

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Case No. 2011-ALJ-30-320-AP

APX Alarm Security Solutions, Inc., ... Appellant,

v.

South Carolina Department of Labor, Licensing, and
Regulation, South Carolina Contractors Licensing Board ... Respondent.

RETURN IN OPPOSITION TO MOTION TO DISMISS

INTRODUCTION

This case involves APX's efforts to renew its burglar alarm license in South Carolina. APX—which now operates under the name Vivint, Inc., and which is the second largest residential security and home automation company in North America—has operated in and maintained a license in South Carolina for several years. APX has nearly 12,000 customers in South Carolina. Despite its tenure, APX currently finds itself at odds with the LLR regarding APX's efforts to renew its license.

The issue presented in this appeal is whether the law-of-the-case doctrine bars the LLR from denying APX's license renewal application on the exact same grounds that the Administrative Law Court vacated and deemed to be improper. However, in an attempt to short-circuit the Court's review of the agency's improper conduct, the LLR suggests that this Court is powerless to examine this case until the agency renders a "final judgment." The agency is wrong.

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SC Court of Appeals

The LLR's posturing is not how the "final judgment" rule is designed to work; indeed, the Administrative Procedures Act specifically authorizes appeals from "preliminary, procedural, or intermediate agency action" when "review of the final agency decision would not provide an adequate remedy." S.C. Code Ann. § 1-23-380. Because that is precisely the case here, the Court should deny the LLR's Motion to Dismiss.

PROCEDURAL BACKGROUND

This case has a winding procedural history, but the posture of the case highlights the impropriety of the LLR's motion to dismiss. The relevant dates and events are detailed on the table on Page 4 below. To summarize:

At various points in APX's quest to renew its license, the LLR has cited three different grounds for denying APX's renewal application:

- (1) APX's litigation in other jurisdictions;
- (2) Qualifying party issues; and
- (3) South Carolina Code § 40-1-110.

LLR identified the first of these in advance of APX's hearing before the agency, and the LLR fully considered this issue at that hearing. The Administrative Law Court, however, vacated the LLR's decision on that issue, stating that the LLR's decision was not "proper on the merits." (Ex. C, ALC Order (June 15, 2012).) The second purported ground for denying APX's renewal application was not identified in advance of APX's hearing before the agency, and the LLR ultimately abandoned it as a basis for denying APX's license when the case was on appeal to the Administrative Law Court. The third and final basis for the LLR's denial of APX's license renewal was never noticed in advance of APX's agency-level hearing, was not

identified in the agency's written order, and was first disclosed in the LLR's appellate brief to the Administrative Law Court.

The Administrative Law Court vacated the LLR's order, citing a lack of notice of the purported grounds for denying APX's license, and remanded the case back to the agency. APX was prepared to go back before the LLR for a hearing on the agency's third, never-identified-before-appeal basis for denying the application. After all, the LLR's first basis for denying APX's application was noticed by the agency and was fully heard by the Contractors' Licensing Board, and the Administrative Law Court vacated that decision as being wrong on the merits. Likewise, the LLR abandoned its second basis for denying APX's application. Accordingly, the only possible basis for denying APX's application that the LLR could consider on remand was its newfound reliance on South Carolina Code § 40-1-110, which appeared for the first time on appeal to the Administrative Law Court.

Following the Administrative Law Court's earlier ruling, the LLR noticed a new hearing, but it identified only the first basis—litigation in other jurisdictions—as the grounds on which the agency was continuing to hold up APX's renewal application. Because the LLR was simply repeating its earlier behavior that the Administrative Law Court had rejected as improper on appeal, APX filed a motion with the Administrative Law Court to compel compliance with its earlier order, arguing that the law-of-the-case doctrine prevented the LLR from doing a second time what had already been held to be improper. The Administrative Law Court denied APX's motion without any substantive discussion and directed simply that the agency must "rehear the Appellant's license renewal application." This appeal followed.

(Chronology of Litigation on Following Page)

Chronology of Litigation

<u>Date</u>	<u>Event</u>	<u>Citation</u>
July 6, 2010	APX submitted its license renewal application to the LLR	Ex. A, ALC R. p. 46
September 17, 2010	LLR indicated that it would have to hold a hearing on the application, citing (1) APX's litigation in other jurisdictions as the potential basis for denying application	Ex. A, ALC R. pp. 6, 8, 11
April 21, 2011	Hearing held before LLR on (1) APX's litigation in other jurisdictions ; LLR voted to deny renewal application without publicly identifying any basis for doing so	Ex. A, ALC R. p. 17
June 8, 2011	LLR issued written order, citing (1) APX's litigation in other jurisdictions and (2) "qualifying party issues" as grounds for denying application	Ex. A, ALC R. pp. 2-4
June 24, 2011	APX appealed LLR order to ALC	Ex. A, ALC R. p. 12
September 23, 2011	LLR filed its return brief to the ALC, in which it cited (1) APX's litigation in other jurisdictions and, for the first time, (3) South Carolina Code § 40-1-110 as grounds for denying application; no discussion of (2) "qualifying party issues" in LLR's appellate briefing	Attached as Exhibit B
January 10, 2012	Oral argument before ALC, during which LLR confirmed it had abandoned (2) "qualifying party issues" as a basis for denying application	No documentation; the ALC does not transcribe appellate arguments
June 15, 2012	ALC issued order vacating LLR's denial order, stating that the agency's decision was not proper on the merits and that APX had not been given notice of grounds on which denial was based, and directed LLR to rehear matter	Attached as Exhibit C
August 27, 2012	LLR noticed second hearing on APX's application, but it cited only (1) APX's litigation in other jurisdictions as the potential basis for denying application, and attached the exact same materials to the notice that were already presented to and considered by the LLR the first time through	Attached as Exhibit D
October 5, 2012	APX sought order compelling compliance with ALC's prior ruling based on the law-of-the-case doctrine	Attached as Exhibit E
October 15, 2012	ALC denied APX's motion	Attached as Exhibit F
November 15, 2012	APX appealed ALC's October 15th Order to this Court	On file with the Court

ARGUMENTS AND AUTHORITIES

The LLR argues that this appeal is “premature” because, in its view, APX has not exhausted its administrative remedies and, therefore, there is not a final judgment that can be presented to this Court. The agency’s motion, however, tells only half the story.

While it is certainly true that South Carolina generally follows the final judgment rule, the Administrative Procedures Act specifically provides for the immediate appeal of agency behavior if delaying review would leave the appellant without an adequate remedy:

A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. *A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.* Except as otherwise provided by law, an appeal is to the court of appeals.

S.C. Code Ann. § 1-23-380 (emphasis added); *see also* *Tobaccoville USA, Inc. v. McMaster*, 387 S.C. 287, 292 n.2, 692 S.E.2d 526, 529 n.2 (2010) (relying on this “immediately reviewable” provision to review rulings of the Administrative Law Court on discovery issues, which are interlocutory and are traditionally reserved to the trial court’s discretion).

This same principle—namely, that a party is not required to remain idle while an agency disregards the law—is captured in the case law that exempts a party from exhausting its administrative remedies when doing so would be futile. *See generally* *Brown v. James*, 389 S.C. 41, 54, 697 S.E.2d 604, 611 (Ct. App. 2010) (“A commonly recognized exception to the requirement of exhaustion of administrative remedies exists when a party demonstrates that pursuit of administrative remedies would be a vain or futile act.”).

Further proceedings before an agency meet the “futility” exception when the outcome before the agency is virtually certain to be “unfavorable” to the private litigant. *See, e.g., Storm M.H. v. Charleston County Bd. of Trs.*, Op. No. 27201 (S.C. Sup. Ct. filed Dec. 12, 2012) (Shearouse Adv.Sh. No. 45 at 52) (“First, we find that it would have been futile for Parent to exhaust her administrative remedies as the Board’s decision was certain to be unfavorable.”); *Brown*, 389 S.C. at 54–57, 697 S.E.2d at 611–613 (reversing a circuit court’s ruling that a teacher had to engage in further proceedings with a school board in order to exhaust her remedies because the board had already voted not to renew the teacher’s contract).

This case undoubtedly meets this standard. In September 2010, the LLR gave notice to APX of one potential basis for denying APX’s license renewal application. When the agency issued its written order denying the application, the LLR cited that same basis for which it had given prior notice, as well as a second, not-previously-disclosed basis that the agency later abandoned on appeal. Then, mid-appeal to the Administrative Law Court, the agency fabricated a brand-new third reason for denying the application.

As discussed above, the Administrative Law Court vacated the LLR’s ruling, finding that the agency’s decision was improper on the merits and that it had not given APX adequate notice of the other purported grounds for denial. That court then directed the agency to rehear the matter after giving adequate notice. On remand, though, the LLR ignored the Administrative Law Court’s directive and noticed a new hearing only on the exact same issue that had previously been noticed and was ruled to be an improper basis for denying APX’s license. (Ex. D, Hearing Notice Letter from LLR (Aug. 27, 2012).) The notice letter remarkably even attached pages from the appellate record as support for the agency’s position. (*Id.*)

It would make no sense for the Administrative Law Court to remand a case back to the LLR due to lack of notice, but to direct the agency to rehear an issue for which notice was actually given and that the Administrative Law Court ruled was improper. But this is the position that the LLR has inexplicably taken. There cannot be any conclusion drawn from this posturing other than the agency is simply ignoring the Administrative Law Court and is determined to continue denying APX's license on the same specious grounds that the Administrative Law Court previously vacated.

The law-of-the-case doctrine is designed to prevent exactly this behavior. As the Supreme Court explains: "Under the law-of-the-case doctrine, a party is precluded from re-litigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009). This rule "applies both to issues explicitly decided and to those issues which were necessarily decided in the former case." *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997). And it applies even when new evidence is introduced if that evidence is of the "same class and character" that was previously before the court. See, e.g., *Nelson v. Charleston & W. Carolina Ry. Co.*, 231 S.C. 351, 357, 98 S.E.2d 798, 800 (1957) ("Additional evidence cumulative in nature will not take the case out of the rule and constitute a material change where evidence of the same class and character was considered on the former appeal.").

Forcing APX to slog back through the bureaucratic tar pit, only to return to this Court months or years later with these same issues framed for the Court's consideration, would be both futile and squarely at odds with the purposes underlying the law-of-the-case doctrine: "stability, finality, and judicial efficiency." *City of Charleston v. Hotels.com, LP*, 520 F. Supp.

2d 757, 774 (D.S.C. 2007); *see also United States v. Williams*, 162 F. App'x 254, 258 (4th Cir. 2006) (explaining that the law-of-the-case doctrine is designed to promote “the need for litigation to finally come to an end”). Accordingly, APX respectfully submits that the Court should deny the LLR’s motion to dismiss so that this case can be resolved without wasting scores of additional public and private resources through fruitless agency-level proceedings.

CONCLUSION

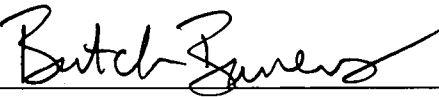
As the table on Page 4 above makes clear, APX’s license—its lifeline to do business in South Carolina—has been in limbo for over two and a half years, even though it is one of the nation’s leading providers of security systems and related services and operates on an international scale.

APX was vindicated once before when the Administrative Law Court reversed the LLR’s decision to deny the company its license. Now the LLR is pretending that it can simply redo the same actions that were previously vacated and that this Court is powerless to stop this misconduct. The agency is incorrect, as the Administrative Procedures Act specifically authorizes the Court to hear this appeal. Nor does the law require APX to exhaust administrative avenues that are already foreclosed as a prerequisite to seeking this Court’s review. Accordingly, the LLR’s motion should be denied.

SIGNATURE PAGE ATTACHED

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: 

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Attorneys for Appellant APX Alarm Security Solutions,
Inc., n/k/a Vivint, Inc.

January 7, 2013
Columbia, South Carolina

Exhibit A

Record on Appeal Before the Administrative
Law Court

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

APPEAL FROM THE SOUTH CAROLINA DEPARTMENT OF
LABOR, LICENSING AND REGULATION
CONTRACTORS' LICENSING BOARD

Docket No. 11-ALJ-11-0320-AP

APX Alarm Security Solutions, Inc.....Appellant,

v.

South Carolina Department of Labor,
Licensing and Regulation,
Contractors' Licensing Board.....Respondent.

RECORD ON APPEAL

Suzanne Hawkins
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S.C. Department of Labor, Licensing and
Regulation
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FILED

AUG 12 2011

SC ADMIN. LAW COURT

Karl S. Bowers, Jr.
M. Todd Carroll
Attorneys for Appellant
Hall & Bowers, LLC
1329 Blanding St.
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(803) 454-6504

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BEFORE THE SOUTH CAROLINA CONTRACTORS' LICENSING BOARD

In the Matter of:

APX ALARM SECURITY
SOLUTIONS, INC. #BAC.5569

Applicant.

ORDER

This matter is before the Board pursuant to the application of APX Alarm Security Solutions (Applicant) for renewal of licensure as a Burglar Alarm Company. Upon staff review of the application, questions arose regarding Applicant's qualification for licensure. Applicant answered 'Yes' to Questions 3 and 4 on the application regarding prior judgments, liens and claims, and pending complaints, investigations and disciplinary actions respectively. At the hearing on April 21, 2011, Applicant appeared in support of the application represented by Counsel Karl Bowers, Esq.

Applicant has been previously disciplined by the Contractor's Licensing Board by Order dated December 2, 2009 by which Applicant received a public reprimand and a \$5000.00 civil penalty. Applicant also has been the subject of administrative, consumer, fire marshal and law enforcement investigations and actions in eleven (11) other states. Applicant provided a summary of these actions to the Board which are detailed, according to records presented at the hearing below.

1. The *Arkansas Board of Private Investigators and Private Security Agencies* ordered that APX pay approximately \$42,000 in civil penalties for violations that included 45 licensing paperwork violations, misrepresentation of information to a potential customer, and a failure to submit certifications for 41 employees. The Arkansas board revoked the license of the APX manager, Steve Evers.
2. The *Florida Dept. of Business Professional Regulation* entered into a stipulation regarding two installations in Florida in 2008 that were contrary to Florida law.
3. The *Louisiana Department of Public Safety and Corrections Office of State Fire Marshal* issued a Cease and Desist Order stating that APX Alarm did not have a current qualifying party. This Order was lifted on June 16, 2008. Twelve days later, the Fire Marshal issued another Cease and Desist Order alleging that APX Alarm had permitted two unlicensed representatives to engage in sales of security systems in Louisiana, performed installations of poor quality, and had made misrepresentations. APX settled this matter by agreeing not to renew its license.
4. The *Maryland State Police* alleged that APX sales representatives who were licensed in Virginia crossed into Maryland and sold accounts to customers without first obtaining a Maryland license. After APX offered to cancel any customers' contracts and refund any amounts paid, no further action was taken by the Maryland Attorney General.

5. The *Minnesota Department of Labor and Industry* took formal action against APX Alarm's technology systems contractor license based on several violations of Minnesota statutes.
6. The *Mississippi Fire Marshal's Office* issued a Cease and Desist Order for failure to license each operating location in the State, but after proper explanation and documentation was submitted, the Order was lifted.
7. The *North Carolina Alarm Systems Licensing Board* received a complaint from a consumer alleging "Poor Business Practices." Another complaint was filed with the North Carolina consumer protection agency alleging that an APX representative cursed at an elderly customer and checked his credit without authorization.
8. In 2009, the Attorney General of New York filed an action against APX relating to improper sales practices. No further action was taken after APX entered into an agreement of 'assurance of discontinuance.'
9. The *Oregon Department of Justice* alleged violations of the Oregon Unlawful Trade Practices Act for matters relating to allegations of improper trade practices and a violation of Oregon's telephone solicitation laws. As of the date of the hearing, APX and the Oregon Department of Justice are negotiating an 'assurance of voluntary compliance.'
10. The *State of Tennessee Department of Commerce and Insurance Office of Legal Counsel* filed a claim against APX for failing to renew the Alarm Systems Contractor's certification and a failure by APX to respond to an inquiry forwarded by the Tennessee Alarm Systems Contractors Board. As a result of this action, APX received a \$1000.00 civil penalty.
11. The *Texas Department of Public Safety* launched an investigation in 2008 for allegations that APX failed to register 78 Canadian employees within the first 14 days of employment. In 2009 the Departments investigated alleged unlicensed activity performed by one of APX Alarm's employees. Since its last renewal, APX has had various licenses or permits to engage in door-to-door marketing denied or revoked.

Applicant, whose principle address is in Utah, testified that its proposed qualifying party is not a resident of South Carolina and further stated at the hearing that the company has since changed its name to Vivin Inc. According to Board records, APX had not updated this information with the Board prior to the hearing.

