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HEARINGS OFFICE

BOARD OF PRIVATE DETECTIVES AND GUARDS
OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the Guard License of)	PDG 2016-96-L
)	
ALBERT K. A. HAYASHI)	BOARD'S FINAL ORDER
)	FOR NONCOMPLIANCE
Respondent.)	WITH A PREVIOUS BOARD'S
)	FINAL ORDER

**BOARD'S FINAL ORDER FOR NONCOMPLIANCE
WITH A PREVIOUS BOARD'S FINAL ORDER**

On November 6, 2019, the Board of Private Detectives and Guards ("**Board**") approved and adopted a Board's Final Order ("**BFO**") in the above-referenced matter.

Under the terms of the BFO, Respondent was required to, among other things, pay an administrative fine in the amount of SEVEN HUNDRED FIFTY AND NO/DOLLARS (\$750.00) and provide the Board with proof of his compliance with terms of his conviction within 120 days from the BFO. Under the terms of the BFO, in the event Respondent fails to fully and timely comply with his obligations thereunder, the Board ordered that upon the filing of an affidavit by the Regulated Industries Complaint Office ("**RICO**") attesting to Respondent's non-compliance with the BFO, Respondent's license may be automatically revoked.

On June 12, 2020, the Board's Executive Officer received an affidavit from RICO which stated that the Respondent failed to pay the administrative fine within 120 days of the BFO and therefore did not comply with the terms and conditions of the BFO. On June 30, 2020, the Board's Executive Officer received a supplemental affidavit from RICO which stated that the Respondent failed to pay the administrative fine within 120 days of the BFO and did not provide proof of compliance with the terms of his conviction to the Board within 120 days of the BFO and therefore did not comply with the terms and

conditions of the BFO. On January 13, 2021, the Board notified Respondent that this matter would be placed on the agenda for the Board's meeting on January 27, 2021, at which time he would be afforded an opportunity to appear and contest the contents of the RICO affidavit and/or demonstrate that Respondent is in compliance with the BFO. On February 1, 2021, the Board notified Respondent that the prior meeting of January 27, 2021 had been cancelled and that this matter would be placed on the agenda for the Board's meeting on February 5, 2021.

On February 5, 2021, the Board met and considered this matter. Respondent did not appear. Having reviewed all the materials submitted in this matter, the Board voted to uphold its BFO dated November 6, 2019, and to revoke Respondent's license based on his failure to comply with the terms and conditions of the BFO.

Accordingly, pursuant to the authority delegated by the Board to the Executive Officer at its November 8, 2007 meeting, the license of Albert K. A. Hayashi, is hereby revoked as of February 5, 2021. Respondent is ordered to turn in all indicia of licensure to the Executive Officer of the Board within ten (10) days after the receipt of this Order. Respondent cannot apply for a new license until the expiration of at least five (5) years after the effective date of revocation. If Respondent desires to become licensed again, Respondent must apply to the Board for a new license pursuant to and subject to Hawaii Revised Statutes 92-17, 463B-21, and all other applicable laws and rules in effect at the time.

DATED: February 18, 2021



CHELSEA FUKUNAGA
Executive Officer



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2019 NOV 21 P 12:35

BOARD OF PRIVATE DETECTIVES AND GUARDS HEARINGS OFFICE
OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the Guard License of) PDG-2016-96-L
)
ALBERT K. A. HAYASHI,) BOARD'S FINAL ORDER
)
Respondent.)
_____)

BOARD'S FINAL ORDER

On February 28, 2019, the duly appointed Hearings Officer submitted her Findings of Fact, Conclusions of Law, and Recommended Order in the above-captioned matter to the Board of Private Detectives and Guards ("Board"). Copies of the Hearings Officer's recommended order were also transmitted to the parties. Neither party filed exceptions to the recommended decision.

Upon review of the entire record of this proceeding, the Board adopts the Hearings Officer's findings of fact, conclusions of law, and recommended order as the Board's Final Order. Accordingly, the Board finds and concludes that there are no genuine issues of material fact, that Petitioner Regulated Industries Complaints Office ("Petitioner") is entitled, as a matter of law, to an order concluding that Respondent Albert K. A. Hayashi ("Respondent") violated Hawaii Revised Statutes §§436B-19(2) and (17) together with Hawaii Administrative Rules §§16-97-46(12) and (21), and accordingly, grants Petitioner's motion for summary judgment.

