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**FILED**  
**FIRE ALARM, BURGLAR ALARM AND**  
**LOCKSMITH ADVISORY COMMITTEE**  
*11-13-2015*

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
NEW JERSEY FIRE ALARM, BURGLAR ALARM  
AND LOCKSMITH ADVISORY COMMITTEE

IN THE MATTER OF THE  
APPLICATION OF

**JOSE L. RIVERA**  
**Applicant # 1782069/1782079**

TO PRACTICE AS A BURGLAR ALARM AND  
FIRE ALARM LICENSEE IN THE  
STATE OF NEW JERSEY

Administrative Action

FINAL ORDER  
OF DENIAL OF LICENSURE

This matter was opened to the New Jersey Fire Alarm, Burglar Alarm & Locksmith Advisory Committee (the "Committee") upon receipt of information which the Committee has reviewed and on which the following findings of fact and conclusions of law are made;

FINDINGS OF FACT

1. Jose L. Rivera ("respondent") applied on March 11, 2013 for a New Jersey Fire Alarm license and on October 3, 2013 for a Burglar Alarm license. On his applications for licensure, respondent indicated he had been convicted of a crime. As requested, respondent provided documentation related to his conviction. According to the information provided, respondent pled guilty on October 18, 2012 to one count of a violation of Title 18 U.S.C. §286, "Conspiracy to Defraud the Government with Respect to Claims"; one count of a violation of Title 18 U.S.C. §371, "Conspiracy to Commit Theft of Mail" and one count of a violation of Title 18 U.S.C. §1708, "Theft

of Mail; Aiding and Abetting". Respondent was sentenced to five (5) years probation and ordered to pay fifty-seven thousand, nine hundred and one dollars (\$57,901.00) in restitution and three hundred dollars (\$300.00) as a penalty. (Exhibit A, Copy of United States District Court, Judgment in a Criminal Case, dated October 18, 2012, attached and made a part of hereto). (Exhibit B, Criminal History Background Check, attached).

2. According to a press release from the United States Attorney's Office for the Eastern District of Pennsylvania, dated April 26, 2012, respondent was part of an illegal enterprise involving the fraudulent use of Puerto Rican identities to file false tax returns claiming an entitlement to a refund. Respondent conspired with two other persons to use stolen identities of residents of Puerto Rico in order to cause false tax returns to be filed with the Internal Revenue Service, thereby generating bogus tax refund checks. According to the press release, respondent provided the names and addresses of his family members and associates. A total of one hundred and eighty two false tax returns were filed resulting in one million, fifty-one thousand, three hundred and forty-five dollars (\$1,051,345) in fraudulent refunds. One of the co-conspirators was a United States Postal Service letter carrier. The postal carrier would steal the tax refund checks from the United States mail and give them to respondent. Respondent would deliver the checks to another co-conspirator who would pay respondent for the checks. On other occasions, respondent would retrieve the fraudulent tax refund checks from the addresses of his family and associates and provide them to the co-conspirator. (Exhibit C, copy of press release from the United States Attorney's Office for the Eastern District of Pennsylvania, dated April 26, 2012, attached).

3. Respondent also provided a letter to the Committee dated May 29, 2014. In the letter, respondent explained his version of the facts and circumstances related to his arrest and convictions. Additionally, respondent indicated he is currently certified to engage in the fire protection contractor business by the New Jersey Department of Community Affairs, pursuant to

N.J.S.A. 52:27D-25n et seq. (Exhibit D, letter provided by respondent, date May 29, 2014, attached).

### DISCUSSION

On July 15, 2014, the Committee considered respondent's applications for licensure in conjunction with a review of his criminal history summary, the Judgement In a Criminal Case, the press release from the United States Attorney's Office for the Eastern District of Pennsylvania, dated April 26, 2012 and the May 29, 2014 letter provided by respondent. After a thorough review, the Committee preliminarily determined that respondent's October 18, 2012 convictions for "Conspiracy to Defraud the Government with Respect to Claims" in violation of Title 18 U.S.C. §286; "Conspiracy to Commit Theft of Mail" in violation of Title 18 U.S.C. §371 and "Theft or Receipt of Stolen Mail" in violation of Title 18 U.S.C. §1708 prohibited the Committee from issuing him a license pursuant to N.J.S.A. 45:5A-27a(2). That statute holds that an applicant seeking licensure to engage in the alarm business shall be of good moral character, and not have been convicted of a crime of the first, second or third degree within 10 years prior to the filing of the application.