Initially, it should be recognized that in considering any application for licensure or certification, the burden is upon the applicant to provide full, complete, and accurate responses to all questions on the application and to demonstrate that he or she is qualified for the license sought. Further, the Board may deny an authorization to practice to an applicant who has committed an act that would be grounds for disciplinary action of the licensing act of the specific board. See S.C. Code Ann. § 40-1-130 and 40-79-130.

The Board has fully considered the evidence and testimony presented at the hearing including Applicant's statements to the Board that all of the matters in other states have been 'resolved.' The Board appreciates Applicant's disclosure of these matters. Having considered all factors, both aggravating and mitigating, presented by this application and recognizing that while the Board must exercise great discretion in determining one's future ability to engage in a licensed profession or occupation, the Board's primary duty is to protect the citizens of South

Carolina. The Board further recognizes that it may issue a license under certain terms and conditions which would allow Applicant to engage in practice while subject to restrictions imposed by the Board. Recognizing this, the Board has considered this possibility and must decline to do so because it believes there are no suitable, feasible and realistic conditions it could devise which would adequately protect the public.

The Board finds that Applicant's prior history of investigations, violations and sanctions in this state and eleven others, as well as the qualifying party issues, present multiple statutory grounds upon which its license renewal application may be denied at this time. Therefore, Applicant's application is denied pursuant to Sections 40-1-130, 40-79-130 and 40-79-70, 40-79-220, and 40-79-230 of the 1976 Code of Laws of South Carolina, as amended, for failure to satisfy the Board that Applicant meets all requirements for the issuance of a license.

THEREFORE, IT IS ORDERED that Applicant's application for licensure as a Burglar Alarm Company in this State is **DENIED**.

**SOUTH CAROLINA CONTRACTORS' LICENSING
BOARD**

6/8/11
Date

BY: Kimberly L. Lineberger
Kimberly L. Lineberger
Chairperson of the Board

**South Carolina Department of Labor, Licensing & Regulation
Before the State Licensing Board for Contractors**

**STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON**

In the Matter of:

**APX Alarm Security,
License No. BAC 5569**

Applicant

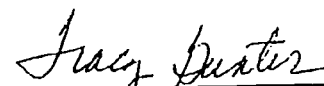
Case No.

CERTIFICATE OF SERVICE BY MAIL

This is to certify that the undersigned has this date, June 16, 2011, served the **Order** in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s) to the following address:

**APX Alarm Security
4931 N 300 W
Provo UT 84604**

**Karl Bowers Jr., ESQ
Hall & Bowers LLC
PO Box 12107
Columbia SC 29211-2107**



**Tracy Gunter
Program Assistant
Contractors Licensing Board**



Mark Sanford
Governor

Adrienne Riggins Youmans
Director

South Carolina
Department of Labor, Licensing and Regulation

Contractors' Licensing Board



110 Centerview Drive;
Post Office Box 11329
Columbia, SC 29211-1329
Office Phone: (803) 896-4686
Licensing Section FAX: (803) 896-4701
www.llr.state.sc.us

September 17, 2010

Mr. Karl S. Bowers, Jr., Esq.
Hall & Bowers, LLC
Attorneys at Law
Post Office Box 12107
Columbia SC 29211

RE: Application Hearing of APX Alarm Security Solutions, Inc. before the SCDLLR, South Carolina Contractors' Licensing Board

Dear Mr. Bowers:

Your request for APX Alarm Security Solutions, Inc., to appear before the full Board has been received to address the reinstatement their application as a Burglar and Fire Alarm Contractor in the State of South Carolina. The board staff could not approve their renewal application at staff level because of the "Yes" answer on the Background Questions concerning actions or pending actions against APX Alarm Security Solutions, Inc. in at least 12 states. Board members will be provided with a copy of your request and a copy of the application for their review prior to the meeting.

The next full Board meeting will be held October 21, 2010, at 10:00 A.M., Room 105, at the Synergy Office Park, Kingstree Building, 110 Centerview Drive, Columbia, South Carolina, 29210. You will be placed on the agenda following the business portion of the meeting.

At the hearing, you as counsel may present any documents and witnesses that you deem appropriate to support your application. If you wish to submit documentary evidence, please bring at least 10 copies of each document.

If you find you or your client cannot attend at that time and date, please notify me at (803) 896-4634 as soon as possible, so you can be taken off the agenda.

Sincerely,

Joyce Thurber
Program Coordinator, CLB Administration
Office of Board Services

Cc: Michael Anderson

South Carolina Department of Labor, Licensing & Regulation
Before the Contractors' Licensing Board

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

In the Matter of:

APX ALARM SECURITY SOLUTIONS INC

BAC. 5569 ,

Case No: 2009-255

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

PERSONALLY appeared before me Joyce Thurber, who, being duly sworn, states:

1. That she is the Program Coordinator for the South Carolina Department of Labor, Licensing and Regulation, Contractors' Licensing Board.

2. That she hereby certifies that on the 21st day of September, 2010, she served the Notice of Application Hearing, in the above-captioned matter by personally depositing a copy of the same in the United States mail, with correct postage affixed thereon, addressed to the person indicated below:

MR. KARL S. BOWERS, JR., ESQ.
HALL & BOWERS, LLC
ATTORNEYS AT LAW
POST OFFICE BOX 12107
COLUMBIA SC 29211

REPRESENTING APX ALARM SECURITY SOLUTIONS, INC.
PROVO UTAH



Joyce Thurber
Contractors' Licensing Board
SOUTH CAROLINA DEPARTMENT OF LABOR,
LICENSING & REGULATION

SWORN to before me this

21st day of September, 2010

Shirley Fulmer Meeker (L.S.)
Notary Public for South Carolina

My Commission Expires: 10/26/2011



Mark Sanford
Governor

Adrienne Riggins Youmans
Director

South Carolina
Department of Labor, Licensing and Regulation

Contractors' Licensing Board



110 Centerview Drive;
Post Office Box 11329
Columbia, SC 29211-1329
Office Phone: (803) 896-4686
Licensing Section FAX: (803) 896-4701
www.llr.state.sc.us

January 5, 2011

Mr. Karl S. Bowers, Jr., Esq.
Hall & Bowers, LLC
Attorneys at Law
Post Office Box 12107
Columbia SC 29211

RE: Application Hearing of APX Alarm Security Solutions, Inc. before the SCDLLR, South Carolina Contractors' Licensing Board

Dear Mr. Bowers:

Your request for APX Alarm Security Solutions, Inc., to appear before the full Board has been re-scheduled to address the reinstatement their application as a Burglar and Fire Alarm Contractor in the State of South Carolina. The board staff could not approve their renewal application at staff level because of the "Yes" answer on the Background Questions concerning actions or pending actions against APX Alarm Security Solutions, Inc. in at least 12 states. Board members will be provided with a copy of your request and a copy of the application for their review prior to the meeting.

The next full Board meeting will be held January 20, 2011, at 10:00 A.M., Room 105, at the Synergy Office Park, Kingstree Building, 110 Centerview Drive, Columbia, South Carolina, 29210. You will be placed on the agenda following the business portion of the meeting.

At the hearing, you as counsel may present any documents and witnesses that you deem appropriate to support your application. If you wish to submit documentary evidence, please bring at least 10 copies of each document.

If you find you or your client cannot attend at that time and date, please notify me at (803) 896-4634 as soon as possible, so you can be taken off the agenda.

Sincerely,

Joyce Thurber
Program Coordinator, CLB Administration
Office of Board Services

Cc: Gary Wiggins
Manager, Office of Board Services,
Design and Construction Boards

South Carolina Department of Labor, Licensing & Regulation
Before the Contractors' Licensing Board

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

In the Matter of:

APX ALARM SECURITY SOLUTIONS INC

BAC. 5569, Reinstatement

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

PERSONALLY appeared before me Joyce Thurber, who, being duly sworn, states:

1. That she is the Program Coordinator for the South Carolina Department of Labor, Licensing and Regulation, Contractors' Licensing Board.

2. That she hereby certifies that on the 5th day of January, 2011, she served the Notice of Application Hearing, in the above-captioned matter by personally depositing a copy of the same in the United States mail, with correct postage affixed thereon, addressed to the person indicated below:

MR. KARL S. BOWERS, JR., ESQ.
HALL & BOWERS, LLC
ATTORNEYS AT LAW
POST OFFICE BOX 12107
COLUMBIA SC 29211

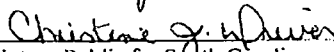
REPRESENTING APX ALARM SECURITY SOLUTIONS, INC.
PROVO UTAH



Joyce Thurber
Contractors' Licensing Board
SOUTH CAROLINA DEPARTMENT OF LABOR,
LICENSING & REGULATION

SWORN to before me this

5th day of January, 2011



Christine G. Hester (L.S.)
Notary Public for South Carolina

My Commission Expires: 11-8-2017

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South Carolina Department of Labor,
Licensing and Regulation
CONTRACTORS' LICENSING BOARD

FAX

110 Centerview Drive
Post Office Box 11329
Columbia, South Carolina 29211-1329

TO:
Karl S. (Butch) Bowers, Jr., Esq.

FROM:
Joyce Thurber,
Program Coordinator

A handwritten signature in cursive script, appearing to read 'Joyce Thurber', is written over the printed name.

COMPANY:

DATE:

Hall & Bowers, LLC

3/21/2011

FAX NUMBER:

NUMBER OF PAGES:

(803)454-6509

2

PHONE NUMBER:

OFFICE:

ADMINISTRATION SECTION

RE: APX Alarm Security Solutions, Inc.

TELEPHONE NUMBER:

Note: NOTICE OF APPLICATION
HEARING 4/21/2011

Phone: 803-896-4634
FAX: 803-896-4814

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ _XX_ REQUESTED

NOTES/COMMENTS:

Confidentiality Note: This e-mail message, including any attachments, contains privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this e-mail message is not the intended recipient or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this e-mail message, including attachments, is strictly prohibited. If you have received this e-mail message in error, please notify us immediately by telephone and return the original e-mail message, including attachments, to SC LLR, Contractors' Licensing Board, Post Office Box 11329, Columbia, SC 29211, via the US Postal Service. Thank you.



Nikki Haley
Governor

Catherine B. Templeton
Director

South Carolina
Department of Labor, Licensing and Regulation

Contractors' Licensing Board



110 Centerview Drive,
Post Office Box 11329
Columbia, SC 29211-1329
Office Phone: (803) 896-4686
Licensing Section FAX: (803) 896-4701
www.lrlonline.com

March 21, 2011

Mr. Karl S. Bowers, Jr., Esq.
Hall & Bowers, LLC
Attorneys at Law
Post Office Box 12107
Columbia SC 29211

RE: Application Hearing of APX Alarm Security Solutions, Inc. before the SCDLLR, South Carolina Contractors' Licensing Board

Dear Mr. Bowers:

Your request for APX Alarm Security Solutions, Inc., to appear before the full Board has been scheduled to address the reinstatement their application as a Burglar and Fire Alarm Contractor in the State of South Carolina. The board staff could not approve their renewal application at staff level because of the "Yes" answer on the Background Questions concerning actions or pending actions against APX Alarm Security Solutions, Inc. in other states. Board members will be provided with a copy of your request and a copy of the application for their review prior to the meeting.

The next full Board meeting will be held April 21, 2011, at 10:00 A.M., Room 105, at the Synergy Office Park, Kingstree Building, 110 Centerview Drive, Columbia, South Carolina, 29210. You will be placed on the agenda following the business portion of the meeting.

At the hearing, you as counsel may present any documents and witnesses that you deem appropriate to support the application of APX Alarm Security Solutions Inc. If you wish to submit documentary evidence, please bring at least 10 copies of each document.

If you find you or your client cannot attend at that time and date, please notify me at (803) 896-4634 as soon as possible, so you can be taken off the agenda.

Sincerely,

Joyce Thurber
Program Coordinator, CLB Administration
Office of Board Services

Cc: Gary Wiggins
Manager, Office of Board Services,
Design and Construction Boards

THE STATE OF SOUTH CAROLINA
In The Administrative Law Court

APPEAL FROM THE SOUTH CAROLINA
DEPARTMENT OF LABOR, LICENSING AND REGULATION

Case No. _____

APX Alarm Security Solutions, Inc., ... Appellant,

v.

South Carolina Department of Labor, Licensing and
Regulation, ... Respondent.

NOTICE OF APPEAL

APX Alarm Security Solutions, Inc., appeals the final action of the South Carolina Department of Labor, Licensing and Regulation ("LLR"). That decision was issued on June 8, 2011. APX first received a copy of the decision on June 23, 2011, making this Notice of Appeal timely filed.

Pursuant to Rule 33, SCALCR, APX hereby states as follows:

A. **Contact Information for the Parties**

The contact information for Appellant APX¹ is:

Vivint, Inc.
4931 N. 300 W
Provo, UT 84604
t. 800.216.5232

¹ APX Alarm Security Solutions, Inc., has changed its corporate name to Vivint, Inc., but still does business in South Carolina as APX Alarm Security Solutions, Inc.

The contact information for counsel for Appellant APX, is:

Karl S. Bowers, Jr.
Email: butch.bowers@hallbowers.com
M. Todd Carroll
Email: todd.carroll@hallbowers.com
Hall & Bowers, LLC
1329 Blanding St.
Columbia, SC 29201
t. 803.454.6504
f. 803.454.6509

The contact information for counsel for Respondent LLR is:

Suzanne L. Hawkins
Email: hawkinss@llr.sc.gov
South Carolina Department of Labor, Licensing and Regulation
P.O. Box 11329
Columbia, SC 29211-1329
t. 803.896.4481
f. 803.896.4471

B. General Statement of the Grounds for Appeal

APX appeals the LLR's decision on at least the following grounds:

1. The LLR's decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, as there was no evidence presented to the agency that supports its decision.
2. The LLR's decision is arbitrary, capricious, and characterized by an abuse of or a clearly unwarranted exercise of discretion, as there was no evidence presented to the agency that supports its decision.
3. The LLR's decision exceeds the agency's statutory authority and is in violation of the Full Faith and Credit Clause.
4. The LLR's decision violates APX's constitutional due process guarantees and is in violation of the statutory provisions that set forth the notice that was required to be—but that was not—given to APX.

APX expressly reserves the right to amend, supplement, and modify this statement of grounds for appeal as provided by Rules 33(B) and 37(B)(1), SCALCR.

C. Copy of the Final Decision

Attached hereto is a copy of the final decision that is the subject of this appeal. APX received this decision on June 23, 2011.

D. Copy of the Request for Transcript

Attached hereto is a copy of APX's request for a transcript of the proceedings before the LLR.

E. Certificate of Service

A certificate of service of this Notice is attached hereto.

Respectfully submitted,

HALL & BOWERS, LLC

By: Butch Bowers
Karl S. Bowers, Jr.
SC Bar No. 16141
M. Todd Carroll
SC Bar No. 74000
1329 Blanding Street
Columbia, SC 29201
(803) 464-6504

Attorneys for Appellant APX Alarm Security Solutions,
Inc.

Columbia, South Carolina
June 24, 2011

THE STATE OF SOUTH CAROLINA
In The Administrative Law Court

APPEAL FROM THE SOUTH CAROLINA
DEPARTMENT OF LABOR, LICENSING AND REGULATION

Case No. _____

APX Alarm Security Solutions, Inc., ... Appellant,

v.

South Carolina Department of Labor, Licensing and
Regulation, ... Respondent.

CERTIFICATE OF SERVICE

I, the undersigned Attorney of the law offices of Hall & Bowers, LLC, attorneys
for Appellant, do hereby certify that I have served the below parties in this action with a
copy of the pleading(s) hereinbelow specified by mailing a copy of the same to the
following address(es):

Pleading: Notice of Appeal

Parties Served: Suzanne L. Hawkins, Esq.
South Carolina Department of Labor, Licensing and
Regulation
P.O. Box 11329
Columbia, SC 29211-1329

HALL & BOWERS, LLC

By: Butch Bowers

Karl S. Bowers, Jr.
Attorneys for Appellant

June 24, 2011

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

APX Alarm Security Solutions, Inc.,

Appellant,

vs.

South Carolina Department of Labor,
Licensing and Regulation, South Carolina
Contractors' Licensing Board,

Respondent.

NOTICE OF ASSIGNMENT
(Appeal)

DOCKET NO. 11-ALJ-11-0320-AP

NOTICE IS GIVEN that a notice of appeal seeking review of agency action was filed on June 24, 2011. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2010), the **Honorable Carolyn C. Matthews**, Administrative Law Judge, has been assigned to preside in this appeal. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550.

