Fuentes was not present to address the board on this matter, nor did he have counsel present on his behalf. Ms. Burkhalter stated Mr. Fuentes' application for registration as an alarm systems installer was summarily denied based on his Class B misdemeanor conviction for obstructing a highway or passageway.

Board member Hayden made a motion to affirm the ALJ's decision and deny Mr. Fuentes' application for registration as an alarm systems installer. Board member Siems seconded the motion. The motion passed unanimously.

Attorney for the Department, Jean O'Shaw, presented the following Direct Appeal case to the board.

Regan V. Welborn- Admin No. Z00275911 & Z00275893:

Mr. Welborn was not present to address the board on this matter, nor did he have counsel present on his behalf. Ms. O'Shaw stated that the Department was notified by Mr. Welborn that he was unable to attend the hearing due to beginning a new job and lack of funds. She further stated that Mr. Welborn was asking for a 6 month continuance. Chairwoman James asked what type of registration he was applying for, to which Ms. O'Shaw stated that he was applying to be an alarm installer.

Board member Simes made a motion to grant Mr. Welborn a 6 month continuance. Board member Ulmer seconded the motion. The motion passed with James, Siems, and Ulmer voting for the motion, while Hayden voted against.

Agenda Item VII: Adjournment

Chairwoman James introduced this agenda item. Board member Hayden made a motion for adjournment. Board member Siems seconded the motion, and the Board voted unanimously in favor of the motion. At 10:20 am, the April 4, 2018 meeting of the Private Security Board was adjourned.