

STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Docket No.: 19-005083

Corporations, Securities & Commercial  
Licensing Bureau,  
Petitioner

Case No.: 336574

v

Agency: Corp. Securities  
Commercial  
Licensing Bureau

Authorized Security Experts LLC,  
Respondent

Case Type: Security Division

Filing Type: Appeal

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Issued and entered  
this 17<sup>th</sup> by: Eric J. Feldman  
Administrative Law Judge  
day of April, 2019

**PROPOSAL FOR DECISION**  
**TO GRANT PETITIONER'S MOTION FOR SUMMARY DISPOSITION**

**PROCEDURAL HISTORY**

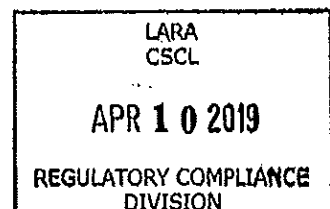
On November 19, 2018, a Formal Complaint was issued by the Michigan Department of Licensing and Regulatory Affairs (LARA), Corporations, Securities & Commercial Licensing Bureau (Bureau), Petitioner, against Authorized Security Experts L.L.C., Respondent, concerning its Security Guard Agency license. The Formal Complaint alleges violations by Respondent of the Private Security Business and Security Alarms Act (Act), MCL 338.1051 *et seq.*

On November 19, 2018, Petitioner issued an Order of Summary Suspension, resulting in Respondent's Security Guard Agency license being summarily suspended as of that date.

Respondent has not submitted an answer to the Formal Complaint or Order of Summary Suspension to date.

On March 13, 2019, Petitioner filed a request for hearing.

On March 15, 2019, the Michigan Administrative Hearing System (MAHS) issued a Notice of Hearing, scheduling an in-person hearing to convene on April 17, 2019.



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On March 26, 2019, Assistant Attorney General (AAG) Bruce Charles Johnson, on behalf of Petitioner, filed a Motion for Summary Disposition pursuant to Mich Admin Code, R 792.10129 (Motion for Summary Disposition), which included two exhibits.<sup>1</sup>

On April 1, 2019, MAHS re-issued the Notice of Hearing, with an Amended Proof of Service to Respondent's correct address. The re-issued Notice of Hearing notified both parties that the in-person hearing is still scheduled for April 17, 2019.

On April 1, 2019, Executive Director Julie McMurtry issued an Order Reassigning Case from Administrative Law Judge (ALJ) Lauren G. Van Steel to the undersigned ALJ, Eric J. Feldman.

To date, Respondent has not filed any response to Petitioner's Motion for Summary Disposition.

#### **APPLICABLE LAW**

MCL 338.1059 provides, in pertinent:

Sec. 9.

- (4) The department shall not issue a license under this act unless the applicant provides the department a bond in the principal amount of \$25,000.00. The bond shall be conditioned on the faithful and honest conduct of the business by the applicant and approved by the department. In lieu of a bond, an applicant may furnish a policy of insurance issued by an insurer authorized to do business in this state that names the licensee and the state as co-insureds in the amount of \$25,000.00 for property damages, \$100,000.00 for injury to or death of 1 person, and \$200,000.00 for injuries to or deaths of more than 1 person arising out of the operation of the licensed activity. The bond shall be payable for the benefit of the people of the state and a person injured by the willful, malicious, and wrongful act of the licensee or any agents or employees of a licensee may bring an action on the bond or insurance policy in his or her own name to recover damages suffered by reason of the wrongful act.

MCL 338.1060 provides, in pertinent:

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<sup>1</sup> Petitioner issued its Motion for Summary Disposition to Respondent's proper address.

Sec. 10.

- (1) The department may revoke any license issued under this act if it determines, upon good cause shown, that the licensee or his or her manager, if the licensee is an individual, or if the licensee is not an individual, that any of its officers, directors, partners or its manager, has done any of the following:

\* \* \*

- (b) Violated any provision of this act.

MCL 338.1064 provides, in pertinent:

Sec. 14.