For the violations found, the Board orders that Respondent pay a fine of \$750.00 within one hundred twenty (120) days of the Board's Final Order by sending a certified check or money order made payable to the "DCCA Compliance Resolution Fund" to the Regulated Industries Complaints Office, 235 South Beretania Street, 9th Floor, Honolulu, Hawaii 96813 within the specified time.

Payment of the fine and proof of compliance with the terms of Respondent's conviction shall be submitted to the Board within one hundred twenty (120) days of the Board's Final Order. Payment of the fine and compliance with the terms of the conviction shall be made conditions for the reinstatement of Respondent's guard license.

Should Respondent fail to pay the fine or submit proof of compliance with the terms of his conviction within the time specified, Respondent's license may be automatically revoked without further notice upon the filing of an affidavit from the Regulated Industries Complaints Office attesting to Respondent's noncompliance. In that event, Respondent shall be required to submit all indicia of licensure as a guard in the State of Hawaii to the Executive Officer of the Board within ten (10) days of notification of revocation.

DATED: Honolulu, Hawaii, 6 NOV 19

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RAY GALAS ~~CHAIRMAN~~
Chairperson
Public Member

Albert Denis
ALBERT DENIS
Vice Chairperson
Industry Member

Paul Ferreira
VACANT ~~Kauai~~ Paul Ferreira
County Police Chief
Hawaii

Chief Tivoli
CHIEF TIVOLI
FAAUMU
Maui County Police Chief

Kenneth Chang
KENNETH CHANG
Industry Member

Douglas Inouye
VACANT ~~Douglas~~ Inouye
Public Member

CATHERINE P. AWAKUNI COLON
Director
Ex-Officio, DCCA



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

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BOARD OF PRIVATE DETECTIVES AND GUARDS
OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the Guard License of)	PDG-2016-96-L
)	
ALBERT K. A. HAYASHI)	HEARINGS OFFICER'S FINDINGS
)	OF FACT, CONCLUSIONS OF LAW,
Respondent.)	AND RECOMMENDED ORDER
)	GRANTING PETITIONER'S MOTION
)	FOR SUMMARY JUDGMENT
)	

HEARINGS OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDED ORDER
GRANTING PETITIONER'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

On November 1, 2018, the Department of Commerce and Consumer Affairs, through its Regulated Industries Complaints Office ("Petitioner"), by and through its attorney, filed a petition for disciplinary action against the guard license of Albert K. A. Hayashi ("Respondent"). The matter was duly set for hearing, and the notice of hearing and pre-hearing conference was transmitted to the parties.

On December 20, 2018, Petitioner filed a motion for summary judgment in the above-captioned matter. On January 24, 2019, a response was filed by Respondent.

On January 31, 2019, the motion came on for hearing before the undersigned Hearings Officer. Petitioner was represented by its attorney, Tammy Y. Kaneshiro, Esq. Respondent participated by telephone and appeared *pro se*.

The Hearings Officer, having considered the motion, memorandum and affidavits attached thereto, the response, along with the argument of counsel, together with the records and files herein, hereby renders the following findings of fact, conclusions of law and recommended order granting Petitioner's motion for summary judgment.

II. FINDINGS OF FACT

1. Respondent was originally issued a guard license in the State of Hawaii by the Board of Private Detectives and Guards ("Board") on October 22, 2013.

Respondent's guard license, License No. GDE 8031, expired on June 30, 2018.

2. On August 27, 2014, Respondent was convicted in the District Court of the Third Circuit, State of Hawaii of violating Hawaii Revised Statutes ("HRS") §286-102¹, for driving a motor vehicle without a valid driver's license.

3. On or about June 30, 2016, Respondent submitted a renewal application for his guard's license ("Application") to the Board.

4. In the Application, Respondent answered "No" to Question 3: "In the past 2 years have you been convicted of a crime in which the conviction has not been annulled or expunged?"