Rules of Procedure governing matters before the Court may be obtained from the Clerk of Court or on the Court's website, www.scalc.net.

The parties are directed to the relevant provisions of the Rules of Procedure for deadlines for perfecting the appeal and briefing the issues on appeal.

This the twenty-ninth day of June, 2011.

Ralph King Anderson, III
Chief Administrative Law Judge

By: Jana E. Shealy
Jana E. Shealy, Clerk
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

FILED

JUN 29 2011

SC ADMIN. LAW COURT

BEFORE THE
SOUTH CAROLINA CONTRACTOR'S LICENSING BOARD

IN THE MATTER OF:
APX Alarm Security Solutions,
Inc.,

Applicant.

TRANSCRIPT OF PROCEEDINGS

Columbia, South Carolina

April 21, 2011

Commencing at 1:17 p.m.

COURT REPORTER: Janice B. Dunkin

JANICE B. DUNKIN

d/b/a DUNKIN COURT REPORTING

YORK, SOUTH CAROLINA

803-684-6155

APPEARANCES:

Board Members:

Bill Neely

Daniel Lehman

Lewis M. Caswell

Kimberly Lineberger, Chairperson

Mark G. Plyler

Frank Walker

Sheridon Spoon, Esquire, Advice Attorney

Karl S. Bowers, Esquire

Hall and Bowers

1329 Blanding Street

Columbia, South Carolina

Representing the Applicant

Nathan Wilcox, Applicant

Also Present:

Gary Wiggins

Joyce Thurber

Angie Scott

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EXHIBITS

No Exhibits Marked

1 MS. LINEBERGER: This is the
2 application hearings. This is in the
3 matter of APX Alarm Security Solutions,
4 Incorporated. The purpose of this
5 hearing is to determine whether APX Alarm
6 can be renewed as Burglar Alarm Licensee.
7 The renewal application could not be
8 renewed at staff level based on a yes
9 answer in the background questions
10 concerning disciplinary actions or
11 pending actions against the company in at
12 least twelve states. Everyone is
13 reminded that these proceedings are being
14 recorded and that all witnesses must be
15 sworn before they testify. All remarks
16 should be directed to the Chairman. Mr.
17 Wiggins, is the complete application in
18 our materials?

19 MR. WIGGINS: Yes, Madam Chair.

20 MS. LINEBERGER: Mr. Wiggins, what
21 questions did Staff have concerning this
22 application?

23 MR. WIGGINS: The application yes
24 answers to the background questions
25 indicate that APX Alarm has had

1 judgments, liens, or claims filed against
2 them since the last renewal and has
3 pending complaints, or is under
4 investigation, or has had action taken
5 against the license in this or other
6 jurisdictions. Attachments in your book
7 shall act as pending or taken at the time
8 the application was submitted.

9 MS. LINEBERGER: Did staff subpoena
10 any other persons to be here today so
11 they might answer questions?

12 MR. WIGGINS: No, ma'am.

13 MS. LINEBERGER: Is the applicant
14 present?

15 MR. BOWERS: Yes, ma'am.

16 MS. LINEBERGER: Are you represented
17 by counsel?

18 MR. WILCOX: Yes, ma'am.

19 MS. LINEBERGER: Counselor, if you
20 will, give us your name and full address
21 for the record.

22 MR. BOWERS: Yes, ma'am. Madam
23 Chair, Members of the Board, my name is
24 Butch Bowers. That's B-o-w-e-r-s. I'm
25 an attorney here in Columbia with the

1 firm of Hall and Bowers. My business
2 address is 1329 Blanding Street,
3 Columbia, 29201, and I'm here on behalf
4 of APX Alarm in this license renewal
5 application matter. With me is my
6 client, Nathan Wilcox, W-i-l-c-o-x. Mr.
7 Wilcox is the General Counsel and
8 Corporate Secretary for APX Alarm based
9 in Provo, Utah.

10 MS. LINEBERGER: And do you have any
11 witnesses that you are going to call?

12 MR. BOWERS: Madam Chair, if it
13 pleases the Board we have Mr. Wilcox that
14 we will call if that's the will of the
15 Board. I'm here very briefly. As Mr.
16 Wiggins accurately set forth the APX on
17 its license renewal application form
18 indicated that there were other matters
19 pending in other jurisdictions,
20 specifically in eleven other
21 jurisdictions other than South Carolina.
22 Written materials were attached to the
23 application that addressed each of those
24 including one in South Carolina. I said,
25 eleven other jurisdictions. There is one

1 in South Carolina that has been resolved,
2 and Madam Chair, these matters are
3 resolved, and we think that the written
4 materials support that and indicate that,
5 but if it pleases the Board, and it is
6 the will of the Board to have Mr. Wilcox
7 sworn and testify as to these matters,
8 we're happy to do that. So, at your
9 pleasure.

10 MS. LINEBERGER: Let's go ahead and
11 do that.

12 NATHAN WILCOX, having been duly sworn testifies as
13 follows:

14 DIRECT EXAMINATION BY: MR. BOWERS

15 Q Mr. Wilcox, would you please state your position
16 with APX Alarm?

17 A I am the Corporate Secretary and General Counsel,
18 so an Officer of the company and also the General
19 Counsel for the company.

20 Q How long have you been with the company?

21 A As outside counsel since 2004, in-house counsel
22 since October of 2007.

23 Q Would you very briefly please tell the Board a
24 little bit about your experience and professional
25 affiliation in the alarm business?

1 A I am currently the Vice President of the Utah Alarm
2 Association which is a Chapter of what is known as
3 ESA, or the Electronics Security Association. It
4 used to be known as the National Burglar and Fire
5 Alarm Association. Some people recognize NBFAA. I
6 also served on the By-Laws Committee for the ESA,
7 Electronic Security Association, and I'm a member
8 of the committee that is drafting laws relating to
9 licensing for monitoring stations throughout the
10 United States.

11 Q Mr. Wilcox, it's correct that your company is based
12 in Utah?

13 A The headquarters of the company is in Utah. We are
14 in -- we are actually an international company. We
15 have operations in the United States and Canada.
16 We have roughly -- approximately five hundred
17 thousand customers. We are a full service company,
18 which means we provide from the sales,
19 installation, the monitoring, all of the services
20 associated with it. So, we provide all the service
21 to the customers from beginning to end.

22 Q Okay. Approximately how many customers do you have
23 in South Carolina?

24 A In South Carolina we have approximately ninety-two
25 hundred customers currently.

1 Q Mr. Wilcox, are you familiar with the license
2 renewal application that's at issue here before us
3 today?

4 A I am.

5 Q And Mr. Wilcox, are you able to provide testimony
6 to the Board with regard to each of the -- each of
7 the matters that at the time the application was
8 made were indicated were pending in other
9 jurisdictions?

10 A Yes. I am.

11 MR. BOWERS: All right. For the
12 sake of expediting this, if it is okay
13 with Madam Chair, I'll just ask Mr.
14 Wilcox to briefly discuss each one of the
15 issues that were indicated on the
16 application.

17 MS. LINEBERGER: Certainly.

18 MR. BOWERS: Mr. Wilcox?

19 MR. WILCOX: The first matter is in
20 Arkansas. It's a matter involving the
21 Arkansas Board of Investigators and
22 Private Security Agencies. That's a
23 Board that regulates alarm companies and
24 alarm company agents in the State of
25 Arkansas. There a hearing that was held,

1 and an Order was entered relating to our
2 license and the license of the Qualifying
3 Agent there. The issues that was
4 presented -- there are actually two
5 issues. One involved a customer who was
6 making a claim that a representation --
7 there had been a misrepresentation made
8 to that customer. There was an eight
9 hundred and fifty dollar fine imposed
10 related to that customer, and it was
11 resolved. The customer was -- it was --
12 the customer never had a system
13 installed. It was a potential customer,
14 and the representation was made, and
15 nothing further happened with respect to
16 the customer. The other, the majority of
17 it relates to the applications, or the
18 licenses that were issued to forty-one
19 individuals who were agents in Arkansas.
20 They obtained a license in the State of
21 Arkansas to work. Arkansas requires that
22 an agent receive -- obtain a
23 certification of NBFAA Level One
24 Certification, it's a testing
25 requirement, a national testing, within

1 six months after they start working in
2 Arkansas. This is really a paperwork
3 issue, because if the individuals are
4 working in Arkansas for more than six
5 months, they need to submit that. If
6 they stop work in Arkansas, they need to
7 submit a termination notice that they are
8 no longer working in Arkansas, and then
9 that time period stops or is hold at that
10 point. What had happened is those
11 termination notices were not submitted
12 for these individuals. There was no
13 individual who worked more than six
14 months in Arkansas, but because those
15 termination notices had not been sent and
16 the corresponding certification had not
17 been submitted, there was a fine issue to
18 one thousand for each of those
19 individuals, and that constitute the
20 forty-one thousand portion of it. That
21 matter is actually on appeal in the State
22 of Arkansas, and I anticipate it will
23 probably be resolved on appeal in the
24 State of Arkansas.

25 MR. BOWERS: Mr. Wilcox, if I may,

1 that matter as you indicated is on
2 appeal?

3 MR. WILCOX: Yes.

4 MR. BOWERS: Your company appealed.
5 Correct?

6 MR. WILCOX: Yes. We did appeal it.

7 MR. BOWERS: But at the regulatory
8 level, it was resolved. Correct?

9 MR. WILCOX: Yes.

10 MR. BOWERS: Okay.

11 MR. WILCOX: Then the second one
12 relates to Florida, and Florida involved
13 the installation of and deactivation of a
14 commercial fire alarm system. It was not
15 a residential system. The representation
16 was made by the Homeowner that the system
17 was being installed in a residence, not a
18 commercial establishment. We were not
19 licensed at the time to do a commercial
20 establishment. We believed it was a
21 residential establishment. One of the
22 homes had no system in it, but it was a
23 home that had been a residence. It had
24 been converted into an assisted living or
25 group home, and the second one actually

1 had a system in it from another company,
2 and that system was a -- it was a
3 commercial system. What had happened is,
4 the first system was installed. The
5 second system when it was deactivated, it
6 automatically sends a signal and the fire
7 department came out, and there was a
8 citation that was issued related to those
9 two, the installation of one and the
10 deactivation of another system, and those
11 were resolved. The Louisiana matter,
12 this is in 2008. In 2008, we -- this is
13 the first time we had done business in
14 the State of Louisiana. We had a Cease
15 and Desist Order that was issued, because
16 the applicants for license had submitted
17 applications, but not received their
18 actual license before they began to work.
19 There was an understanding that there was
20 a grace period, and there was not a grace
21 period. The -- once the Cease and Desist
22 was issued, it was lifted about a week
23 later. I think it was about actually ten
24 days total later, and -- because licenses
25 were issued, and then there was a second

1 Cease and Desist. It issued based upon
2 complaints from four customers. This
3 matter was actually resolved. We kept
4 our license and then -- but did not renew
5 the license in the State of Louisiana,
6 and we did not do any operations in the
7 State of Louisiana. All matters with
8 respect to the State of Louisiana have
9 been resolved and are completed.

10 MR. CASWELL: Excuse me. Are you
11 saying you did not apply to renew?

12 MR. WILCOX: We did not apply. We
13 can apply for license in Louisiana. It's
14 just not -- frankly, it's not a location
15 that works for our business model. The
16 individual to speak with at the Fire
17 Marshall's Office, a gentleman by the
18 name of Boyd Petty, and he is the
19 Assistant Fire Marshall there. He is the
20 man that actually addresses that. I
21 actually met with him at the end of
22 December of 2010 to discuss whether we
23 going to submit a new application to go
24 back to Louisiana. We made a decision
25 from a business standpoint it is not a

1 location that worked with our business
2 model. The next is the State of
3 Maryland, and Maryland, this I believed
4 was discussed the last time we were here.
5 Maryland, we had a team of sales
6 representative gone from the State of
7 Virginia, where they were licensed, into
8 the State of Maryland, where they did not
9 have a license, but where Maryland would
10 give reciprocity to their license in
11 Virginia, well, their licence in
12 Virginia, but they had not made the
13 application. They sold alarm systems in
14 Maryland. When it came to our attention
15 that they had gone into Maryland, we then
16 notified the Attorney General's Office
17 and entered into an agreement that any
18 individual who purchased the system from
19 those individuals who crossed into
20 Maryland could either cancel the system,
21 or if they wanted to keep it we would
22 give them -- I think, it was a month or
23 two months of credit, and that issue was
24 resolved with Phil Ziperman at the
25 Attorney General's Office. Next is the

1 State of Minnesota. In Minnesota they
2 have a similar licensing system to the
3 State of South Carolina, although they
4 call it a limited power technician or a
5 power limited technician, excuse me,
6 what's the qualifier there, because we
7 are dealing with low voltage systems that
8 are being installed. The individual had
9 submitted an application. The PLT had
10 submitted an application for licensure,
11 submitted the appropriate fee. He was
12 listed on the website as being a licensed
13 PLT in the State of Minnesota.

14 Subsequently, we were notified that they
15 did not have an application for this
16 individual, and it indicated that there
17 was no qualifier license in the State of
18 Minnesota. We've shown them that the
19 check that was submitted had been cashed
20 by the State of Minnesota, and that they
21 had listed this individual as being
22 licensed on their website, and it was
23 resolved. We never received a letter
24 from the State of Minnesota, anything
25 they had not received this individual's

1 application. The State of Mississippi
2 was a Cease and Desist Order that was
3 issued. It was a Cease and Desist Order
4 that was issued saying if you are engaged
5 in conduct you are instructed to cease.
6 We were not, and the Cease and Desist was
7 lifted. Montana is on the application
8 for renewal of our license in the State
9 of Montana. They had raised, and asked
10 us to appear, and answer questions about
11 the same type of thing, issues going on
12 in other states. In North Carolina,
13 there are -- there is a process in North
14 Carolina, their Rule which is 74-D. It
15 is their licensing ordinance. If a
16 customer makes a complaint in the State
17 of North Carolina, it would appear before
18 a Grievance Committee for a hearing. The
19 Grievance Committee then makes a decision
20 whether that is to go forward to a full
21 Board hearing. Listed here, Sherry Couie
22 (phonetic) which is a -- she was a false
23 alarm officer in the State of -- excuse
24 me, in Fayetteville, and then Charles
25 Deaton was a customer. Those were both

1 dismissed subsequently. In the State of
2 New York, this was a matter that was an
3 investigation. An agreement was entered
4 into in Assurance of Voluntary
5 Discontinuance. This related to
6 complaints from customers. I don't
7 remember the exact number, but it was --
8 I believe, it was less than twenty
9 customers there. It was just complaints
10 about various alleged sales practices.
11 We entered into an agreement that without
12 any action taken against our license,
13 without any admission of we had done
14 anything wrong, that we would not engage
15 in any of the alleged conduct. Similar
16 in Oregon. It was a similar agreement,
17 an Assurance of Voluntary Compliance was
18 entered into based upon allegations from
19 there. I think it was thirteen
20 customers. Those customers are actually
21 identified in the agreement, and it also
22 involved telephone solicitation law,
23 because part of business involves
24 solicitations through telephone,
25 telemarketing which is done after a lead

1 is generated. We receive a lead, and
2 then we communicate back to the
3 individual. South Carolina, we -- I
4 don't know if you want to talk about
5 South Carolina. I think in this actual
6 letter at the time that we -- this was
7 filed, we had indicated here at the very
8 bottom that we had received -- had not
9 received a formal public reprimand. I
10 think we had actually received a letter.

11 MR. BOWERS: That's correct, and for
12 the record, that matter has been
13 resolved. That was resolved via a Board
14 Hearing back in the fall of 2009.

15 MR. WILCOX: In Tennessee it was an
16 individual who had -- at the time the
17 individual did not have his license, but
18 subsequent did obtain a license. A
19 system was sold, and there was a -- a
20 complaint was filed, and a fine of one
21 thousand dollars was issued, and then
22 last in the State of Texas, this is an
23 allegation leading to unlicensed sales
24 representatives, individuals who had come
25 from -- I believe this is -- I believe it

1 was from 2008. It was individuals who
2 had come from Canada and did not have
3 social security numbers. So, they could
4 not perform a background check on them,
5 and what happened, is they had not obtain
6 their social security numbers and
7 submitted them for purposes of background
8 check performed by EPS in the State of
9 Texas. As a result, a fine was issued, a
10 two hundred dollar fine was paid.

11 MR. BOWERS: Thank you, Mr. Wilcox.

12 DIRECT EXAMINATION CONTINUED BY: MR. BOWERS

13 Q Very briefly, so it is your testimony here today
14 before this Board that the matters that you just
15 discussed and went through have been resolved
16 sufficient to have the license renewal application
17 approved here in South Carolina?