The Committee analyzed the elements of Title 18 U.S.C. §286, and determined they were synonymous to a state conviction for "Conspiracy", pursuant to N.J.S.A. 2C:5-2. A person is guilty of a violation of Title 18 U.S.C. §286 when he enters into any agreement, combination, or conspiracy to defraud the United States, or any department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim and shall be fined or imprisoned not more than ten years, or both. Similarly, a person is guilty of "Conspiracy", pursuant to N.J.S.A. 2C:5-2, when with another person or persons, and with the purpose of promoting or facilitating its commission he: 1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or attempt or solicitation to commit such crime; or 2) agrees to aid such other person or persons in the planning

or commission of such crime or of an attempt or solicitation to commit such crime. Pursuant to N.J.S.A. 2C:5-4a, "Conspiracy" is a crime of the same degree as the most serious crime which is the object of the conspiracy, except that a conspiracy to commit a crime of the first degree is a crime of the second degree. Pursuant to N.J.S.A. 2C:43-6a(2), a person convicted of a crime of the second degree is sentenced to a fixed term between five (5) and ten (10) years. Therefore, when analyzing the elements of Title 18 U.S.C. §286, as well as the potential length of incarceration that could be imposed (i.e. ten (10) years), it is apparent that a violation of Title 18

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U.S.C. §286 is equivalent to a violation of a second degree conspiracy conviction under the New Jersey Code of Criminal Justice. Since the conviction occurred within ten years from respondent's date of application for licensure, he must be denied licensure pursuant to N.J.S.A. 45:5A-27a(2).

The Committee also determined that respondent's October 18, 2012 conviction for "Conspiracy to Commit Theft of Mail", in violation of Title 18 U.S.C. §371, prohibited the Committee from issuing respondent a license pursuant to N.J.S.A. 45:5A-27a(2). The Committee analyzed the elements of Title 18 U.S.C. §371 and determined they were synonymous to a state conviction for "Conspiracy" pursuant to N.J.S.A. 2C:5-2. A person is guilty of a violation of Title 18 U.S.C. §371 when two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy. Each person shall be fined under this title or imprisoned not more than five (5) years, or both. Pursuant to N.J.S.A. 2C:43-6a(2), a person convicted of a crime of the second degree is sentenced to a fixed term between five (5) and ten (10) years. Pursuant to N.J.S.A. 2C:43-6a(3) a person who has been convicted of a crime of the third degree is sentenced to a fixed term between three (3) and five (5) years. Therefore, when analyzing the elements of Title 18 U.S.C. §371, as well as the potential length of incarceration that could be imposed (i.e. five (5) years), it is apparent that a violation of Title 18 U.S.C. §371 is equivalent to a violation of a second or third degree conspiracy conviction under the

New Jersey Code of Criminal Justice. Since the conviction occurred within ten years from respondent's date of application for licensure, he must be denied licensure pursuant to N.J.S.A. 45:5A-27a(2).

The Committee also determined that respondent's October 18, 2012 conviction for "Theft or Receipt of Stolen Mail", in violation of Title 18 U.S.C. §1708, prohibited the Committee from issuing respondent a license pursuant to N.J.S.A. 45:5A-27a(2). The Committee analyzed the elements of Title 18 U.S.C. §1708 and determined they were synonymous to a state conviction for "Theft", pursuant to N.J.S.A. 2C:20-3, or for "Theft by Deception", pursuant to N.J.S.A. 2C:20-4. A person is guilty of a violation of Title 18 U.S.C. §1708 when he steals, takes, or abstracts, or by fraud or deception obtains, or attempts so to obtain, from ....a letter or mail carrier, any letter, or mail, or any article or thing contained therein and shall be fined or imprisoned not more than five years, or both. Similarly, a person is guilty of "Theft", pursuant to N.J.S.A. 2C:20-3, when he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him hereof. A person is guilty of "Theft by Deception", pursuant to N.J.S.A. 2C:20-4, if he purposely obtains property of another by deception. A person deceives if he purposely creates or reinforces a false impression, including a false impression as to law, value, intention or other state of mind. According to N.J.S.A. 2C:20-2b(1)(a), theft constitutes a crime of the second degree if the amount involved is seventy-five thousand dollars (\$75,000.00) or more. Pursuant to N.J.S.A. 2C:20-2b(2)(a), theft constitutes a crime of the third degree if the amount involved exceeds five hundred dollars (\$500.00) but is less than seventy-five thousand dollars (\$75,000.00). Therefore, when analyzing the elements of Title 18 U.S.C. §1708, as well as the potential length of incarceration that could be imposed (i.e. five (5) years), it is apparent that a violation of Title 18 U.S.C. §1708 is equivalent to a violation for second or third degree "Theft", pursuant to N.J.S.A. 2C:20-3 or "Theft by Deception", pursuant to N.J.S.A. 2C:20-4.

The Committee also reviewed respondent's application and criminal history in order to determine whether respondent should be denied licensure, pursuant to N.J.S.A. 45:1-21b, for engaging in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense. After extensive consideration, the Committee determined that respondent's convictions for "Conspiracy to Defraud the Government with Respect to Claims"; "Conspiracy to Commit Theft of Mail" and "Theft or Receipt of Stolen Mail", involved engaging in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense.