- (4) The department may suspend a license issued under this act if the licensee fails to comply with any of the requirements of this act. Unless a license is required to be revoked for a violation of this act, the department shall reinstate a suspended license upon the licensee complying with this act and the licensee paying a \$100.00 reinstatement fee.

Mich Admin Code R 792.10808 states the following:

Rule 808. At the close of the record in a contested case, unless the parties have otherwise agreed to a disposition of the matter, or as otherwise provided under a licensing law, an administrative law judge shall issue a proposal for decision pursuant to the general hearing system rules for proposals for decision.

**STATEMENT OF FACTS NOT IN GENUINE DISPUTE**

1. Respondent was licensed as a Security Guard Agency under the Act. [Pet's Mot. for Summ. Disp., Exh. 1 and Exh. 2.]
2. Section (9)(4) of the Act requires that security guard agencies maintain either a surety bond or policy of insurance.
3. On April 30, 2018, Travelers Casualty and Surety Company of America notified Petitioner that it was electing to cancel Respondent's Surety Bond effective June 4, 2018. [Pet's Mot. for Summ. Disp., Exh. 1.]

4. On May 9, 2018, and June 14, 2018, Petitioner attempted to contact Respondent by mail to inquire if it maintained a surety bond or policy of insurance, as required by the Act. All attempts were unsuccessful. [Pet's Mot. for Summ. Disp., Exh. 1 and Exh. 2.]
5. On August 21, 22, 23, and 24, 2018, Petitioner also attempted to contact Respondent by telephone. All attempts were unsuccessful because the voicemail box was not set-up and, therefore, Petitioner was unable to leave messages. [Pet's Mot. for Summ. Disp., Exh. 1 and Exh. 2.]
6. Respondent continued to engage in activities regulated by the Act without a valid surety bond or policy of insurance on file with Petitioner, contrary to MCL 338.1059(4). [Pet's Mot. for Summ. Disp., Exh. 1 and Exh. 2.]
7. Respondent's conduct further provided grounds for the assessment of a penalty, as defined in MCL 338.1060(1)(b) and MCL 338.1064(4). [Pet's Mot. for Summ. Disp., Exh. 1 and Exh. 2.]
8. On November 19, 2018, Petitioner issued a Formal Complaint and Order of Summary Suspension against Respondent.
9. On March 13, 2019, Petitioner filed a request for hearing.
10. As of the date of this decision, Respondent has not filed any response to the Formal Complaint, Order of Summary Suspension, or Motion for Summary Disposition.

### **CONCLUSIONS OF LAW**

Petitioner moves for summary disposition pursuant to Mich Admin Code R 792.10129, arguing that there is no genuine issue of material fact in this case.

The Michigan Administrative Hearing System Rules provide the framework for a motion for summary disposition.

Mich Admin Code R 792.10129 provides, in pertinent part:

Rule 129.

- (1) A party may make a motion for summary disposition of all or part of a proceeding. When an administrative law judge does not have final decision authority, he or she may issue a proposal for decision granting summary disposition on all or part of a proceeding if he or she determines that that any of the following exists:

- (a) *There is no genuine issue of material fact.*
- (b) There is a failure to state a claim for which relief may be granted.
- (c) There is a lack of jurisdiction or standing.

Mich Admin Code R. 792.10129 (emphasis added).

Rule 129(1)(a) tracks the basis for summary disposition under Michigan Court Rule (MCR) 2.116(C)(10). Under that court rule, summary disposition is available when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10); *see also Coblenz v City of Novi*, 475 Mich 558; 719 NW2d 73 (2006); *Haliw v City of Sterling Heights*, 464 Mich 297; 627 NW2d 581 (2001); *Veenstra v Washtenaw Country Club*, 466 Mich 155; 645 NW2d 643 (2000).

"A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Attorney General v PowerPick Player's Club of Michigan, LLC*, 287 Mich App 13, 26-27; 783 NW2d 515 (2010) (quoting *West v Gen. Motors Corp.*, 469 Mich 177, 183; 665 NW2d 468 (2003)).