18 A Yes.

19 Q Mr. Wilcox, are there any other unresolved
20 complaints or charges pending against your company
21 before any other professional licensing board in
22 any other State?

23 A There are as of this date. At the time the
24 application was filed, I think the filing of the
25 application was in July of 2010, and there's --

1 yeah, we've received either investigation letter,
2 or we received other inquiries periodically. It is
3 not something that happens everyday, but we do
4 receive them.

5 Q And at the time of the application, are there any
6 other unresolved charges or complaints in any other
7 jurisdiction?

8 A Not to my knowledge.

9 Q Mr. Wilcox, what is it that you would ask this body
10 to do today?

11 A Request the approval of the renewal application.

12 MR. BOWERS: Madam Chair, that's all
13 the questions I have at this time. He's
14 more than willing to answer any questions
15 that the Board may have.

16 MS. LINEBERGER: Do the Board
17 Members have any questions?

18 EXAMINATION BY: THE BOARD

19 MR. LEHMAN: I've got one, and I
20 don't know exactly what bearing of this
21 is. What is the date of the application.
22 I'm sure it is here.

23 MR. WILCOX: I believe it is early
24 July. I think it is July 10th, is the
25 date I saw stamped.

1 MS. THURBER: July, 2010.

2 MR. BOWERS: Yes, sir. So, the
3 application, the stamp received OLC, I
4 think that's July 6th, 2010.

5 MR. LEHMAN: Yeah, I guess. I
6 couldn't read it.

7 MR. BOWERS: Okay.

8 MR. LEHMAN: Now y'all -- y'all
9 changed our name. Correct?

10 MR. WILCOX: Yeah. That's correct.

11 MR. LEHMAN: Vivian, or ---

12 MR. WILCOX: Vivent, in December --
13 December 8, 2010 the name was changed for
14 the Corporation to Vivent, Inc. It's a
15 made up name. It's a combination of Viv,
16 which is French for life or live and
17 intelligence, and it was combined. It is
18 part of a rebranding process. Our
19 products have expanded beyond just
20 security, and we decided to go through
21 and change the name to stop focusing just
22 on security alarms.

23 MR. BOWERS: Mr. Wilcox, very
24 briefly, for the benefit of Mr. Lehman
25 and the rest of the Board, would you

1 expand on that just briefly about the
2 corporate name change, and what that
3 entails and when it occurred.

4 MR. WILCOX: Okay. The corporate
5 name change occurred officially with the
6 filing of the Amendment of the Articles
7 of Incorporation, the change of name took
8 place on December 8th of 2010. I believe
9 there is an application. I think it is a
10 revision application that is on file in
11 the State of South Carolina to have that
12 name change officially recognized in the
13 State of South Carolina with the Labor --
14 the LLR. The products have changed from
15 just the basic security which involves
16 motion sensors, door and window sensors,
17 glass break sensors, and even the smoke
18 detector aspect of it, and the basic
19 alarm panel to now there is automatic
20 door locks, cameras, fixed cameras and
21 also pan tilt cameras. We also do a
22 remote control thermostat, which can be
23 controlled either through the alarm
24 panel, or be controlled through a PDA, or
25 through the internet. There is a --

1 there is other energy management
2 components to it, and there is other
3 aspects of home automation that we are
4 moving into that we have yet to get into,
5 and so that was the reason for the
6 rebranding, was to get away from just
7 focusing on alarms. We were known as the
8 alarm company. I think we're either the
9 sixth or seventh largest alarm company in
10 the United States right now on the STM
11 100. So, we've been known as that. We
12 want to try to move into home automation.
13 There was actually an article in
14 Bloomberg's yesterday about -- about our
15 -- the President of the company -- the CO
16 of the company talking about this
17 rebranding.

18 MR. LEHMAN: Well, I was leading to
19 whether you had filed the amendment to
20 change the name is where I was heading,
21 but you say you have filed that?

22 MR. WILCOX: Yeah, there's a -- and
23 I'm not familiar with what the actual
24 form is, but I understand it is a
25 revision application that is filed just

1 to change the name.

2 MR. LEHMAN: Gary, do we know if we
3 have that?

4 MS. THURBER: We do.

5 MR. LEHMAN: We do? Okay.

6 MR. CASWELL: All these issues were
7 settled -- several of them settled by
8 payment of fine. Is that right?

9 MR. WILCOX: Yeah. That is correct.
10 In fact, I can identify on the -- if it
11 is not otherwise identify in the material
12 you have, in the State of Arkansas that
13 was -- that was a civil penalty
14 assessment. We have -- as part of the
15 appeals process we have posted a bond.
16 That money has been paid to the Court and
17 how it will be resolved, it will be paid
18 out from there. In the State of Florida
19 there was a seventy hundred and fifty
20 dollar fine. I believe it actually was
21 more than that when the final decision
22 was rendered. In Louisiana, there was
23 fine that was issued there. I can't
24 remember off the top of my head what the
25 amount was. That was in 2008. In the

1 State of Maryland it was an amount that
2 was less than five thousand dollars.
3 Minnesota, it was an amount that I
4 believe was -- it was less than thirty
5 thousand dollars. I don't remember the
6 exact amount as we are sitting here
7 today. Mississippi there was not.
8 Montana there not. North Carolina there
9 was not. New York there was. I believe
10 the amount was twenty-five thousand.
11 State of Oregon there was, and I believe
12 that was sixty thousand. South Carolina,
13 as discussed, it is four thousand
14 dollars. Tennessee is listed there as a
15 thousand dollars, and Texas is two
16 hundred dollars.

17 MR. WALKER: Mr. Wilcox, are you
18 currently in North Carolina?

19 MR. WILCOX: Yes. Yes, and you are
20 asking the company, because I personally
21 submitted an application, but I never
22 received my pocket card. I have one for
23 South Carolina, but not for North
24 Carolina.

25 MR. CASWELL: Who is the Qualifying

1 Party for South Carolina?

2 MR. WILCOX: In South Carolina, it
3 is -- his name is Steve Evers, and there
4 is also a revision application for a
5 replacement of the Qualifier with the
6 name of Steve Gobelli (phonetic), which I
7 understand has also been filed.

8 MR. CASWELL: Is he a resident of
9 South Carolina?

10 MR. WILCOX: Mr. Gobelli is a
11 resident of the State of Florida, and Mr.
12 Evers is a resident of the State of
13 Virginia.

14 MS. LINEBERGER: Are there any
15 additional questions?

16 MR. CASWELL: I'd like to make a
17 Motion we go into Executive Session.

18 MR. LEHMAN: Second.

19 (Whereupon, a vote was taken and the
20 Motion to go into Executive Session
21 was passed unanimously)

22 MS. LINEBERGER: Is there a Motion
23 to come out of Executive Session?

24 MR. CASWELL: So moved.

25 MR. LEHMAN: Second.

1 (Whereupon, a vote was taken and the
2 Motion to come out of Executive
3 Session was passed unanimously)

4 MS. LINEBERGER: Is there a Motion
5 concerning the Application Hearing of APX
6 Alarm Security Solutions?

7 MR. NEELY: Madam Chair, I move that
8 we deny the application of APX Alarm
9 Security Solutions.

10 MS. LINEBERGER: Is there a second?

11 MR. LEHMAN: Second.

12 (Whereupon, a vote was taken and the
13 Motion was passed unanimously)

14 MS. LINEBERGER: Thank you, sir.

15 MR. BOWERS: Thank you, Madam Chair.

16 (Thereupon, the proceedings were
17 concluded at 1:51 p.m.)
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Janice Dunkin, a Notary Public for the State of South Carolina, do hereby certify that I reported the foregoing proceedings at the time and place herein designated and that the foregoing pages, are a true, accurate and correct transcript of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, nor in anyway interested in the event of said cause.

In witness my hand and official seal this the 26th day of July, 2011, York, South Carolina, State of South Carolina.

Janice Dunkin

Court Reporter/Notary Public

My Commission Expires:

9-7-2014



SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
SOUTH CAROLINA CONTRACTOR'S LICENSING BOARD
OFFICE OF LICENSURE AND COMPLIANCE
P.O. Box 12517, Columbia, S.C. 29211
(803) 896-4501

REC'D OLC

2010-2012 Burglar and Fire Alarm License Biennial Renewal Application: 03

Document # 140

Company Name: APX Alarm Security Solutions, Inc.

License Number: BAC.5569

Mailing Address:

4931 N 300 W

Provo, UT 84604

Phone: 801-705-8066

Fax: 801-705-8082

E-Mail: viviana.harrington@apxalarm.com

Physical Address:

4931 N 300 W

Provo, UT 84604

Phone: 801-705-8066

Fax: 801-705-8082

E-Mail: viviana.harrington@apxalarm.com

Renewal Instructions

1. Complete all questions and sign and date this renewal application. Incomplete applications will be returned.
2. Information in our files is pre-printed on this form. Application must be typed or printed in black or blue ink only and make any necessary corrections and attach additional sheets if necessary.
3. **Fee Schedule:** Burglar and Fire Alarm Company licenses renewed on or before July 31, 2010, fee is \$200 which includes one primary qualifying party certificate. Burglar and Fire Alarm Company Branch office fee is \$50 which includes one primary qualifying party certificate. Burglar and Fire Alarm Company additional qualifying party certificate fee is \$10.
4. After July 31, 2010, additional late fees are applied. Renewed August 1, 2010 to August 31, 2010 penalty fee of \$100 applied. Renewed September 1, 2010 to September 30, 2010 penalty fee of \$150 applied. Renewed October 1, 2010 to October 31, 2010 penalty fee of \$175 applied. After October 31, 2010, the license is lapsed and you must apply for initial licensure to be reinstated.
5. You must have a current Certificate of Liability Insurance (minimum amount \$100,000) on file with this office before you can renew your license. The certificate must indicate the S.C. Contractor's Licensing Board as the certificate holder.
6. Mail completed application with a payment made payable to LLR-SC Contractor's Licensing Board, Office of Licensure and Compliance, PO Box 12517, Columbia, SC 29211-2517. Your application must be postmark by the Post Office on or before July 31, 2010, to avoid additional late fees.

BIENNIAL LICENSE RENEWAL FEE (Check License(s) Renewing)

- | | |
|---|--|
| ☒ Burglar Alarm License - \$200 | ☐ Fire Alarm License - \$200 |
| ☐ Branch office - \$50 | ☐ Branch office - \$50 |
| ☐ Each additional qualifying party - \$10 | ☐ Each additional qualifying party - \$10 |

Answer "Yes" or "No" to each of the following questions. If your answer is "yes" to any of the questions below, please provide on a separate sheet of paper, a full detailed written explanation with your renewal application to the Board.

1. Since your last application for renewal, have you had a license certification or registration cancelled, surrendered, revoked, suspended, restricted or disciplined by any Federal or state authority or contracted without proper licensure? ☐ Yes ☒ No
2. Since your last application for renewal, have you been arrested, indicted, convicted, pled guilty or nolo contendere for violation of any Federal, state, or local law (other than minor traffic violations)? ☐ Yes ☒ No
3. Since your last application for renewal, have there been any judgments, liens or claims filed against you or any organization of which you are or were an officer, principal, or major shareholder? ☒ Yes ☐ No
4. Since your last application for renewal, do you have any complaints pending, under investigation, or has any action been taken against your license in any jurisdiction? ☒ Yes ☐ No

5. Since your last application for renewal, have you or an organization of which you are or were an officer, principal or major shareholder ever been issued a Ceased and Desist Order for unauthorized practice? ☒ Yes ☐ No
6. Are you currently or have ever been licensed or registered in any profession in any Federal or state jurisdiction? ☐ Yes ☒ No
7. Since your last application for renewal, have you or any business entity of which you are or were an officer, principal, or major shareholder received any notice of any final judgments, liens, liens or claims of any kind? ☒ Yes ☐ No

List all qualifying party name(s) below approved by the Board. (Attach another sheet if necessary) To add a new registered employee, go to the Board's web site at www.hr.state.sc.us/pol-contractors, select applications/forms and then Document #135.

Qualifying party name Larry Stephen Evers License no. BFS.10983 BAQ

Qualifying party name _____ License no. _____

Qualifying party name _____ License no. _____

List all Registered Employees of your BA entity below approved by the Board. (Attach another sheet if necessary) To add a new registered employee, go to the Board's web site at www.hr.state.sc.us/pol-contractors, select applications/forms and then Document #126.

Registered employee name See Attached License no. _____

Registered employee name _____ License no. _____

Registered employee name _____ License no. _____

Registered employee name _____ License no. _____

Registered employee name _____ License no. _____

Registered employee name _____ License no. _____

Registered employee name _____ License no. _____

Registered employee name _____ License no. _____

Registered employee name _____ License no. _____

Registered employee name _____ License no. _____

Registered employee name _____ License no. _____

Registered employee name _____ License no. _____

Affidavit for Owner/President

The primary qualifier(s) listed is (are) full-time employee(s) in a responsible management position with this license. All statements contained herein are true and correct to the best of my knowledge. I further understand that false or incorrect information provided by me may result in the cancellation of or denial of a license issued pursuant to this renewal and may be subject to civil and criminal proceedings. I agree all information in this application can be verified and investigated. I have read, and I am familiar with the South Carolina Code of Laws regulating contracting and hereby agree to abide by such laws.

Signature of Owner/President [Signature] Title Vice President Date 6-28-10

Sworn and Subscribed before me this 28th day of June 2010

Notary Public Tara Alissa Bell My Commission Expires 1-16-2013

State of Utah County of Utah



TARA ALISSA BELL
NOTARY PUBLIC - STATE OF UTAH
COMMISSION # 577345

Registered Employee Name	License Number
ADAIR, THOMAS STEELE	PENDING
ANDERSEN, TYRELL	BFS. 15270 BARE
ANDERSON, CASEY S	PENDING
ANDERSON, GARY	BFS. 14788 BARE
BAILEY, HOLDEN ALAN	BFS. 15988 BARE
BAILEY, TYLER LYMAN	BFS. 16000 BARE
BALETKA, JOHN W	BFS. 14687 BARE
BENNETT, SCOTT H	BFS. 13824 BARE
BIRD, JOHN JAKE	PENDING
BONEY, TALLEY B. JR.	BFS. 1569 BARE
BORGOYNE, JON W	PENDING
BROOKS, ADAM C	BFS. 15992 BARE
BROWN, JASON V	BFS. 13805 BARE
BROWN, LUKE D	BFS. 15391 BARE
CARR, BENJAMIN E	BFS. 14802 BARE
CHAPMAN, JAMES A W	BFS. 13825 BARE
CHILDS, KIM ALBERT	BFS. 14020 BARE
CONLEY, BILLIE JAMES	BFS. 14564 BARE
CONNOR, KEVIN GRANT	BFS. 14671 BARE
COOPER, SCOTT A	BFS. 15979 BARE
CORREA, DIOGO	BFS. 15265 BARE
CROSSETTE, NICHOLAS	BFS. 13826 BARE
DICKEN, MATTHEWS C	BFS. 15269 BARE
DIXON, ERIC J	BFS. 12521 BARE
DOLL, JEFFREY MARK	BFS. 12560 BARE
EAMES, TRAVIS W	BFS. 15986 BARE
ENNIS, ROBERT DOUGLAS	BFS. 14306 BARE
EVERS, LARRY STEPHEN	BFS. 10983 BAQ
GAMMON, SHAWN M	BFS. 14773 BARE
GARDNER, BOWDY B	BFS. 12662 BARE
GERSZEWSKI, IAN RICHARD	BFS. 16002 BARE
GLOVER, ADAM JOSHUA	BFS. 14141 BARE
GOFF, TRACY LANCE	BFS. 15982 BARE
GRAVELY, STEPHEN A	BFS. 13478 BARE
HANSON, BRANDIN S	BFS. 15257 BARE
HARKER, TREVOR S	BFS. 13129 BARE
HARRINGTON, MABEL V	BFS. 13787 BARE
HARRY, JOSEPH E	BFS. 15292 BARE
HAWKS, JORDAN D	BFS. 15220 BARE
HAYNIE, BRIAN J	BFS. 13850 BARE
HAYNIE, PAUL F	BFS. 13849 BARE
HOFFMAN, JOSHUA A	BFS. 16011 BARE
JARMAN, THOMAS SHANE	BFS. 14140 BARE
JENSEN, NATHAN PETER	BFS. 15996 BARE
JOHNSON, KEVIN MICHAEL	PENDING
JOHNSON, RYAN	BFS. 14135 BARE
KIAS, ALLISON	BFS. 15248 BARE
LAUDIE, JONH M	PENDING
Lavelle, Brian Esteban	BFS. 11723 BARE
LIDDLE, DANIEL F	BFS. 14901 BARE
LUCAS, STEFFHEN KYLE	BFS. 12561 BARE
LYON, TYLER GLEN	BFS. 15994 BARE
MARSHALL, JEREMY D	BFS. 14903 BARE
MAYTON, CHARLES KENNETH	BFS. 16006 BARE

