

**TEXAS PRIVATE SECURITY BOARD**

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,  
JULY 8, 2016**

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

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**BOARD MEMBERS PRESENT:**

Honorable Patti James, Chairwoman  
Honorable Howard Johnsen, Vice-Chairman  
Honorable Mark Smith, Secretary  
Honorable Albert Black  
Honorable Wade Hayden  
Honorable C.D. Siems  
Honorable Debbra Ulmer

**STAFF PRESENT:**

RenEarl Bowie, Assistant 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;  
Aaron Grigsby, Captain, 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 video DVD on file at the Board's office.

The board meeting was called to order at 9:00 a.m.

Chairwoman James welcomed everyone to the meeting and asked that all cell phones and pagers be turned off or set to vibrate for the duration of the meeting.

Board member Hayden asked Chairwoman James if the meeting room could observe a moment of silence for the fallen Dallas Police Officers, in light of the overnight events in that city. All in attendance observed a moment of silence.

### **Agenda Item I: Approval of Minutes for Board Meeting held April 22, 2016**

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

### **Agenda Item II: Quarterly Licensing Report from Regulatory Services Division**

Assistant Manager Ryan Garcia presented the licensing totals for the third quarter, 3/1/16 to 5/31/16. He stated, for this time period, the Division received 361 original company applications, 1,514 company renewals, 14,613 original individual applications, and 11,443 individual renewals not including online registrations. He went on to say, for the same time period the Division processed the following licenses/registrations:

- 231 original company licenses (180 online, 51 manual),
- 1,467 company renewals (1,115 online, 352 manual),
- 10,591 individual registrations (9,354 online, 1,237 manual),
- 11,307 individual renewals (8,864 online, 2,443 manual),
- 6,916 employee information updates (3,644 online, 3,272 manual).

He also stated this time period showed 5,827 active company licenses, 329 active school licenses, and 159,012 active individual registrants.

Captain Aaron Grigsby was next to address the Board regarding investigations. He stated that there had been 214 investigations to date and the following is a snapshot of some of that activity:

#### Region 1 (Dallas area)

- a suspect was arrested for Operating a Locksmith Company without a License. This suspect attempted to fraudulently obtain \$800 from an elderly homeowner to replace a deadbolt lock that the suspect had broken.
- a security guard was shot and killed at a nightclub in the Dallas area. Dallas Special Agents and RCS HQ provided investigative assistance to local authorities.
- An investigation was initiated into an unlicensed security company contracting with a nightclub to provide unlicensed security guards. Investigation revealed four armed security guards working unlicensed at the club. All four were arrested.
- an investigation is ongoing involving a suspect who has fraudulently obtained a security license number from a legitimate company and is using this number to employ unlicensed security guards who are reported to be convicted felons. The main suspect in this case is also a convicted felon. An arrest warrant has been issued.

#### Region 2 (Houston area)

- an investigation was initiated into a locksmith operating without a license. This company had been investigated in February due to the words “lockouts, car keys” along with a phone number being painted on the side of van. The van was seen again, this time with the word “locksmith” and a phone number painted on the side.
- An investigation was initiated involving a part time police officer working secondary employment at a nightclub. Investigation also revealed unlicensed commissioned security guards working at the nightclub. Three suspects were arrested. One of the suspects had a criminal history that would prevent him from being licensed.

### Region 5 (Lubbock area)

- a suspect was arrested and charges were filed of Operating without a License. Investigation revealed suspect was cutting and programming vehicle keys.

### Region 6 (Central Texas)

- an investigation was initiated into a company providing unlicensed armed security guards to a supermarket in Bexar County. Investigation resulted in charges filed on three suspects. Administrative action was also taken against the qualified manager due to employing security guards without a license, knowing that these individuals were not properly licensed.
- an investigation was initiated into a potentially unlicensed armed security guard at a café. Investigation revealed that the suspect had been performing armed security at the location without possessing any type of private security license.

### RCS HQ

- information was received concerning a shooting in which a security guard company was involved. Initial investigation revealed that two security officers working at the club discharged their weapons during an altercation. One of these security officers has an incomplete noncommissioned guard application and is suspected to be employed as a full-time police officer. It was also revealed that a noncommissioned guard also working has a disqualifying conviction on his record. Investigation is on-going.
- information was received concerning the owner/qualified manager of a private investigations company in Dallas currently having a felony warrant out for his arrest.
- information received concerning a security officer involved shooting in Dallas as well as two in Houston. All were properly reported, and all involved officers were properly licensed. No further action taken.
- information received concerning a security officer involved shooting that occurred at a Houston nightclub. Investigation revealed the company did not properly report the shooting incident to DPS. Administrative action imposed for failure to report.
- an investigation was initiated into a potentially unlicensed armed security guard at a café. Investigation revealed that the suspect had been performing armed security at the location without possessing any type of private security license.