A material fact has been defined as an "ultimate fact issue upon which a jury's verdict must be based." *Estate of Neal v Friendship Manor Nursing Home*, 113 Mich App 759, 763, 318 NW2d 594 (1982). In other words, "[t]he disputed factual issue must be material to the dispositive legal claim[s]." *Auto Club Ins Ass'n v State Auto Mut Ins Co*, 258 Mich App 328, 333; 671 NW2d 132 (2003).

In reviewing a motion brought under MCR 2.116(C)(10), the court must consider the pleadings, affidavits, depositions, admissions, and any other admissible evidence in favor of the nonmoving party. MCR 2.116(G)(5); *Maiden v Rozwood*, 461 Mich 109, 12; 597 NW2d 817 (1999); *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993); *Miller v Farm Bureau Mut Ins Co*, 218 Mich App 221, 233; 553 NW2d 371 (1996). Affidavits or other documentation submitted in support of or in opposition to a motion for summary disposition under MCR 2.116(C)(10) must contain admissible evidence. MCR 2.116(G)(6); *Maiden*, 461 Mich at 121.

Granting the nonmoving party the benefit of any reasonable doubt regarding material facts, the court must then determine whether a factual dispute exists to warrant a trial. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 617-618; 537 NW2d 185 (1995); *Radtke*, 442 Mich at 374. If there is no genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *See Quinto v Cross & Peters Co*, 451 Mich 358, 363; 547 NW2d 314 (1996) (plaintiff failed to present evidence on which a reasonable person could find that hostile work environment existed; summary disposition proper).

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Here, Petitioner contends that because Respondent does not maintain either a surety bond or policy of insurance, there remains no material fact regarding Respondent's eligibility for a Security Guard Agency license.

Respondent has not filed any response to the Formal Complaint, Order of Summary Suspension, or Motion for Summary Disposition.

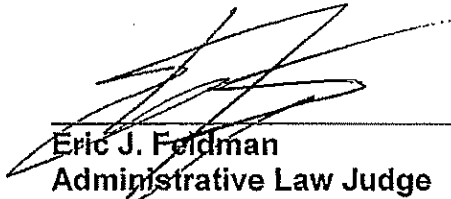
Section (9)(4) of the Act is clear. The Act requires that security guard agencies maintain either a surety bond or policy of insurance. Respondent's surety bond elapsed on June 4, 2018. Petitioner has tried multiple times to contact Respondent about the cancellation, but to no avail. Respondent does not have a surety bond or policy of insurance to maintain eligibility. Therefore, there is no genuine issue of material fact to be decided due to Respondent not meeting the requirements to maintain a Security Guard Agency license pursuant to the Act.

Accordingly, the undersigned concludes that Petitioner's Motion for Summary Disposition is properly granted. Therefore, MAHS has cancelled the hearing scheduled for April 17, 2019, and has removed this case from its docket.

#### PROPOSED DECISION

Based on the above, the undersigned proposes that the Director adopt the above Statement of Facts Not in Genuine Dispute and Conclusions of Law and issue a Final Order as follows:

1. Petitioner's Motion for Summary Disposition be **GRANTED**.
2. There is no genuine issue of material fact, such that it can be determined as a matter of law, without an evidentiary hearing, that the Formal Complaint, and Order of Summary Suspension, for Complaint No. 336574, were lawfully issued on November 19, 2018. Impose a sanction as deemed appropriate against Respondent concerning its license as a Security Guard Agency in the state of Michigan.

  
Eric J. Feldman  
Administrative Law Judge

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**EXCEPTIONS**

The parties may file Exceptions to this Proposal for Decision within twenty-one (21) days after it is issued and entered. An opposing party may file a response within fourteen (14) days after initial Exceptions are filed. All Exceptions and Responses to Exceptions must be filed with the Michigan Administrative Hearing System, 611 West Ottawa Street, P.O. Box 30695, Lansing, Michigan 48909, and served on all parties to the proceeding.