MCCONKEY, JOHN R	BFS. 14917 BARE
MCGINITY, MICHAEL P	BFS. 15379 BARE
MEALEY, ERIC B	BFS. 14913 BARE
MILLS, KEVAN C	PENDING
MOSS, JASON S	BFS. 14902 BARE
MOSS, RYAN JEFFERY	BFS. 13868 BARE
OLSETH, TYLER S	BFS. 15339 BARE
PERKINS, MICHAEL R	BFS. 14734 BARE
PREGITZER, ROBERT BRUCE	BFS. 15700 BARE
PRIDAY, DARIN S	BFS. 14801 BARE
RASMUSSEN, CALEB JORDAN	BFS. 16004 BARE
REDDEN, MARSHALL ROBERTS	PENDING
ROCK, DANIEL L	BFS. 14905 BARE
RODRIGUEZ, BRANDON	BFS. 15999 BARE
ROWE, SHAWN R	BFS. 14807 BARE
SCHORTINGHUIS, MICHAEL E	BFS. 3793 BARE
SEAMONS, TYLER ROBERT	BFS. 15990 BARE
SIMMONS, NATHANIEL	BFS. 15984 BARE
SIMS, ANDREW JOHN	BFS. 12562 BARE
SOUBANNARATH, PHOUTTHAYASACK	BFS. 15272 BARE
STALLINGS, CONTESSA	BFS. 15282 BARE
STALLINGS, KENNETH	BFS. 15283 BARE
STEVENS, MATTHEW C	PENDING
STREET, RAMONT A	BFS. 14565 BARE
STRICKLAND, DANNY BAILEY	BFS. 14059 BARE
SWICK, ALAN J	BFS. 14805 BARE
THOMSON, JEFFREY CRAIG	BFS. 15771 BARE
THOMSON, MARK H	BFS. 15359 BARE
TURNER, JODY M	BFS. 10361 BARE
WATABE, FOSTER M	BFS. 14916 BARE
WILCOX, NATHAN B	BFS. 13788 BARE
WILLIAMS, JORDAN PAUL	BFS. 16009 BARE
WOLVERTON, SPENCER HAROLD	PENDING
WOODRUFF, LARRY ALAN	BFS. 15954 BARE
WOODRUFF, TEONTRY T	BFS. 15485 BARE
YOUNG, JARED D	BFS. 13857 BARE

Terminations and Update

APX ALARM

2 July 2010

SC Dept. of Labor, Licensing and Regulation
Office of Licensure and Compliance
110 Centerview Dr.
PO Box 12517
Columbia, SC 29211-2517

RE: BAC.5569 Renewal

To Whom It May Concern:

In accordance with your requirement, we are reporting registered employees with APX Alarm Security Solutions, Inc. However, your records indicate individuals as still registered with APX Alarm Security Solutions, Inc. though they were terminated on 6 October 2008. I have attached a copy of the letter that was submitted to your office for termination.

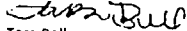
At this time, I would like to terminate addition employees, effective 1 July 2010.

Terminate:

AGUIAR, IKAIKA E	BFS. 14436 BARE
BEAM, GERILE S	BFS. 14139 BARE
COPE, CAMERON JOHN	BFS. 11580 BARE
EHIN, RYAN C	BFS. 15293 BARE
GARCIA, LEONARDO	BFS. 15205 BARE
GONZALES, BLUEHAWK	BFS. 15210 BARE
HOBSON, RYAN SCOTT	BFS. 12553 BARE
JACKEL, DARREN M	BFS. 15223 BARE
JOHNSON, ANDREW ELVIN	BFS. 12520 BARE
KELLY, CAMERON J	BFS. 14906 BARE
KELLY, TREVOR ALAN	BFS. 12538 BARE
KOFE, TEVITA P "BENNY"	BFS. 13931 BARE
KOSKI, DALLIE D	BFS. 15285 BARE
LARSEN, TYSON T	BFS. 15374 BARE
LEYBA, TYSON J	BFS. 13047 BARE
MA'AKE, NELAI TE VAILIKI	BFS. 13805 BARE
MCAMBER, KENDAL H	BFS. 15301 BARE
MUSICK, BRIAN PAUL JR	BFS. 13903 BARE
NGATUVAI, SIONE FA'ATALI	BFS. 13952 BARE
PENDLETON, BEN D	BFS. 15340 BARE
PERKINSON, SPENCER J	BFS. 15253 BARE
PURIDY, PRESTON G	BFS. 15224 BARE
TUCKER, MICHEAL J	BFS. 15237 BARE
WOOD, GRAHAM J	BFS. 13804 BARE

Thank you for your service. If any questions or concerns arise, please contact me, Tara Bell, at tbell@apxalarm.com or 801.705.6285.

Sincerely,



Tara Bell
APX Alarm Security Solutions, Inc.
T: 801-705-6285

APX ALARM

October 06, 2008

COPY

BETTY ARCHIE/ CHANDA DAVIS
DEPARTMENT OF LICENSING AND REGULATION
Contractors Licensing Board
110 Centerview Drive
Columbia, SC 29211

Re: Notification of Departure of Registered Employees

Dear Sirs,

Please find below the names of all APX Alarm Security Solutions employees who were registered to work in the State of South Carolina until September 30th, 2008.

These employees are no longer employed to work in the State of South Carolina, hence you may cancel their registrations.

AKERS, COLVIN B
ANDERSON, RHETT
ASHBY, SHARLEEN
ASHBY, TYLER PHILLIP

BEERS, BRETT MATTHEW
BINGHAM, ALAN
BINGHAM, DILLION FLINT
BLARN, DAVID CRAIG
BOWEN, ZACHARY LORENZO
BRERETON, JORDAN C
BRESEE, ANDREW R
BROWN, DAVID CALVIN
BRUMFIELD, BARRY
BRYANT, JESSE DERRICK
BURNETT, ISAAC G
BUTHERLAND, JOSHUA B
BUZBY, SHOWELL E

CALLAND, TOREVA A
CALLAND, WESLEY AJ
CASALE, ROBERT JOHN
CHAN, DAVID P
CHEEVER, LUCAS A
CHRISTENSEN, DREW NEIL
CLARK, BENJAMIN B
CLIFFORD, SCOTT BRADLEY

CLIFFORD, TIFFANY MARIE
COOLEY, CHARLES SAMUEL

COTNER, JAMES A
COWAN, ROBERT A
COX, KENNY MAX
COX, KEVIN C
CUMMINGS, JEREMY K

DAUGHERTY, JRACEY C
DAUGHERTY, PATRICK S
DICKERSON, JEFFREY DEAN
DOUROS, AARON A
DOUROS, ZACHARY A
DOW, JAMES ALEX
DUPERRON, KIMBERLY ANN

ECKMAN, JACOB TODD
EGBERT, D CHASE
EMBLEY, KYLE PAUL

FANENE, ROEL A
FERRELL, ROBERT ALLEN
FISHER, BRENTON R
FRANCIS, KEVIN T
FRUICHANTIE, NICHOLAS FRANK

GARNER, KEVIN BRYAN
GILL, SCOTT ALEXANDER
GREEN, JACOB A
GREER, SPENCER EDWARD

HAMON, TRAVIS K
HATCH, STEVEN JUDD
HERNANDEZ, ANGEL J
HERNANDEZ, JUAN C
HESS, CHRISTOPHER BRANDON
HILBERT, BRANDON ANDRE
HILL, AARON D
HILL, JAKE DON
HILTON, COLLIN DANIEL
HILTON, CONRAD T
HOLMES, ANDREW PATRICK
HOWARD, TRAVIS ALLEN
HUGHES, AMBER LYNN
HUGHES, KEITH
HULME, RYAN PATRICK
JOHNSON, MICHAEL THOMAS RODMAN
JOHNSON, SPENCER MAURICE
JOHNSON, TRAVIS JOHN
JOHNSTON, DANIEL T

KEENER, CHRIS JACOB
KEILBART, CHRISTOPHER R
KLEIST, MICHAEL SHANNON
KOVANDA, DAVID
KRUEGER, CARR CANANN

LARSON, DEREK KEVIN
LAVELLE, BRIAN ESTEBAN
LEWIS, BRETT TAYLOR
LEWIS, DEREK J

LINDSEY, DAVID KEITH
LOVELADY, MATTHEW T
LUDVIGSON, MICHAEL E

MARKS, WILLIAM J
MARTINEZ, VICTOR
MATTHEWS, KADE
McCONNER-HUGHES, CHRISTIAN CHARLES
MCDONOUGH, MICHAEL MATTHEW
McMAHON, TIPTON SHEA
McWORTER, JEFF
MELANCON, PAUL P
MELANCON, STEVEN A
MILLER, CHRISTOPHER DAVID
MOORE, MATTHEW JOSHUA

NEARY, MICHAEL AARON
NEUFELD, EDWARD ANDREW
NICOL, TRENT JEFFREY
NOEF, BRYSON P

PACKARD, JOSHUA BERNARD
PENNEPACHE, ZACHARY B
PETERSEN, BRANDON R
PIERCE, JACOB C
PIERCE, JAKE CARL
POLLOM, JESSE
PULSIPHER, KENTON ALLEN

RAMM, MATT J
RICHARDS, MATTHEW LEE
ROMNEY, BLAKE WELTON
ROMNEY, CHRISTOPHER J
RYDALCH, GARIN RAY

SALO, KEITH J
SCHMALZ, JACOB DANIEL
SCHOFIELD, BRANDON BURK
SCRIMSHER, SKYLER WAYNE

SECREST, JACOB TALMADGE
SHARP, JOSH Q
SHARP, SHAWN MERRILL
SKINNER, KYLE THOMAS
SMART, DAVID G
SMITH, TYLER J
STARR, JASON R
STOUT, BIRKELAND ENGH
STRATTON, CRAIG OWEN
STREBEL, BLAKE W
STREBEL, ROBERT S
SUTHERLAND, BENJAMIN JOSEPH

TALBOT, LOGAN JARVIS
TAWZER, DALLIN C
THOMPSON, PATRICK AARON
TRANE, TJ TIMOTHY
TUBBS, JORDAN EARLO

ULUAVE, FOSITA

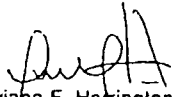
VARGES, ABRAHAM

WARREN, PHILLIP A
WILSON, LONDON EDWARD
WILSON, ZACH T
WYKNENKO, DARREN P

ZEYER, AARON WAYNE
ZORD, BUCKE RANKIN
ZUEHLKE, MATT D

Please do not hesitate to contact me if you have any questions or concerns.

Very truly yours,



Viviana F. Harrington
State Licensing and Compliance Manager
Direct: (801) 705-8066

2010 Fire Alarm Renewal

RECVD OLC

2010 JUL -6 P 3:03

**South Carolina Dept. of Labor, Licensing and Regulation
Office of Licensure and Compliance**

**APX Alarm Security Solutions, Inc.
2010 Burglar and Fire Alarm License Biennial Renewal Application**

Arkansas

Arkansas Board of Private Investigators and Private Security Agencies. File C109-043.

7W30- Against License #E 07-009 and Qualifying Manager (Larry Steve Evers).

The Arkansas Board of Private Investigators and Private Security Agencies charged APX Alarm with violating A.C.A. 17-40-350(a)(1) with two Arkansas customers and alleged that APX Alarm had 45 licensing paperwork violations. The Board dismissed the claim with respect to one of the customers, found that APX Alarm had failed to submit certifications for 41 employees within 6 months of their employment in order to continue their registration as apprentices, that an APX Alarm sales representative had misrepresented information to a potential customer, and that APX Alarm had violated licensing application requirements for another employee for not submitting an application within the required time period. The Board ordered that APX Alarm pay the State approximately \$42,000.00 in civil penalties and revoked the license of APX Alarm's manager in Arkansas, Steve Evers. APX Alarm's license remains in good standing and APX Alarm is in the process of appealing the decision of the Board.

Florida:

Florida Dept. of Business Professional Regulation, Case No: 2008-05011

APX Alarm (through Mr. Larry S. Evers, the license holder), entered into a stipulation regarding two installations in Florida in 2008 that were contrary to Florida law. Specifically, APX Alarm technicians installed an alarm system with a smoke detector in two residential structures that had been converted to commercial use. APX Alarm was not licensed at the time to remove or install smoke alarms in commercial establishments. APX Alarm has stipulated to refrain from violations of Florida law, pay \$750.00 in an administrative fine, and pay administrative costs of \$181.02. During a hearing in November 2009, to confirm the stipulation, the Board rejected the stipulation and voted to amend the stipulation and send a new proposal to APX Alarm.

Louisiana

Department of Public Safety and Corrections Office of State Fire Marshal, Louisiana,

File: 5427, 5431, 5436, 5438, 5440- Against License F1058 and Employees.

On June 9, 2008, the Louisiana Office of the State Fire Marshal issued a Cease and Desist Order stating that APX Alarm did not have a current qualifying person and that all Security related business should be suspended until all the company's employees were properly licensed in Louisiana. The proper explanation and documentation for each situation was submitted to the Fire Marshal and the Cease and Desist Order was lifted on June 16, 2008. On June 27, 2008, the Fire Marshal issued another Cease and Desist Order. In this second Order, the Fire Marshal alleged that APX Alarm had permitted two unlicensed representatives to engage in sales of security systems in Louisiana, performed installations of a poor quality, and had made misrepresentations. APX Alarm entered into a settlement agreement with the Louisiana Office of the State Fire Marshal and did not renew its License.

Maryland

Maryland State Police - 1111 Reister Town Road, Baltimore, MD 21208- Against License 107-1302

Allegation of violation of state licensing laws: sales representatives who were licensed in Virginia crossed into Maryland and sold accounts to customers without first obtaining a Maryland license. APX Alarm resolved the issue with the Attorney General and Maryland State Police by offering to cancel any customers' contract and refund any amounts paid. No action was taken against APX Alarm's license.

Minnesota

Minnesota Department of Labor and Industry, 443 Lafayette Rd N., St. Paul, MN 55155.

File # EL2900443/CMW - License # TS01618.

Formal action against APX Alarm's technology systems contractor license based on allegations that APX Alarm engaged in violation of Minn. Stat 326B.082, Subd. 11 (b) (2) (2008), 326B.082, Subd. 11 (8) (2008), 326B.082, Subd. 12 (2008), 326B.082, Subd. 13 (2008), 326B.082, Subd. 14 (2008) and Minn. R. 3800.3540, surp 3 (2007). APX Alarm entered into a settlement of consent order agreement with the Minnesota Department of Labor and Industry. No action was taken against any licensing for APX Alarm in Minnesota.

Mississippi

Mississippi Fire Marshal's Office - Cease and Desist Order

On July 23, 2008, the Mississippi Fire Marshal's Office issued a Cease and Desist Order stating that APX Alarm did not license for each operating location in the State (Violation of Mississippi Code, Title 73, chapter 69). The proper explanation and documentation for the situation was submitted to the State Fire Marshal's office and the Cease and Desist Order was lifted one week later.

North Carolina

North Carolina Alarm Systems Licensing Board; Case Number 2009-ASL-038

1. Sherry Couey filed complaint with Consumer Protection for "Poor Business Practices", possible violation of 74D-10(5). Hearing will be held on January 13, 2010.

North Carolina Alarm Systems Licensing Board; Case Number 2009-ASL-032

2. Possible violation of 74D. Mr. Charles Deaton filed complaint with Consumer Protection alleging that an APX representative cursed at Deaton who is 73 years old and checked his credit without authorization on January 13, 2010.

New York

Investigation by Andrew Cuomo, Attorney General of the State of New York. -

Assurance of Discontinuance-

In January 2009, Attorney General of the State of New York filed an action against APX Alarm relating to improper sales practices. APX Alarm entered into an agreement of assurance of discontinuance with the Attorney General of the State of New York. No action was taken against any licensing for APX Alarm in New York.

Oregon

Department of Justice, 1162 Court Street NE, Salem, OR 97301-4096

Alleged violation of Oregon Unlawful Trade Practices Act, ORS 646.605 through ORS 646.565. This matter relates to allegations of improper trade practices in 2008 and a violation of Oregon's telephone solicitation laws. APX Alarm and the Oregon Department of Justice are in the process of negotiating an Assurance of Voluntary Compliance which does not include any adverse action against APX Alarm's licenses to do business in Oregon.