Chairwoman James asked how many Agents were on Captain Grigsby's staff. He informed her that there were 10 including himself.

Assistant Director Bowie was next to address the board with an update on Texas Online Private Security. He stated that TOPS was continuing development and that there was a "go-live" date of August 27<sup>th</sup>. He showed an example of what the application would look like when complete. He stated that the primary method of communication would be email based. The Department sent letters regarding the need for companies to input this information. He appealed to the board and members of the industry to get the word out so that the department was not flooded at the last minute with inputting emails.

### **Agenda Item III: Reports from Board Committees**

No reports at this time

### **Agenda Item IV: Discussion and possible action regarding amendments to Rule §35.26-Reclassification and Assignment**

### **Agenda Item V: Discussion and possible action regarding changes to §35.3- Registration Applicant Pre-employment Check**

### **Agenda Item VI: Discussion and possible action regarding changes to §35.4- Guidelines for Disqualifying Criminal Offenses**

Assistant Director Bowie addressed the board on the Agenda items IV, V, and VI. He stated that these rules were placed on the Agenda in order to gain public feedback. He continued by stating the department did not place them on the agenda in order to make any changes at this meeting, but rather to gain public feedback. He recommended that the board not take up these rules, nor assign to the rules committee but rather have members of the public contact the board members with any thoughts on these rules.

A motion made by Board member Hayden and seconded by Board member Black, to table discussion on these rules until a later date. The motion passed with a unanimous vote.

### **Agenda Item VII: Public Comment**

Walt Roberts- representing ASSIST- addressed the board. He stated they had discussed with Assistant Director Bowie working together on the afore mentioned rules.

Donald Gurney- representing Tri-Shield- addressed the board. He stated that he wanted to give feedback on some of the items on the Agenda. He began by stating that in the proposed changes to Rule §35.14 it stated that the word “Security” and individual names would need to be ½” tall, but companies do not make name plates that big, especially for people with long names. He stated this would cause a need for them to be affixed to the shirt, but with the high turnover rate that was not a good option. He went on to say that in the same rule the change stating security officers may not carry equipment that resembles a police officer’s should be dropped, as all of their equipment resemble police officer equipment.

Steve Moninger, Policy Analyst for Regulatory Services Division, addressed the board regarding the Rules that were approved at the last meeting. He stated they had been posted for public comment and the time period for that had now closed. He went on to say that as there were no comments the rules would now go to the Public Safety Commission for approval at their next meeting in August.

### **Agenda Item VIII: Executive Session as authorized under §551.071, if necessary.**

The board elected not to take an executive session at this time.

### **Agenda Item IX: Administrative Hearings on Licensing and Disciplinary Contested Cases**

Chairwoman James called roll to determine which individuals, with cases before them, were present. Doug Ward, Christopher Owen, and James Luster were present or had representatives in attendance on their behalf.

Board member Hayden made a motion to affirm SOAH's decisions regarding whether to summarily deny, suspend, revoke or approve the applications or registrations for:

- Jose Torres - Docket No. 405-16-2979 (summarily deny application)
- David Espino.- Docket No. 405-16-2681 (summarily deny application )
- Anieta P. Umanah- Docket No. 405-16-2537 (summarily deny application)
- Christopher J. Joseph- Docket No. 405-16-3205 (summarily deny application)

In the cases of Torres, Umanah, and Joseph, Board member Ulmer seconded the motion, with the board voting unanimously in favor. In the case of Espino Board member Black seconded the motion, with the board voting unanimously in favor.

Attorney for the Department, Aaron Heath presented this case to the board.

#### Douglas D. Ward - Docket No. 405-16-2920

Mr. Ward was present to address the Board on this case, but did not have counsel present on his behalf. Mr. Heath stated Mr. Ward's application for registration as a security salesperson was summarily denied based on his 3 felony convictions for aggravated Assault with a Deadly Weapon. Chairwoman James asked when Mr. Ward completed his sentence, to which Mr. Heath advised that his sentence was completed in August 2005, but the offense was considered permanent disqualifying as a 3g offense.

