

BEFORE THE BOARD OF PRIVATE SECURITY
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-08-0403-PSP REGARDING:

THE APPLICATION FOR LICENSURE) Case No. 1224-2008
OF GILBERT MARTIN, Security Guard)
License Pending.)

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**PROPOSED FINDINGS OF FACT;
CONCLUSIONS OF LAW; AND RECOMMENDED ORDER**

I. INTRODUCTION

Gilbert Martin appeals from the Montana Board of Private Security's denial of his request to be licensed as a private security guard. Hearing Examiner Gregory L. Hanchett convened a contested case hearing in this matter on June 13, 2008. Darcee Moe, agency legal counsel, represented the Department of Labor and Industry Business Standards Division (BSD). Martin represented himself. Martin and his sister/employer, Darcee Kerner, testified under oath. The parties stipulated to the admission of BSD's Exhibits 1 and 2. The parties also stipulated to certain facts which were recited on the record and which have been incorporated into the findings of fact in this recommendation. Based on the evidence and argument adduced at hearing, the hearing examiner makes the following findings of fact, conclusions of law, and recommended order.

II. FINDINGS OF FACT

1. Martin submitted an application for licensure as a private security guard on April 16, 2007. Question #18 of the application asked Martin "Do you have criminal charges pending or have you ever pled guilty or been convicted of a crime (including a plea of no contest or deferred prosecution) relating to, or committed during your professional career, involving violence, use or sale of alcohol or drugs, fraud, deceit, or theft, whether or not an appeal is pending?" In response, Martin checked "No." Exhibit 1, page 2.

2. Martin signed his application with an affidavit indicating that "I hereby declare under penalty of perjury the information included in my application to be true and complete to the best of my knowledge." Exhibit 1, page 4. Martin clearly understood the fact that he was required to truthfully answer the questions. He also clearly understood the need to fully disclose all previous convictions that could not be characterized as having occurred prior to his sixteenth birthday or involving only a traffic violation for which the offender paid no more than \$100.00.

3. Martin's answer to Question #18 was false. In fact, he had been convicted of forgery and fraud in separate instances in the State of Colorado. He had also been convicted of Driving Under The Influence (DUI) and misdemeanor assault. Martin was aware of these additional convictions at the time he answered Question #18 but concealed them from the Board of Private Investigators by failing to disclose them on his application. Indeed, he took no steps to disclose them until after a criminal records check conducted by a Montana Business Standards Division investigator made after Martin filed his application revealed the prior convictions. Only once he was confronted with these convictions did he disclose them.

4. Protection of the public in licensing security guards requires that only those persons who are demonstrably trustworthy be permitted to be licensed as private security guards. By failing to honestly answer Question #18, Martin has failed to demonstrate that he is sufficiently trustworthy to be licensed as a private security guard at this time.

III. CONCLUSIONS OF LAW¹

1. Martin seeks to have the denial of his application for licensure overturned. As such, he bears the burden of proof to demonstrate that the Board's denial of his license was erroneous either in fact or law. *See generally*, 2 Am. Jur. 2d Administrative Law §251.

2. A professional licensing board may grant or deny a license. Mont. Code Ann. § 39-1-307(1)(e). Grounds for disciplinary action against a licensee may also serve as a basis for denying a license to an applicant. Mont. Code Ann. § 39-1-137(1). The purpose of the chapter regulating licensing of private investigators and security guards is "to increase levels of integrity, competency, and performance of security companies and their employees . . . to safeguard the public health, safety, and welfare against illegal, improper, or incompetent actions committed by security companies and their licensed employees" Mont. Code Ann. § 37-60-103.

3. Mont. Code Ann. § 37-1-316 provides in pertinent part that the following is unprofessional conduct (and, therefore sanctionable conduct) for a licensee or license applicant:

* * *

(1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

* * *

(3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

¹Statements of fact in the conclusions of laws are incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

4. Martin's failure to disclose the existence of his convictions for forgery and domestic violence were willful. Knowing at the time of the application that he had such convictions and being fully aware of the parameters of Question #18, the hearing examiner is forced to conclude that Martin willfully concealed the existence of these convictions because he felt that disclosure would lessen his likelihood of being licensed as a private security guard. This type of concealment is inimical to the safeguarding of the public welfare in licensing private security guards. The hearing examiner, therefore, concludes that the Board did not err either in fact or law in determining not to license Martin as a private security guard.

IV. RECOMMENDED ORDER

Based upon the foregoing, the hearing examiner recommends that the Board affirm the denial of Gilbert Martin's application for licensure as a private security guard.

DATED this 18th day of July, 2008.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
Hearing Examiner

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.