South Carolina

South Carolina Department of Labor, Licensing and Regulation before the South

Carolina Contractor's Licensing Board DIE Case# 2008-159 (Smith), OGC File# 09-0024 -

Against License # BAC5569

The Attorney General's Office for the state of South Carolina filed an action against APX Alarm relating to a sales team in that state in 2008. The allegation relates the State's claim that APX Alarm had a branch office in South Carolina in 2008, but did not have a separate qualifying agent for that office. APX Alarm disputed this allegation in 2008, when it was first raised, and.

has attempted to resolve the matter with the Attorney General's Office. At a hearing held on October 15, 2009, the Board announced that it intended to issue a \$4,000 fine and some form of a public reprimand; however, no written order has been issued.

Tennessee

*State of Tennessee Department of Commerce and Insurance Office of Legal Counsel,
500 James Robertson Parkway, Davy Crockett Tower, 5th Floor, Nashville, Tennessee 37243
(615) 741-3072- Consent Order from Tennessee Alarm Systems Contractors Board - License #
1253*

Failure to timely renew Alarm Systems Contractor's certification during which time APX solicited and installed an alarm system in a private residence in violation of Tennessee Alarm Contractors Licensing Law and Rules. Failure to respond to inquiry forwarded by Tennessee Alarm Systems Contractors Board regarding these allegations. APX Alarm was issued a \$1,000 fine.

Texas

*Texas Department of Public Safety, Private Security Bureau, Investigator Steven Stone,
P.O. Box 130040, Tyler, TX 75713, 903-939-6066 - Against License # B13684*

September 2009- Investigation into alleged unlicensed activity performed by one of APX Alarm's employees. The Department of Public Safety issued a \$200 fine which APX Alarm has paid. No action was taken against APX Alarm's licenses in Texas. (Documentation enclosed)

June 2008 - Investigation into alleged unlicensed activity. APX Alarm failed to register 78 Canadian employees within first 14 days of employment. Employees were waiting for issuance of social security cards, required for registration application. APX Alarm entered into a settlement agreement with Texas Department of Public Safety, Private Security Bureau. No adverse action was taken against APX Alarm's licenses in Texas.

Since its last renewal, APX Alarm has had various licenses or permits to engage in door-to-door marketing denied or revoked. These licenses or permits are typically issued to individual representatives of APX Alarm.

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

APX Alarm Security Solutions, Inc.,

Docket No. 11-ALJ-11-0320-AP

Appellants,

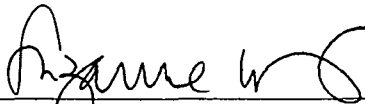
vs.

South Carolina Department of
Labor, Licensing and Regulation,
Contractors' Licensing Board,

CERTIFICATION OF RECORD

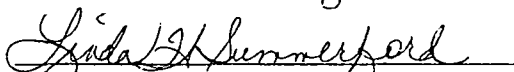
Respondent.

I, Suzanne Hawkins, Attorney for the South Carolina Department of Labor, Licensing and Regulation, Contractors' Licensing Board, do hereby certify in accordance with S.C. Code Ann § 1-23-380(A)(3) (Supp. 2004) that the attached Record on Appeal is a true and correct copy of the entire record in the administrative proceeding entitled In the Matter of : APX Alarm Solutions, Inc.



Suzanne Hawkins
Assistant General Counsel
South Carolina Department of Labor, Licensing and Regulation
Contractors' Licensing Board

SWORN to and subscribed before me
this 11th day of August 2011.


Notary Public for South Carolina
My Commission expires: 01/14/2018

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

APPEAL FROM THE SOUTH CAROLINA DEPARTMENT OF
LABOR, LICENSING AND REGULATION

Docket No. 11-ALJ-11-0320-AP

APX Security Solutions, Inc.,.....Appellants,

v.

South Carolina Department of Labor, Licensing and Regulation, Contractors'
Licensing Board,.....Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original Record on Appeal with or served a copy thereof on the persons hereafter named, **by hand delivery**, to the said persons hereafter named, at the places and addresses stated below, which are the last known addresses for same:

Honorable Carolyn C. Matthews
Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201

Karl S. Bowers, Esq.
Attorney for Appellant
1329 Blanding Street
Columbia, SC 29201

FILED

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SC ADMIN. LAW COURT

August 12, 2011

SOUTH CAROLINA DEPARTMENT OF
LABOR, LICENSING & REGULATION

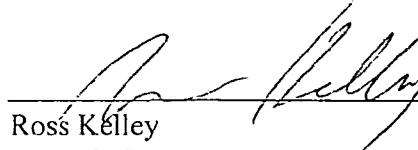

Ross Kelley
Law Clerk
South Carolina Department of
Labor, Licensing and Regulation
Office of General Counsel
P. O. Box 11329
Columbia, SC 29211

Exhibit B

LLR's Return Appellate Brief Before the
Administrative Law Court

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

APPEAL FROM THE SOUTH CAROLINA
DEPARTMENT OF LABOR, LICENSING AND REGULATION

Docket No. 10-ALJ-30-0320-AP

APX Alarm Security Solutions, Inc. Appellant.

v.

South Carolina Department of Labor, Licensing and Regulation,
Contractors' Licensing Board. Respondent.

BRIEF OF RESPONDENT

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Columbia, South Carolina
September 23, 2011

FILED

SC ADMIN. LAW COURT

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STATEMENT OF ISSUES ON APPEAL

- I. THE BOARD'S DENIAL OF REINSTATEMENT WAS WITHIN ITS STATUTORY AUTHORITY, WAS NOT CLEARLY ERRONEOUS, AND WAS NOT ARBITRARY AND CAPRICIOUS.
 - a. THE BOARD ACTED WITHIN ITS STATUTORY AUTHORITY WHEN IT DENIED APX'S RENEWAL BASED ON ITS ADMISSIONS OF DISCIPLINARY SANCTIONS IN OTHER JURISDICTIONS.
 - b. THE BOARD'S FINDINGS OF FACT ARE BASED ON THE RECORD AND SUPPORT THE BOARD'S DENIAL OF REINSTATEMENT.
- II. APPELLANT IS PRECLUDED FROM RAISING PROCEDURAL ISSUES ON APPEAL BY ITS FAILURE TO PRESERVE ANY SUCH ISSUES IN THE BOARD HEARING.

STATEMENT OF THE CASE

This matter is an appeal of the South Carolina Contractors Licensing Board's (hereinafter "the Board") denial of Appellant's request for reinstatement of its licensure as a Burglar Alarm Company in the State of South Carolina.

In July of 2010, the South Carolina Contractors' Licensing Board Office of Licensure and Compliance received Appellant APX's license renewal application. (R. pp. 46-47) Included in this application were four (4) questions concerning the applicant's conduct since its last license renewal. In its application, Appellant answered "Yes" to questions 3 and 4 as follows:

3. Since your last application for renewal, have there been any judgments, liens or claims filed against you or any organization of which you are or were an officer, principal, or major shareholder?
4. Since your last application for renewal, do you have any complaints pending, under investigation, or has any action been taken against your license in any jurisdiction?

(R. p. 46) Pursuant to Board practice, Appellant's "Yes" responses to these questions prevented the Board staff from automatically approving the renewal of the license, and Appellants was notified by letter of September 17, 2010 that the full Board would consider the application at its next meeting, on October 6, 2010. (R. p. 6)

After requesting, and being granted, two continuances, Nathan Wilcox, APX's Corporate Secretary and General Counsel, appeared on behalf of Appellant appeared at the April 21, 2011 Board meeting. (R. pp. 8, 11, 17) Wilcox testified to Appellant's disciplinary history in South Carolina and eleven other states (Arkansas, Florida, Louisiana, Maryland, Minnesota, Mississippi, North Carolina, New York, Oregon, Tennessee, and Texas), indicating that fines, sanctions, or other disciplinary actions were imposed in all but one of

those states. (R. pp. 22-43) Following this testimony, the Board entered executive session. (R. p. 43), and, on its return, the Board voted unanimously to deny Appellant's reinstatement. (R. p. 44)

On June 8, 2011, the Board issued a written Order denying Appellant's reinstatement on the basis "that Applicant's prior history of investigations, violations and sanctions in this state and eleven others, as well as qualifying party issues, present multiple statutory grounds upon which its license renewal application may be denied at this time." (R. pp. 2-4). On June 24, 2011, Appellant timely filed and served its Notice of Appeal with the Court. (R. pp. 12-15) The Court's jurisdiction over this appeal is provided by South Carolina Code Ann. Sections 40-1-160 and 40-79-160.

STANDARD OF REVIEW

The South Carolina Administrative Law Court has appellate jurisdiction over final decisions issued in contested cases before the professional and occupational licensing boards with the South Carolina Department of Labor, Licensing and Regulation, including the State Contractors Licensing Board (hereinafter "the Board"). S.C. Code Ann. § 1-23-600(D) (Supp. 2010).

An Administrative Law Judge may not reverse or modify an agency's decision unless substantial rights of the Appellant have been prejudiced because the administrative findings are either clearly erroneous, in view of reliable, probative, and substantial evidence on the record as a whole, are arbitrary or capricious, are made upon unlawful procedure, or are affected by other error of law. S.C. Code Ann. § 1-23-380(5) (Supp. 2010); Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); South Carolina Dept. of Labor, Licensing and

Regulation v. Girgis, 332 S.C. 162, 503 S.E.2d 490 (Ct. App. 1998); and Marietta Garage, Inc. v. South Carolina Dept. of Public Safety, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999). An administrative agency's factual findings are presumed to be correct and can be set aside only if the findings are not supported by substantial evidence. Kearse v. State Health and Human Services Finance Commission, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995). The South Carolina Supreme Court has defined "substantial evidence" as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Midlands Utility, Inc. v. S.C. Department of Health and Environmental Control, 298 S.C. 66, 69, 378 S.E.2d 256, 258 (1989). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Grant v. South Carolina Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995).

The Appellant bears the burden to show convincingly that the Commission's order is without evidentiary support or is arbitrary or capricious as a matter of law. Hamm v. Public Service Commission of South Carolina, 310 S.C. 13, 425 S.E.2d 28 (1992), Waters v. South Carolina Land Resources Conservation Comm'n, 312 S.C. 219, 467 S.E.2d 842 (1994).

ARGUMENT

I. The Board's Denial of Reinstatement was Within its Statutory Authority, was not Clearly Erroneous, and was not Arbitrary and Capricious.

The Board's decision to deny Appellant's request for reinstatement was clearly within its discretion and the scope of its statutory authority under S.C. Code Ann. §§ 40-1-70, 40-1-110, 40-1-130, 40-79-10, 40-79-90, 40-79-110, and 40-79-130 (1976), as amended, and the South Carolina Administrative Procedures Act, S.C. Code Ann. § 1-23-10, *et. seq.* (1976)

which give the Board the authority to order the revocation, suspension, or cancellation of licenses, issue public reprimands, place licensees on probation, restrict or suspend a license for a definite or indefinite time, seek injunctive relief, and prescribe conditions to be met during probation, restriction, or suspension, and impose a fine of up to Five Thousand dollars (\$5000.00) per offense. In addition, the Board may deny a license on the same grounds for which the board may take disciplinary action.

a. **The Board Acted Within its Statutory Authority when it Denied APX's Renewal Based on its Admissions of Disciplinary Sanctions in Other Jurisdictions.**

The Board is vested with the authority to administer the Alarm System Business Act, which law provides that the Board "shall protect the health, safety, and welfare of the public through the regulation of businesses and individuals who provide work to individuals." Section 40-79-10. This statutory charge to protect the public falls within the police power, a power that "has no well-defined limits, but must be as extensive as the necessities which call for its exercise." City Council of Charleston v. Werner, 38 S.C. 488, 495, 17 S.E. 33, 35 (1893).

The Board may "deny a license, certification, or registration to an applicant based on the same grounds for which the board may take disciplinary action against a licensee." S.C. Code Ann. § 40-79-130. Section 40-1-130 similarly provides that "[a] board may deny an authorization to practice to an applicant who has committed an act that would be grounds for disciplinary action under this article or the licensing act of the respective board." Further, Section 40-1-110(1)(b) provides that one of the grounds for disciplinary action is to have "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.*" (emphasis added)

Therefore, the Board was squarely within its authority, and properly exercised its statutory discretion, in its denial of Appellant's renewal. The Appellant admitted in its own application to, and testimony before, the Board that its licenses have "otherwise been disciplined" in ten states, plus South Carolina. (R. p. 4). Mr. Wilcox testified to the following disciplinary actions taken against the Appellant in other states:

Arkansas: a disciplinary hearing resulted in an \$850 fine for a misrepresentation to a potential customer, and a second investigation led to a \$41,000 fine for failing to comply with reporting requirements related to employees. (R. at 25-27)

Florida: citations for two instances of unlicensed practice. (R. at 28)

Louisiana: cease and desist orders were issued for the actions of unregistered employees and for four consumer complaints, and a fine was imposed. (R at 28-30, 41)

Maryland: an agreement was reached regarding unlicensed practice, and a fine of "less than \$5000" was imposed. (R. at 31, 42)

Minnesota: a fine of "less than \$30,000" was imposed for unlicensed practice issues (R. at 32, 42).

Mississippi: a cease and desist order was issued. (R. at 33)

North Carolina: two complaints were filed, and dismissed. (R. at 33)

New York: complaints filed by "fewer than 20" customers regarding sales practices led to a consent order and a \$25,000 fine. (R. at 34, 42)

Oregon: complaints filed by 13 customers regarding telephone solicitation practices led to a consent order and a \$60,000 fine. (R. at 34-35, 42)

Tennessee: an unlicensed practice issue, and a separate complaint, led to a \$1000 fine. (R. at 35)

Texas: an unlicensed practice issue led to a \$200 fine. (R. at 35-36)

Fines, consent orders resolving disciplinary actions, and cease and desist orders are all disciplinary in nature. Appellant testified to approximately **fifty** separate complaints or investigations in other jurisdictions (30, plus the “fewer than 20” customers in New York). Appellant’s repeated representation that all of the complaints or investigations initiated against it, except for the one in North Carolina, are “resolved” is disingenuous. These dozens of complaints and investigations were all resolved with sanctions of one form or another, *each one of which* gives the Board the discretion to refuse to issue the license.

Appellant suggests that the Board is limited to the thirteen different grounds listed in Section 40-79-130 on which to base a decision denying reinstatement. See S.C. Code Ann. §§ 40-79-130(1), (2). However, as discussed above, the first sentence of that section states, “[a] board may deny an authorization to practice to an applicant who has committed an act that would be grounds for disciplinary action under this article or the licensing act of the respective board.” Therefore, when determining whether to deny reinstatement, the Board may consider whether the licensee’s actions fall under the grounds to deny renewal under Section 40-79-130, as stated by Appellant, or the Board may also deny renewal if the licensee’s conduct meets the grounds for disciplinary action provided in either the “Engine” or the South Carolina Alarm System Business Act. *See* S.C. Code Ann. § 40-79-130.

Appellant further suggests that the Board’s decision to deny APX’s application was based on a misinterpretation of the statute, which caused the Board to believe APX’s “prior history of investigations, violations and sanctions in this state and eleven others”

required denial of APX's reinstatement under Section 40-79-130(c)(2). (R. p. 4) Further, Appellant seems to suggest that absent this misinterpretation, the Board would have been required to grant APX's reinstatement since APX's violations and sanctions were "resolved." However, Appellant's argument is unfounded and illogical. Section 40-79-130(2)(c) mandates that the Board **must** deny reinstatement when an applicant has unresolved claims. The fact that the Board cannot grant reinstatement when an applicant has unresolved claims cannot be reversed to mean that the Board **must** accept an application when an applicant does not have unresolved claims, as Appellant argues. In fact, as mentioned above, Sections 40-1-110(1)(b) and 40-79-130(1)(a) provide just the opposite—that prior discipline in another state or jurisdiction is an appropriate ground on which the Board **may** deny reinstatement.

Finally, the Board's actions in this matter are entitled to deference. "The construction of a statute by the agency charged with executing it is entitled to the most respectful consideration and should not be overruled without cogent reasons." Faile v. S.C. Employment Sec. Comm., 267 S.C. 536, 540, 230 S.E.2d 219, 221-22 (1976).

The Board's action in this matter was based on its statute, which provides that it may cancel a license for any of the reasons for which it would discipline a licensee, including any disciplinary action taken against the licensee in other states or jurisdictions. The Respondent admitted to having been disciplined fifty other times in ten other jurisdictions. The Board's decision cannot be overturned.

b. The Board's Findings of Fact are Based on the Record and Support the Board's Denial of Reinstatement.