Mr. Ward addressed the board on his own behalf. He stated that he very much wanted to become a security salesperson and has been doing all that he can to correct his past mistakes. Chairwoman James asked what type of work he has been doing, to which Mr. Ward replied that he owns a cabling company, which employs 12-15 people. He went on to say that he wanted to move into doing cameras and access control.

Secretary Smith made a motion to affirm SOAH's decision and grant Mr. Ward's application for registration as a Security Salesperson. Board member Black seconded the motion, and the board voted equally for and against the motion. Chairwoman James asked for further discussion from the board members who voted against the motion on their reasoning for their votes, as this is a permanently disqualifying offense. Secretary Smith stated that Chapter 53 must be considered when making this decision.

Board member Ulmer stated that between 1980 and 2002, Mr. Ward committed 6 offenses, all of them serious. She addressed Mr. Ward stating that despite whatever outcome the board's vote was, he still owned a thriving business and would continue to be able to support himself. She stated that in her opinion this offense is a permanently disqualifying event and therefore she could not vote to give him his license.

Board member Hayden stated that he was troubled by the ALJ's analysis. He stated that several of the Findings of Fact are not supported by the record; specifically #17, #19. Board member Siems also stated that he agreed with Board member Hayden, Finding of Fact #17 stated "Mr. Ward has successfully rehabilitated himself", but he did not see any indication of this other than starting his business.

Chairwoman James asked for another vote on the previous motion before the board. Smith and Black voted for the motion while Hayden, Siems, James, and Ulmer voted against. The motion did not pass.

Board member Hayden made a motion to Overturn the ALJ's ruling and deny Mr. Ward's application for registration as a Security Salesperson, based on misapplications of Finding of Facts #17 and #19 as well as the application of conclusion of law #7. The motion was seconded by Board member Ulmer. The motion passed with Hayden, Siems, James, Johnson, and Ulmer voting for, while Smith and Black voted against.

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

Christopher T. Owen - Docket No. 405-16-3206

Mr. Owen was present to address the Board on this case, but did not have counsel present on his behalf. Ms. Burkhalter stated Mr. Owen's application for registration for application as an alarm salesperson was summarily denied based on a Class A misdemeanor conviction for burglary of a vehicle. She went on to say that Mr. Owen would be eligible for licensure in February 2020.

Mr. Owen addressed the board stating that he owned an oil and natural gas company for several years and during that time had been entrusted with millions of dollars. At the time of the incident he filed for divorce at the same time that his mother passed away. He went on to explain that he became homeless. He continued explaining that it had been raining a lot at the time and he needed a pair of socks. He went into an open Goodwill trailer and took a pair of donated socks. The police pulled up at that moment and Goodwill chose to prosecute him.

The following questions were asked of Mr. Owens:

- Chairwoman James – What work are you currently doing?
  - Working passing out flyers for America's Ultimate Security.
- Chairwoman James – Was this the only time you have been arrested?
  - arrested for traffic tickets and 25 years ago arrested for assault charges.
- Board member Ulmer- Were you convicted of those charges?
  - It was moved to a Class B misdemeanor.
- Chairwoman James- Do you have a home now?
  - yes.

Secretary Smith made a motion to affirm the ALJ's decision, and approve Mr. Owen's application for registration as an alarm salesperson. Board member Siems seconded the motion. The motion passed with a unanimous vote.

James M. Luster - Docket No. 405-16-2645

Mr. Luster was not present to address the Board on this case; however he did have counsel present on his behalf- Jason Danowsky. Ms. Burkhalter stated Mr. Luster's registration as an alarm salesperson was summarily revoked based on his Class A misdemeanor convictions for Resisting Arrest. She further stated that this offense is disqualifying for 5 years after the completion of the sentence and Mr. Luster has not yet completed his sentence. She also stated the ALJ made a minor misstatement in Conclusion of Law #6 by stating that the offense is disqualifying for 5 years from the date of conviction and asked the board to reform this to state from the completion of the sentence. Board member Hayden also pointed out that Conclusion of Law of #3 and #4 were referring to Texas Transportation Code and not the Texas Occupations Code.

Mr. Jason Danowsky addressed the board on Mr. Luster's behalf. He stated that in the Texas Government Code, Section 58, it states in part that "A state Agency may change a Finding of Fact or Conclusion of Law only if the Agency determines that the judge did not properly apply or interpret the law, agency rules, written policy," etc. He stated that while he agreed that mistakes were made in the Conclusions of Law, it still did not change the judge's decision. He further stated that the judge properly considered Chapter 53 of the Texas Occupations Code as well as the board's own Chapter 35.4 regarding the considerations to be made before revocation of a license.