III. CONCLUSIONS OF LAW

Petitioner has charged Respondent with violating the following HRS and Hawaii Administrative Rules ("HAR") provisions:

HRS §436B-19 Grounds for refusal to renew, reinstate or restore and for revocation, suspension, denial, or condition of licenses. In addition to any other acts or conditions provided by law, the licensing authority may refuse to renew, reinstate or restore, or may deny, revoke, suspend, or condition in any manner, any license for any one or more of the following acts or conditions on the part of the licensee or the applicant thereof:

* * * *

(2) Engaging in false, fraudulent, or deceptive advertising, or making untruthful or improbable statements;

* * * *

(17) Violating this chapter, the applicable licensing laws, or any rule or order of the licensing authority.

HAR §16-97-46 Grounds for suspension, revocation, and refusal to renew a license. Failure of any licensee to comply with chapter 463, HRS, or this chapter shall be grounds for

¹ Conviction under HRS §286-102 constitutes conviction of a petty misdemeanor crime. HRS §286-136(a) provides in part: "Except as provided in subsection (b), any person who violates sections 286-102...shall be fined not more than \$1,000 or imprisoned not more than thirty days, or both." HRS §701-107 provides in part: "A crime is a petty misdemeanor if it is so designated in this Code or in a statute ...that provides that persons convicted thereof may be sentenced to imprisonment for a term not to exceed thirty days."

suspension, revocation, or refusal to renew the license after a hearing, pursuant to chapter 16-201. In addition, the following shall be grounds for suspension, revocation, or refusal to renew the license:

* * * *

(10) Misrepresentation of any material fact in connection with the submission of employee registration information to the board;

* * * *

(12) Misrepresentation of a material fact by an applicant in obtaining a license;

* * * *

(21) Failure in any material respect to comply with chapter 463, HRS, or this chapter.

Respondent does not dispute that he answered "No" to Question 3 of the Application and that his response was untrue. Based on this record, Petitioner is entitled to summary judgment as to HRS §§436B-19(2) and (17) together with HAR §§16-97-46(12) and (21). On the other hand, Petitioner did not establish a basis for summary judgment as to HAR §16-97-46(10). Nothing in the record established that Respondent's "No" response resulted in a material factual issue or entitled Petitioner to ruling on HAR § 16-97-46(10) as a matter of law.

IV. RECOMMENDED ORDER

After hearing argument on the motion, the Hearings Officer informed the parties of her intent to recommend partial summary judgment in Petitioner's favor as to violations of HRS §§436B-19(2) and (17) together with HAR §§16-97-46(12) and (21) and to deny summary judgment as to HAR §16-97-46(10). Prior to the parties' argument regarding sanctions, Petitioner withdrew the charge based on HAR §16-97-46(10).

Based on the foregoing findings and conclusions, the Hearings Officer recommends that the Board find and conclude that there are no genuine issues of material fact, that Petitioner is entitled, as a matter of law, to an order concluding that Respondent violated HRS §§436B-19(2) and (17) together with HAR §§16-97-46(12) and (21), and accordingly, grant Petitioner's motion for summary judgment.

For the violations found, the Hearings Officer recommends that Respondent be ordered to pay a fine of \$750.00 within one hundred twenty (120) days of the Board's Final Order by sending a certified check or money order made payable to the "DCCA Compliance Resolution Fund" to the Regulated Industries Complaints Office, 235 South Beretania Street, 9th Floor, Honolulu, Hawaii 9613 within the specified time.

The Hearings Officer further recommends that payment of the fine and proof of compliance with the terms of Respondent's conviction shall be submitted to the Board within one hundred twenty (120) days of the Board's Final Order. The Hearings Officer recommends that payment of the fine and compliance with the terms of the conviction shall be made conditions for the reinstatement of Respondent's guard license.

Finally, the Hearings Officer recommends that should Respondent fail to pay the fine or submit proof of compliance with the terms of his conviction within the time specified, Respondent's license may be automatically revoked without further notice upon the filing of an affidavit from the Regulated Industries Complaints Office attesting to Respondent's noncompliance. In that event, Respondent shall be required to submit all indicia of licensure as a guard in the State of Hawaii to the Executive Officer of the Board within ten (10) days of notification of revocation.

DATED: Honolulu, Hawaii, FEB 28 2019.



DESIREE L. HIKIDA
Administrative Hearings Officer
Department of Commerce
and Consumer Affairs