Appellant argues that the Board misstates many facts regarding the statuses of Appellant's investigations, violations and sanctions in other jurisdictions and that the

Board's Order should be set aside due to these factual inconsistencies. However, the Board's factual findings were substantially accurate. For instance:

Minnesota: The Board's Order states that formal action was taken against an APX license for "several violations of Minnesota statutes." (R. p. 3) This information is supported by the record, as it was taken directly from the list of pending administrative issues submitted by Appellant to the Board. (R. pp. 58-60) Appellant's application states, "Formal action against APX Alarm's technology systems contractor license based on allegations that APX Alarm engaged in violation of [several Minnesota statutes]. APX Alarm entered into a settlement of consent order agreement with the Minnesota Department of Labor and Industry." (R. p. 59)

North Carolina: The Board's Order states that two customer complaints were filed in the state. (R. p. 3) This is factually correct, based on both the list Appellant submitted to the Board and on Mr. Wilcox' testimony at the hearing. (R. p. 33, 59)

Oregon: The Board's Order states that Appellant, at the time of the hearing, was in negotiations for an "assurance of voluntary compliance" with the Oregon Department of Justice. (R. p. 3) This is a very slight misstatement by the Board, but it is too insignificant to have any impact on the Board's decision. The correct factual statement is that Appellant was, at the time of its application for renewal, in negotiations for an "assurance of voluntary compliance" and had already entered this agreement and been issued a fine at the time of the hearing. (R. pp. 34, 59)

Texas: Appellant does not accuse the Board of proffering false facts regarding Appellant's conduct in Texas. Rather, Appellant includes Texas in its list of factual inaccuracies by the Board because Appellant contends that Appellant's actions in Texas

are not relevant to the Board's inquiry. (R. p. 12) However, the Texas actions referenced by the Board come directly from the list of administrative issues submitted by Appellant to the Board in its application. (R. p. 60)

Louisiana: With regard to Appellant's actions in Louisiana, the Board's Order does include a misstatement, but this misstatement is not sufficient to support a finding that the Board's decision was clearly erroneous. In Louisiana, Appellant did not renew its license following the issuance of two Cease and Desist Orders against it. (R. pp. 2, 30, 58) The Board incorrectly stated that Appellant's decision not to renew was a condition of Appellant's settlement of these issues with the State of Louisiana. (R. p. 2)

Under Section 1-23-380(5)(e), the Court is permitted to set aside the factual findings of an agency when they are "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." S.C. Code Ann. § 1-23-380(5)(e). The **whole record** must be reviewed in order to make this determination. In this case, although the Board made two slight errors in its reiteration of the facts regarding approximately fifty disciplinary actions, these errors do not even begin to outweigh the evidence in the record in support of the Board's decision to deny reinstatement. The record reflects a Burglary Alarm Company with approximately fifty investigations, founded violations and sanctions in a total of twelve states. Under Section 40-1-110(1)(b) and 40-79-130(1)(a), the Board is justified in denying renewal of Appellant's license on the basis of only one disciplinary action in another jurisdiction. Clearly, the record supports the Board's decision to protect the citizens of South Carolina by denying Appellant's reinstatement.

II. Appellant is Precluded from Raising Procedural Issues on Appeal by Its Failure to Preserve any Such Issues in the Board Hearing.

Appellant contends that the Board's decision should be overturned because

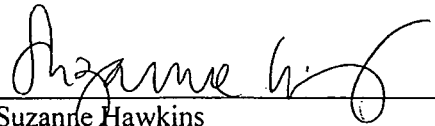
1. APX's notice of the hearing was inadequate for failure to include a statement of legal authority and jurisdiction, a reference to the particular sections of the statutes and rules involved, a reference to the facts or conduct warranting the intended action, and a reference to the "qualifying-party issues," and
2. The Board entered executive session without announcing the purpose for such.

However, Appellant waived its right to raise these issues on appeal when Appellant failed to raise them during the hearing. "It is well-established that an issue cannot be raised for the first time, but must have been raised to and ruled upon by the trial court to be preserved for appellate review." Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000). Appellant cannot now contend that the notice given was inadequate when it participated in the hearing without raising the objection to the Board. Similarly, if Appellant took issue with the Board's questions regarding Appellant's qualifying party, Appellant should have objected at that time. Appellant further failed to object to the Board's motion to go into executive session. "The ultimate goal behind preservation of error rules is to ensure that an issue raised on appeal has first been addressed to and ruled on by the trial court." State v. Nelson, 331 S.C. 1, 5 n. 6, 501 S.E.2d 716, 718 n. 6 (1998). By its failure to object to these procedural issues during the Board hearing, Appellant has waived them and they cannot now form a basis for disturbing the Board order.

CONCLUSION

The Appellant has failed to meet his burden to show that the Commission's decision prejudiced his substantial rights because it was clearly erroneous, was arbitrary or capricious, was made upon unlawful procedure, or was affected by other error of law. Therefore, and for all of the foregoing reasons, the Final Order of the South Carolina Contractors Licensing Board in this matter should be affirmed.

Respectfully submitted,



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Attorney for Respondent S.C. Dept. of Labor
Licensing and Regulation, S.C. Contractors
Licensing Board

September 23, 2011
Columbia, SC

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

APPEAL FROM THE SOUTH CAROLINA DEPARTMENT OF
LABOR, LICENSING AND REGULATION
CONTRACTORS' LICENSING BOARD

Docket No. 11-ALJ-30-0320-AP

APX Alarm Security Solutions, Inc.,.....Appellants,

v.

South Carolina Department of Labor, Licensing and Regulation,
Contractors' Licensing Board,.....Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original Brief of Respondent with or served a copy thereof on the persons hereafter named, by depositing same in an envelope, securely wrapped in the United States mail, by certified mail, properly addressed to the said persons hereafter named, at the places and addresses stated below, which are the last known addresses for same:

Honorable Carolyn C. Matthews
Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201

Karl S. Bowers, Jr.
M. Todd Carroll
1727 Hampton Street
Columbia, SC 29201

FILED

SEP 23 2011

SC ADMIN. LAW COURT
Columbia, South Carolina
September 23, 2011

SOUTH CAROLINA DEPARTMENT OF
LABOR, LICENSING & REGULATION

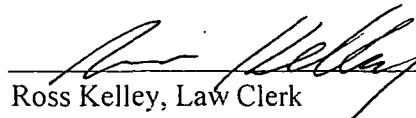

Ross Kelley, Law Clerk
South Carolina Department of
Labor, Licensing and Regulation
Office of General Counsel

Exhibit C

Order of the Administrative Law Court
Vacating LLR's Denial Order

FILED

JUN 15 2012

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

APX Alarm Security Solutions, Inc.,)
)
Appellant,)
vs.)
)
SC Department of Labor, Licensing and)
Regulation, South Carolina Contractors' Licensing)
Board,)
)
Respondent.)
_____)

Docket No. 11-ALJ-11-0320-AP

ORDER

June 15, 2012

Appearances: Karl S. Bowers, Jr. Esquire and M. Todd Carroll, Esquire, for the Appellant
Suzanne L Hawkins, Esquire, for the Respondent

This matter is before the Court on an appeal of the South Carolina Department of Labor, Licensing and Regulation Contractors' Licensing Board's decision to deny Appellant APX Alarm Security Solutions, Inc.'s application to renew its burglar alarm license in South Carolina. For the reasons explained below, the Court remands LLR's decision and directs the agency to rehear APX's license renewal application.¹

BACKGROUND

The record indicates that APX is one of the largest full-service providers of security systems and related services in North America. Based in Utah, APX services over 500,000 customers in the United States and Canada, including over 9,000 customers in South Carolina. APX provides security system sales, installation, servicing, monitoring, and all other services associated with maintaining a security system.

¹ The Court understands that APX now operates under the name Vivint, Inc. Therefore, the LLR shall issue the license discussed herein in that corporate name. For ease of reference, though, the Court refers to the appellant as APX throughout this Order.

In July 2010, APX submitted its license-renewal application to the Office of Licensure and Compliance within the Contractor's Licensing Board. By letter dated September 17, 2010, the Board provided APX with notice that the application could not be approved at the staff level and that a hearing would be held before the Board with respect to the application.

The notice's stated that APX's application was not approved at the staff level for the following reason:

The board staff could not approve their renewal application at staff level because of the "Yes" answer on the Background Questions concerning actions or pending actions against APX Alarm Security Solutions, Inc. in at least 12 states.

The relevant "background questions" were the following:

3. Since your last application for renewal, have there been any judgments, liens or claims filed against you or any organization of which you are or were an officer, principal, or major shareholder?
4. Since your last application for renewal, do you have any complaints pending, under investigation, or has any action been taken against your license in any jurisdiction?

Other than the above-quoted excerpt from the hearing notice, the Board's letter did not contain any other notice about the legal authority or jurisdiction under which the hearing would be held, nor did the Board's letter reference any particular statutes, rules, or factual matters that would be at issue in the hearing.

Due to conflicts, the hearing was rescheduled two times. On April 21, 2011, APX appeared before the Board on its renewal application. APX's Corporate Secretary and General Counsel appeared as a witness and testified to the company's compliance with all applicable laws. The Board neither called any witnesses nor presented any evidence at the hearing.

After APX presented its evidence, the Board went into executive session. Contrary to the mandates of the Freedom of Information Act, the Board failed to announce any reason for going into executive session. When the Board came back into regular session, it did not make any indication on the record as to what was discussed in executive session, nor did it provide any indication that no “formal action” was taken during the executive session. Instead, without any discussion on the record and without citing any reason for its decision, the Board voted unanimously to deny APX’s license renewal application.

On June 8, 2011, nearly two months after the hearing, the Board issued a written order denying APX’s application. In its written order, the Board indicated that its decision was based on grounds not set forth in the hearing notice. APX filed and served its Notice of Appeal on June 24, 2011. The Court has jurisdiction over this appeal pursuant to South Carolina Code §§ 40-1-160 and 40-79-160.

STANDARD OF REVIEW

The Court considers this case in its appellate capacity. Although the Court may not substitute its judgment for an agency’s on questions of fact, it should reverse an agency’s factual determination if it is:

- “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record”; or
- “arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

S.C. Code Ann. §§ 1-23-380(5)(e) to -380(5)(f). In short, an agency’s decision should be reversed if it is supported by nothing more than a “scintilla of evidence.” *Porter v. S.C. Pub. Serv. Comm’n*, 333 S.C. 12, 20–21, 507 S.E.2d 328, 332 (1998).

Likewise, the Court should reverse an agency’s decision that is contrary to law, exceeds

the scope of the agency's authority, or was rendered after the agency failed to follow the legal processes set forth in its enabling statutes or the Administrative Procedures Act. *See* S.C. Code Ann. §§ 1-23-380(5)(a) to -380(5)(d) (identifying a host of circumstances under which the Court should reverse an agency's ruling).

DISCUSSION

APX argues that there are procedural deficiencies in the Board's denial of its license renewal application that require this Court to reverse the Board's order. Specifically, APX alleges that the Board (a) failed to adequately notice the merits hearing and (b) failed to conduct the hearing in accordance with the Freedom of Information Act. Each is addressed below.

A. Inadequacy of Notice

In any contested case, the agency's first required step is to give the adverse party proper notice of any hearing that will be held. *See* S.C. Const. art. I, § 22 ("No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard."). To ensure that the notice comports with procedural due process, the General Assembly has mandated that the hearing notice contain specific information:

- (1) A "statement of the time, place, and nature of the hearing";
- (2) A "statement of the legal authority and jurisdiction under which the hearing is to be held";
- (3) A "reference to the particular sections of the statutes and rules involved"; and
- (4) A "short and plain statement of the matters asserted."

S.C. Code Ann. § 1-23-320(B). When a license is in dispute, the General Assembly has mandated that the notice be even more detailed:

No revocation, suspension, annulment, or withdrawal of any

license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license.

Id. § 1-23-370(c).

In this case, the Court finds that the Board failed to comply with these mandatory procedural safeguards and, therefore, violated APX's due process rights.² While it did provide APX with a letter informing APX of the time and place of the contested case hearing, that notice indicated that a hearing was only necessary because the agency's staff itself could not approve APX's renewal application due to "the 'Yes' answer on the Background Questions concerning actions or pending actions against APX Alarm Security Solutions, Inc. in at least 12 states." The Board failed to include in the notice any:

- "statement of the legal authority and jurisdiction under which the hearing is to be held," as required by South Carolina Code § 1-23-320(B)(2);
- "reference to the particular sections of the statutes and rules involved," as required by South Carolina Code § 1-23-320(B)(3); or
- reference to any so-called "qualifying party issues," as required by South Carolina Code §§ 1-23-320(B)(4) and -370(c).

Because the Board's notice failed to comport with the statutory requirements, the Board's licensing decision—even if proper on the merits, which it was not, *see* Section I *supra*—cannot

² The Board argues that APX waived its claim of inadequacy of notice because it went forward with the merits hearing before the agency. The Board's position is incorrect as a matter of law. *See, e.g., Walls v. S.C. Dep't of Labor, Licensing & Regulation*, Case No. 06-ALJ-11-715-AP, 2006 WL 3921909, at *6 (S.C. Admin. Law Ct. Dec. 21, 2006) (holding that challenges to procedural defects before an agency may "be made at the agency proceeding or at the first level of appeal"). Moreover, because of the Board's attempt to change the basis of its ruling in the middle of appellate proceedings before this Court, as well as other fundamental procedural problems, the Court finds that any objection to the inadequacy of the notice would have been futile. Accordingly, the notice issue is preserved for this additional reason. *See, e.g., State v. Pace*, 316 S.C. 71, 74, 447 S.E.2d 186, 187 (1994) (holding that a failure to object did not waive an issue for review because "any objection would have been futile").

stand, as it was a denial of APX's due process rights. As this Court explained when reversing the LLR's denial of a salesman's application to renew his license to sell manufactured homes:

I find that Appellant was not given adequate notice of the allegations against him with regard to the charge of failure to properly supervise employees. The Board informed Appellant by letter that his renewal was denied because of a lender's allegations of misrepresentations of material facts. However, the minutes of the hearing and the Final Order reflect that the Board denied Appellant's license for failure to properly supervise employees in addition to misrepresenting material facts to a lender. Therefore, I find that the Board's failure to give the Appellant fair notice of the charges against him constitutes a denial of procedural due process and that the Board's decision must accordingly be reversed.

Jefferson v. S.C. Dep't of Labor, Licensing & Regulation, Case No. 99-ALJ-11-0414-AP, 2000 WL 378872, at *2 (S.C. Admin. Law Ct. Mar. 27, 2000) (emphasis added). This reasoning is squarely applicable here. The Board's decision is remanded for this additional reason.

B. Freedom of Information Act

APX also objects to the Board's conduct during the merits hearing and argues that the Board violated the South Carolina Freedom of Information Act by (1) going into executive session without following the statutory procedure and (2) privately deliberating and coming to a decision during executive session.

The General Assembly requires all meetings by the Board to be held in public and prohibits the Board from conducting any business or having any deliberations in executive session except in limited circumstances. *See* S.C. Code Ann. § 30-4-60 ("Every meeting of all public bodies shall be open to the public unless closed pursuant to Section 30-4-70 of this chapter."). The Freedom of Information Act identifies only six instances where a public body may close a meeting; none have any applicability to an agency's deliberations about whether to issue a license. *Id.* § 30-4-70(a). Moreover, before going into executive session, the presiding

officer must publicly announce the “specific purpose” for closing the meeting, and the public body may not commit to taking any action while in executive session. *Id.* § 30-4-70(b). This openness is designed “to protect citizens from secret government activity.” *Seago v. Horry County*, 378 S.C. 414, 422, 663 S.E.2d 38, 42 (2008).

The transcript of the hearing in this case indicates that that the Board went into executive session without stating any reason for that decision. Moreover, the transcript does not reflect that there was any public debate about APX’s application. Once the Board returned from executive session, it unanimously voted to deny APX’s application without any discussion on the record as to the basis for that decision. APX did not learn of the alleged reasons why its license renewal application was denied until a month and a half later when it received the Board’s written order.