Board member Hayden asked Mr. Danowsky if he could answer how Transportation Code §548.07 and §548.05(a)(3) applied to this case. Mr. Danowsky stated that they did not and they were obviously mistakes. Board member Hayden stated that these went beyond procedural rule and if the board were to apply the law as he had said, then the ALJ did not properly apply the law when making their decision. Mr. Danowsky stated that in the analysis the judge stated what law applied in the language of Texas Administrative Code §35.4(e). He further stated that the judge properly considered the law under the Departments Rules and used the correct citation in the Conclusions of Law.

The following questions were asked of Mr. Danowsky:

- Board member Ulmer – What does Mr. Luster do for a living? The proposal for decision states that he does not sell alarms or deal with the public.

-Since the time of the revocation he has been promoted to a supervisory position. His interest in retaining his license is to not have a history of revocation. He does not actively use his license.

- Board member Ulmer- Why is Mr. Luster not here today?

-He is out of state.

- Board member Ulmer- Has he taken steps toward rehabilitation, such as AA meetings?
  - I am not sure that AA classes were required. He did take and complete some classes that were required
- Board member Hayden- Does this stem from a DWI arrest?
  - initially, yes
- Board member Ulmer- Do you know how long ago has he been in the security industry?
  - no.

Board member Hayden made a motion to affirm the ALJ's ruling and reform Conclusions of Law #6, changing "conviction" to "completion", as well as #3 & #4, changing the references of Texas Transportation Code to applicable Texas Occupation Code Chapter 1702, and reinstate Mr. Luster's registration as an Alarm Salesperson. The motion was seconded by Board member Siems. The motion did not pass with Hayden and Siems voting in favor, while Smith, James, Johnson, Ulmer and Black voted against.

Upon the failure of the previous motion a second motion was made. Board member Hayden made a motion to overturn the ALJ's decision, in that the ALJ failed to properly apply and interpret the law, Agency Rules or written policy including but not limited to Conclusions of Law #3, #4, and #6, and deny Mr. Luster's registration as an Alarm Salesperson. Board member Ulmer seconded the motion. The motion passed with a unanimous vote.

Leonardo D. Barrera - Docket No. 405-16-3190

Mr. Barrera was not present to address the Board on this case, nor did he have counsel present on his behalf. Mr. Barrera's application for registration as both a noncommissioned and commissioned security officer was summarily denied based on his third degree felony offense of theft of property in the amount of \$20,000 - \$100,00.

Board member Hayden made a motion to overturn the ALJ's decision, based on the ALJ not properly apply and interpret applicable law in his case, and deny Mr. Barrera's registration as both a noncommissioned and commissioned security officer. Board member Ulmer seconded the motion. The motion passed with a unanimous vote.

Johnny Mendoza - Docket No. 405-16-2680

Mr. Mendoza was not present to address the Board on this case, nor did he have counsel present on his behalf. Mr. Mendoza's application for registration as a noncommissioned security officer was summarily denied based on his Class A misdemeanor conviction for DWI.

Board member Hayden stated that he wanted to discuss this case because he struggled with the facts of this case. He stated this was Mr. Mendoza's second DWI, he didn't lie on his application and the SOAH judge granted his license. Ms. Burkhalter stated he was denied based on his second DWI in 2014, his first being in 1991.



Chairwoman James asked if he drives in the normal course of his day as a noncommissioned security officer. Ms. Burkhalter stated that she did not know as there was no evidence presented at the hearing one way or the other.

Board member Hayden stated it had been 20 years between his offenses, he had a good work history, he testified regarding his rehabilitation, and his employers provided evidence of good standing.

Secretary Smith made a motion to uphold the ALJ's decision, and grant Mr. Mendoza's registration as a noncommissioned security officer. Board member Ulmer seconded the motion. The motion passed with a unanimous vote.

At 10:25, Mr. Jose Torres arrived to address the board in his case. Department Attorney, Aaron Heath addressed the board stating that the board had the discretion to either hear from Mr. Torres and possibly re-vote or not.

Mr. Torres addressed the board stating that he is eligible in March 2017. He currently works in health care but wants to go back to security work. Chairwoman James stated she wanted to give him the chance to speak to the board, but that the board had already ruled on his case and that ruling would stand.

#### **Agenda Item X: Adjournment**

Chairwoman James introduced this agenda item.

Board member Hayden made a motion for adjournment. Secretary Smith seconded the motion, and the Board voted unanimously in favor of the motion. At 10:27 am, the July 8, 2016 meeting of the Private Security Board was adjourned.