

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE STATE LICENSING BOARD FOR CONTRACTORS**

In the Matter of:

APX Alarm Security Solutions, Inc.,
License Nos. BAC-5569; BAC-13321; FAC-
3437; BFS-10672, **Thomas Mertz, Qualifying**
Party; License Nos. BFS-10983 and BFS-
12418, **Larry Evers, Qualifying Party**
Respondents

Case No. 2008-0159 (Smith)
OGC File No. 2009-0024

**ORDER
(Public)**

This matter came before the Contractor's Licensing Board (the Board) for hearing on October 15, 2009, as a result of the notice and complaint served upon the Respondent and filed with the Board. A quorum of the Board was present. The hearing was held pursuant to S.C. Code Ann., §§40-11-110 and -120, SC Code Ann. §40-1-70(6), Regulation 93-250, and the provisions of the Administrative Procedures Act (the APA), S.C. Code Ann. §1-23-10, *et seq.* (1976), as amended, to determine whether sanctions should be imposed upon the Respondent. Suzanne L. Hawkins, Assistant General Counsel, represented the State. The Respondent appeared and was represented by Karl S. (Butch) Bowers Jr., Esquire.

The Respondent was charged with violation of S.C. Code Ann. §§40-79-110(A)(8), -110(A)(16); -110(A)(3), -110(A)(4), -110(A)(24) and -110(A)(9); and 40-1-110(b) (1976, as amended).

FINDINGS OF FACT

Based upon the preponderance of the evidence on the whole record, the Board finds the facts of the case to be as follows:

1. The Respondents APX Alarm Security Solutions, Inc., (APX) are duly licensed by the Board as a burglar alarm branch company, a burglar alarm company, and a fire alarm company. The Respondents Thomas Mertz and Larry Evers were licensed as an alarm system business contractor at all times relevant to this matter.
2. The Respondent APX began selling alarm systems in South Carolina on or about April 10, 2006.
3. The Respondent APX's corporate office is located in Provo, Utah.

4. As of June 30, 2008, the Respondent APX's place of business, located at 325 Spears Creek Church Road, in Columbia, South Carolina, was in a residential apartment within an apartment complex. Customer files were not secured, and no alarm contractor's license was visible.
5. From September 1, 2005, through July 7, 2009, the Respondent APX's sole qualifying part was the Respondent Larry Steven Evers of Clifton, Virginia.
6. On June 30, 2008, the Respondent was served an Order to Cease and Desist operations for failure to comply with branch office and qualifying party requirements governing Alarm System Business Contractors. The Order was lifted upon representation from the Respondent's legal counsel that the Respondents would come into compliance with requirements.
7. On or about July 7, 2008, Respondent APX applied for a branch office license with the Board, adding Thomas Mertz as an "extra" qualifying party, with the branch office having an address of 9005 Two Notch Road, Suite 16, in Columbia, South Carolina.
8. As of January 31, 2009, Respondent APX no longer holds a lease on the office located at 9005 Two Notch Road, Suite 16, Columbia, South Carolina.
9. The Respondent APX's comprehensive general liability insurance on file with the Board expired on May 15, 2009. Evidence indicates the Respondent's coverage may not have lapsed, but no Certificate of Comprehensive General Liability Insurance was filed with the Board; the Respondent acknowledges it depended on its insurance carrier to file the Certificate and that it may not have been filed prior to September 30, 2009.
10. The Respondent APX was disciplined by the State of Louisiana on January 23, 2009, based on a determination that Respondent APX utilized sixteen (16) unlicensed employees to solicit the sale and installation of three hundred, fifty-nine (359) security systems, violated a Cease and Desist Order, and engaged in false, misleading, or deceptive acts or practices to secure the sale of security systems; the Respondent APX was fined Fifty Thousand Dollars (\$50,000.00), and its Louisiana license is now cancelled.
11. On the Respondent APX's June 18, 2008, application for a branch office, applying for the addition of Mr. Mertz as a qualifying party, Respondent APX responded in the negative ("no") to the question "[i]s any complaint or violation pending, under investigation, or has any action been taken against your license in any jurisdiction?" On the same date, i.e., June 18, 2008, the Respondent APX submitted a letter to the Board explaining the Louisiana discipline.

12. Louisiana's investigation of the Respondent APX began on June 9, 2008; the Respondent APX's Louisiana qualifying parties were notified of the investigation and served with an Order to Cease and Desist operations on June 9, 2008.

CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this case, the Board finds as a matter of law that:

1. The Board has jurisdiction in this matter, and upon finding that a licensee has violated any of the provisions of S.C. Code Ann. §§40-1-110 and 40-11-110, may issue a public reprimand; revoke a license; place a licensee on probation or restrict or suspend the individual's license for a definite or indefinite time and prescribe conditions to be met during probation, restriction, or suspension including, but not limited to, satisfactory completion of additional education, or a supervisory period, or of continuing education programs; and impose the reasonable costs of the investigation and prosecution of a case. Additionally, the Board may require a licensee, certificate holder, or other entity or individual to pay a civil penalty of up to five thousand dollars for each violation.
3. The Respondent violated S.C. Code Ann. §40-1-110(b) in that he has had a license to practice a regulated profession or occupation in another state or jurisdiction canceled, revoked, or suspended or who has otherwise been disciplined, as evidenced by the Respondent having been disciplined in Louisiana, and other facts as described above.
4. The Respondent violated S.C. Code Ann. §40-79-110(A)(8) in that he violated a provision of this chapter or a regulation promulgated under this chapter or any other applicable provision of law, as evidenced by the facts as described above.
5. The State failed to prove by a preponderance of the evidence that the Respondent violated S.C. Code Ann. §40-79-110(A)(16).
6. The Respondent violated S.C. Code Ann. §40-79-110(A)(3) in that he failed to maintain the required Certificate of Comprehensive General Liability Insurance, as evidenced by the facts described above.
7. The State failed to prove by a preponderance of the evidence that the Respondent violated S.C. Code Ann. §40-79-110(A)(4).
8. The State failed to prove by a preponderance of the evidence that the Respondent violated S.C. Code Ann. §40-79-110(A)(9).

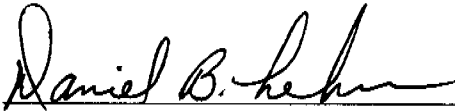
9. The State failed to prove by a preponderance of the evidence that the Respondent violated S.C. Code Ann. §40-79-110(A)(24).
10. The sanction imposed is consistent with the purpose of these proceedings and is made after weighing the public interest and the need for the continued services of qualified contractors against the countervailing concern that society be protected from professional misconduct and ineptitude.
11. The sanction imposed is designed not to punish the Respondent, but to protect the life, health, and welfare of the public at large.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, and DECREED that:

1. The Respondent is publicly reprimanded.
2. The Respondent shall pay a fine of Five Thousand Dollars (\$5,000.00). This fine shall be paid within thirty (30) days of the date of this Final Order. This fine shall not be deemed to be paid until it is received by the Board. Failure to pay this fine may prevent the Respondent from being re-licensed.
3. This Order is to take effect upon its service upon the Respondent.

AND IT IS SO ORDERED,

CONTRACTOR'S LICENSING BOARD

By: 

Daniel B. Lehman
Chairman

12/2, 2009