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Additionally, the Committee reviewed respondent's application and criminal history information in order to determine whether respondent should be denied licensure pursuant to N.J.S.A. 45:1-21f for having been convicted of or engaging in acts constituting, any crime or offense involving moral turpitude or relating adversely to the activity regulated by the Committee. After extensive consideration, the Committee determined that respondent's convictions for "Conspiracy to Defraud the Government with Respect to Claims"; "Conspiracy to Commit Theft of Mail" and "Theft or Receipt of Stolen Mail" are offenses involving moral turpitude and relating adversely to the activity regulated by the Committee.

The Provisional Order was sent to respondent, via regular and certified mail. The certified mail was received by respondent as indicated by the return of the certified card bearing respondent's signature. The regular mail was not returned to the Board. Respondent failed to provide a written response to the Provisional Order of Discipline. Accordingly, the Committee considered the matter, determined that further proceedings were not necessary and that the Provisional Order should be made final.

Aside from the statutory prohibition against licensure pursuant to N.J.S.A. 45:5A-27a(2), the Committee noted the seriousness of the offenses (i.e. "Conspiracy to Defraud the Government with Respect to Claims" in violation of Title 18 U.S.C. §286; "Conspiracy to Commit Theft of Mail"

in violation of Title 18 U.S.C. §371 and "Theft or Receipt of Stolen Mail" in violation of Title 18 U.S.C. §1708), when it determined to finalize the Provisional Order. These convictions and acts relate directly to the very essence of the regulated profession of alarm installation. Alarm installation involves entering a consumers private home or business and property and allows the licensee access to confidential consumer information. The public therefore relies on the Committee to safely issue licenses.

Finally, the Committee determined that respondent's convictions are very recent, (i.e. 2012), and involved a complicated, premeditated scheme to defraud the United States Government out of a substantial amount of money. For all of the foregoing reasons, the Committee determined that the Provisional Order of Denial of Licensure is to be finalized as written.

#### CONCLUSIONS OF LAW

1. The above findings of fact provide grounds for denying respondent's application for a burglar alarm license and a fire alarm license in New Jersey, pursuant to N.J.S.A. 45:5A-27a(2) and N.J.A.C. 13:31A-3.1(a)3, in that respondent's convictions for "Conspiracy to Defraud the Government with Respect to Claims", in violation of Title 18 U.S.C. §286; "Conspiracy to Commit Theft of Mail", in violation of Title 18 U.S.C. §371 and "Theft or Receipt of Stolen Mail", in violation of Title 18 U.S.C. §1708, are equivalent to a conviction of a crime of the second or third degree, under the New Jersey Code of Criminal Justice, which occurred within ten years prior to the filing of the application for licensure

2. The above findings of fact also provide grounds for denying respondent's application for a burglar alarm license and a fire alarm license in New Jersey, pursuant to N.J.S.A. 45:1-21(b), in that respondent's convictions for "Conspiracy to Defraud the Government with Respect to Claims", in violation of Title 18 U.S.C. §286; "Conspiracy to Commit Theft of Mail", in violation of Title 18 U.S.C. §371 and "Theft or Receipt of Stolen Mail", in violation of Title 18 U.S.C. §1708 involved the use or employment of dishonesty, fraud, deception or misrepresentation.

3. The above findings of fact also provide grounds for denying respondent's application for a burglar alarm license and a fire alarm license in New Jersey, pursuant to N.J.S.A. 45:1-21(f), in that respondent's convictions for "Conspiracy to Defraud the Government with Respect to Claims", in violation of Title 18 U.S.C. §286; "Conspiracy to Commit Theft of Mail", in violation of Title 18 U.S.C. §371 and "Theft or Receipt of Stolen Mail", in violation of Title 18 U.S.C. §1708 are convictions or offenses involving moral turpitude or relating adversely to the activity regulated by the Committee.

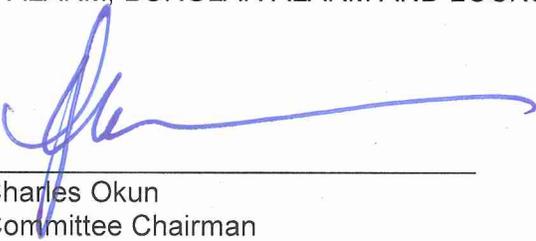
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ACCORDINGLY, IT IS on this 16th day of June, 2015,

ORDERED that:

1. Respondent's applications for a Burglar Alarm license and a Fire Alarm license in New Jersey are hereby denied.

FIRE ALARM, BURGLAR ALARM AND LOCKSMITH ADVISORY COMMITTEE

By: 

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Charles Okun  
Committee Chairman