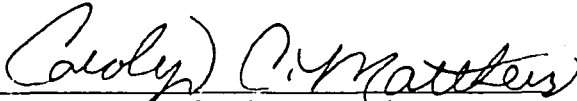
When public bodies have ignored the State’s open-meeting requirements, courts have invalidated the official action that resulted from an improperly closed meeting, even if no formal vote was taken in executive session. *See, e.g., Bus. License Opposition Comm. v. Sumter County*, 311 S.C. 24, 28, 426 S.E.2d 745, 747–48 (1992) (affirming a lower court’s invalidation of a county ordinance on grounds that it was “illegally adopted” during a closed meeting even though no formal vote was taken during that meeting); *Piedmont Pub. Serv. Dist. v. Cowart*, 319 S.C. 124, 130, 459 S.E.2d 876, 879 (Ct. App. 1995) (affirming a lower court’s invalidation of a public body’s decision to honor an employment contract when the vote to do so was taken in executive session). Based on the plain language of the Freedom of Information Act and this precedent, the Court also reverses the Board’s decision for its failure to adhere to the express requirements of the State’s open-meetings law.

CONCLUSION

For the reasons explained above,

IT IS HEREBY ORDERED, that the above-captioned case is **REMANDED** for a new hearing and the June 8, 2011 Order is hereby vacated.

AND IT IS SO ORDERED.


The Honorable Carolyn C. Matthews
Administrative Law Judge

June 15, 2012
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 15 day of June 2012

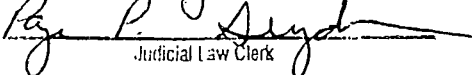
By: 
Judicial Law Clerk

Exhibit D

LLR's Notice of Post-Appeal Hearing



Nikki R. Haley
Governor

Holly G. Pisarik
Director

South Carolina
Department of Labor, Licensing and Regulation
South Carolina Contractors' Licensing Board

August 27, 2012



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
(803) 896-4686
FAX: (803) 896-4814
www.llronline.com

By certified mail and regular mail to:

Vivint, Inc. (formerly known as APX)
4931 N. 300 W.
PROVO, UT 84604

Re: Renewal of License No.: BAC.5569 M

Dear Sir or Madame:

As you know, your South Carolina Renewal Applications for 2010 and 2012 could not be approved at staff level based upon the affirmative answers contained in the Renewal Applications. Because of this, the South Carolina Contractors' Licensing Board will review your renewal applications and attachments at its next meeting scheduled for **October 18, 2012 at 10:00 a.m., Room 105**, Kingstree Building, 110 Centerview Drive, Synergy Business Park, Columbia, SC, 29211.

The 2010 Renewal Application has the following questions answered affirmatively:

"3. Since your last application for renewal, have there been judgments, liens or claims filed against you or any organization of which you are or were an officer, principal, or major shareholder?" and

"4. Since your last application for renewal, do you have any complaints pending, under investigation, or has any action been taken against your license in any jurisdiction?"

Additionally, the 2012 Renewal Application has the following questions answered affirmatively:

"1. Since your last application for renewal, have you had a license, certification or registration cancelled, surrendered, revoked, suspended, restricted or disciplined by and Federal or state authority or contracted without proper licensure?" and

"4. Since your last application for renewal, do you have any complaints pending, under investigation, or has any action been taken against your license in any jurisdiction?"

Attached hereto and incorporated herein are the attachments you included with the 2010 and 2012 Renewal Applications that set forth your explanations for the affirmative answers set forth above.

Please be advised that pursuant to SC Code Ann § 40-79-130, the Board may deny a license, certification, or registration to an applicant based on the same grounds for which the Board may take disciplinary action against a licensee. Specifically, section 40-79-130(1) provides (in relevant part) that a license or registration may be refused to any applicant who has:

- (a) failed to meet the minimum qualifications set forth in this chapter or regulations promulgated under this chapter;
- (b) had a license or registration denied, suspended, canceled, revoked, or otherwise disciplined; or
- (c) committed an act, which would be grounds for disciplinary action under this chapter.

Additionally, section 40-79-130(2) directs that a license or registration may not be issued to any applicant who:

- (a) had a similar license or certificate revoked by any federal, state, or local jurisdiction. Such an applicant is eligible to apply for licensure, in the Board's discretion, or after not less than one year from the date of revocation;
- (b) is presently under suspension or on probation by a professional licensing entity in this or any other state or jurisdiction; or
- (c) has unresolved complaints or charges pending against him before this or any other professional licensing board in this or any other state.

Lastly, section 40-1-130 provides that the Board may deny an authorization to practice to an applicant who has committed an act that would be grounds for disciplinary action under this article or Title 40, Chapter 79. This section further directs that the Board must deny authorization to practice to an applicant who has failed to demonstrate the qualifications or standards for licensure contained Title 40, Chapter 79. The applicant shall demonstrate to the satisfaction of the Board that the applicant meets all the requirements for the issuance of a license.

This matter will be held in accordance with the South Carolina Administrative Procedures Act, S.C. Code Ann. § 1-23-310, *et seq.* (1976, as amended), which describes your procedural rights, including, but not limited to, the right to respond and present evidence and testimony on all issues involved. You have the right, at your expense, to be represented by legal counsel. If you plan to be represented by an attorney other than Mr. Bowers (currently your attorney of record in this matter), please provide me with their name and contact information as soon as possible.

You may present any documents and character witnesses that you deem appropriate to support your request for renewal of your licensure. If you wish to submit documentary evidence, please bring at least twelve (12) copies of each document. The staff will supply the Board with a copy of your applications along with any other information you submitted and a copy of the correspondence from staff.

If for any reason, you decide not to appear before the Board, please notify me immediately.

If your application is approved by the Board without conditions, your credentials will be issued within twenty-four (24) hours of the Board's approval.

Please do not hesitate to contact us directly should further information be desired.

Sincerely,

A handwritten signature in black ink that reads "Lil Ann Gray". The script is cursive and fluid.

Lil Ann Gray, Esq.
Program Coordinator

cc: Karl S. Bowers, Jr, Esq.
(via regular mail and email to:
Butch.bowers@wcsr.com)

Arkansas

Arkansas Board of Private Investigators and Private Security Agencies. File C109-043. 7W30- Against License #E 07-009 and Qualifying Manager (Larry Steve Evers).

The Arkansas Board of Private Investigators and Private Security Agencies charged APX Alarm with violating A.C.A. 17-40-350(a)(1) with two Arkansas customers and alleged that APX Alarm had 45 licensing paperwork violations. The Board dismissed the claim with respect to one of the customers, found that APX Alarm had failed to submit certifications for 41 employees within 6 months of their employment in order to continue their registration as apprentices, that an APX Alarm sales representative had misrepresented information to a potential customer, and that APX Alarm had violated licensing application requirements for another employee for not submitting an application within the required time period. The Board ordered that APX Alarm pay the State approximately \$42,000.00 in civil penalties and revoked the license of APX Alarm's manager in Arkansas, Steve Evers. APX Alarm's license remains in good standing and APX Alarm is in the process of appealing the decision of the Board.

Florida:

Florida Dept. of Business Professional Regulation, Case No: 2008-05011

APX Alarm (through Mr. Larry S. Evers, the license holder), entered into a stipulation regarding two installations in Florida in 2008 that were contrary to Florida law. Specifically, APX Alarm technicians installed an alarm system with a smoke detector in two residential structures that had been converted to commercial use. APX Alarm was not licensed at the time to remove or install smoke alarms in commercial establishments. APX Alarm has stipulated to refrain from violations of Florida law, pay \$750.00 in an administrative fine, and pay administrative costs of \$181.02. During a hearing in November 2009, to confirm the stipulation, the Board rejected the stipulation and voted to amend the stipulation and send a new proposal to APX Alarm.

Louisiana

Department of Public Safety and Corrections Office of State Fire Marshal, Louisiana, File: 5427, 5431, 5436, 5438, 5440- Against License F1068 and Employees.

On June 9, 2008, the Louisiana Office of the State Fire Marshal issued a Cease and Desist Order stating that APX Alarm did not have a current qualifying person and that all Security related business should be suspended until all the company's employees were properly licensed in Louisiana. The proper explanation and documentation for each situation was submitted to the Fire Marshal and the Cease and Desist Order was lifted on June 16, 2008. On June 27, 2008, the Fire Marshal issued another Cease and Desist Order. In this second Order, the Fire Marshal alleged that APX Alarm had permitted two unlicensed representatives to engage in sales of security systems in Louisiana, performed installations of a poor quality, and had made misrepresentations. APX Alarm entered into a settlement agreement with the Louisiana Office of the State Fire Marshal and did not renew its License.

Maryland

Maryland State Police - 1111 Reister Town Road, Baltimore, MD 21208- Against License 107-1302

Allegation of violation of state licensing laws: sales representatives who were licensed in Virginia crossed into Maryland and sold accounts to customers without first obtaining a Maryland license. APX Alarm resolved the issue with the Attorney General and Maryland State Police by offering to cancel any customers' contract and refund any amounts paid. No action was taken against APX Alarm's license.

Minnesota

Minnesota Department of Labor and Industry, 443 Lafayette Rd N., St. Paul, MN 55155.

File # EL2900443/CMW - License # TS01618.

Formal action against APX Alarm's technology systems contractor license based on allegations that APX Alarm engaged in violation of Minn. Stat 326B.082, Subd. 11 (b) (2) (2008), 326B.082, Subd. 11 (8) (2008), 326B.082, Subd. 12 (2008), 326B.082, Subd. 13 (2008), 326B.082, Subd. 14 (2008) and Minn. R. 3800.3540, surp 3 (2007). APX Alarm entered into a settlement of consent order agreement with the Minnesota Department of Labor and Industry. No action was taken against any licensing for APX Alarm in Minnesota.

Mississippi

Mississippi Fire Marshal's Office - Cease and Desist Order

On July 23, 2008, the Mississippi Fire Marshal's Office issued a Cease and Desist Order stating that APX Alarm did not license for each operating location in the State (Violation of Mississippi Code, Title 73, chapter 69). The proper explanation and documentation for the situation was submitted to the State Fire Marshal's office and the Cease and Desist Order was lifted one week later.

North Carolina

North Carolina Alarm Systems Licensing Board; Case Number 2009-ASL-038

1. Sherry Couey filed complaint with Consumer Protection for "Poor Business Practices", possible violation of 74D-10(5). Hearing will be held on January 13, 2010.

North Carolina Alarm Systems Licensing Board; Case Number 2009-ASL-032

2. Possible violation of 74D. Mr. Charles Deaton filed complaint with Consumer Protection alleging that an APX representative cursed at Deaton who is 73 years old and checked his credit without authorization on January 13, 2010.

New York

Investigation by Andrew Cuomo, Attorney General of the State of New York. -

Assurance of Discontinuance-

In January 2009, Attorney General of the State of New York filed an action against APX Alarm relating to improper sales practices. APX Alarm entered into an agreement of assurance of discontinuance with the Attorney General of the State of New York. No action was taken against any licensing for APX Alarm in New York.

Oregon

Department of Justice, 1162 Court Street NE, Salem, OR 97301-4096

Alleged violation of Oregon Unlawful Trade Practices Act, ORS 646.605 through ORS 646.665. This matter relates to allegations of improper trade practices in 2008 and a violation of Oregon's telephone solicitation laws. APX Alarm and the Oregon Department of Justice are in the process of negotiating an Assurance of Voluntary Compliance which does not include any adverse action against APX Alarm's licenses to do business in Oregon.

South Carolina

South Carolina Department of Labor, Licensing and Regulation before the South

Carolina Contractor's Licensing Board OIE Case# 2008-159 (Smith). OGC File# 09-0024 -

Against License # BAC5569

The Attorney General's Office for the state of South Carolina filed an action against APX Alarm relating to a sales team in that state in 2008. The allegation relates the State's claim that APX Alarm had a branch office in South Carolina in 2008, but did not have a separate qualifying agent for that office. APX Alarm disputed this allegation in 2008, when it was first raised, and.

has attempted to resolve the matter with the Attorney General's Office. At a hearing held on October 15, 2009, the Board announced that it intended to issue a \$4,000 fine and some form of a public reprimand; however, no written order has been issued.

Tennessee

*State of Tennessee Department of Commerce and Insurance Office of Legal Counsel,
500 James Robertson Parkway, Davy Crockett Tower, 5th Floor, Nashville, Tennessee 37243
(615) 731-3072- Consent Order from Tennessee Alarm Systems Contractors Board - License #
1253*

Failure to timely renew Alarm Systems Contractor's certification during which time APX solicited and installed an alarm system in a private residence in violation of Tennessee Alarm Contractors Licensing Law and Rules. Failure to respond to inquiry forwarded by Tennessee Alarm Systems Contractors Board regarding these allegations. APX Alarm was issued a \$1,000 fine.

Texas

*Texas Department of Public Safety, Private Security Bureau, Investigator Steven Stone,
P.O. Box 130040, Tyler, TX 75713, 903-939-8066 - Against License # B13684*
September 2009- Investigation into alleged unlicensed activity performed by one of APX Alarm's employees. The Department of Public Safety issued a \$200 fine which APX Alarm has paid. No action was taken against APX Alarm's licenses in Texas. (Documentation enclosed)
June 2008 - Investigation into alleged unlicensed activity. APX Alarm failed to register 78 Canadian employees within first 14 days of employment. Employees were waiting for issuance of social security cards, required for registration application. APX Alarm entered into a settlement agreement with Texas Department of Public Safety, Private Security Bureau. No adverse action was taken against APX Alarm's licenses in Texas.
Since its last renewal, APX Alarm has had various licenses or permits to engage in door-to-door marketing denied or revoked. These licenses or permits are typically issued to individual representatives of APX Alarm.

Supplement to Vivint, Inc. Burglar and Fire License Renewal Application

July 31, 2012

- 1. Since your last application for renewal, have you had a license certification or registration cancelled, surrendered, revoked, suspended, restricted, or disciplined by any Federal or state authority or contracted without proper licensure?**

Yes. In re: APX Alarm Security Solutions, Inc.; Complaint #2011-005-PSP, State of Montana, Department of Labor and Industry, Business Standards Division, 301 South Park, Helena, MT 59620. In July 2010, a complaint was filed by the Board of Private Security which alleges that actions taken in other jurisdictions might be a basis for disciplinary action against APX Alarm's (n/k/a Vivint, Inc.) license. APX Alarm received a letter of reprimand and this matter was resolved through a letter of warning and the payment of a fine. No other actions have been taken against any Vivint fire alarm license or burglar alarm license since the last application for renewal.

- 4. Since your last application for renewal, do you have any complaints pending, under investigation, or has any action been taken against your license in any jurisdiction?**

Yes. Customer complaints are pending before the licensing authority in North Carolina. In addition, Vivint has received requests for information and documents pursuant to investigations by the Attorney General's office in Illinois, Kansas, Minnesota, North Carolina, Ohio, and Wisconsin. No action has been against a Vivint license in any of these states based on these inquiries.

Exhibit E

APX's (now Vivint's) Motion to Compel
Compliance with Administrative Law
Court's Prior Order

indication that it will deny Vivint's renewal application again on the exact same grounds the Court previously rejected. This is bureaucracy out of control and evidences a disappointing disregard for this Court and its authority. Unfortunately, because of this, Vivint has no choice but to invoke the law-of-the-case doctrine and respectfully asks the Court to enjoin the agency's unlawful efforts to drive an out-of-state company out of South Carolina, deprive Vivint of its contractual and other rights, leave thousands of South Carolinians without security services, and render numerous South Carolinians unemployed.

DISCUSSION

The Court is familiar with the procedural background of this case. To summarize, in the Fall of 2010 and the Spring of 2011, the LLR notified Vivint that it could not automatically renew Vivint's burglar alarm license at the staff level "because of the 'Yes' answer on the Background Questions concerning actions or pending actions against APX Alarm Security Solutions, Inc. in other states." (R. pp. 6, 8, 11.) As a result, Vivint participated in a hearing before the Contractors' Licensing Board, during which the LLR presented absolutely no evidence to support denial of Vivint's renewal application.

Notwithstanding the absence of proof, the Board denied Vivint's application. In so doing, the Board cited the same "actions in other states" reason that it identified in advance of the hearing, but it also stated that "the qualifying party issues" prevented approval of Vivint's application. (R. pp. 2-4.) Prior to that hearing, Vivint had not been given any notice at all of so-called "qualifying party issues," and it is still not even sure what those issues may have been. In any event, the LLR abandoned its reliance on the "qualifying party issues" during the January 10, 2012 appellate hearing with this Court.

In its return appellate brief to this Court, the Board also identified a third basis for denying Vivint's renewal application: South Carolina Code § 40-1-110. (Br. of Resp't at 4, 5, 8, 10.) Prior to Vivint's appeal, this statute had never been cited as a basis for denying Vivint's renewal application, and Vivint does not believe that this statute applies to business entities.

In reversing the LLR's decision, the Court specifically noted that the Board's denial of Vivint's renewal application was not "proper on the merits." But the Court's criticism was not limited to the merits of the Board's decision. Citing a myriad of defects in the agency's behavior, particularly the lack of notice regarding the two previously-unidentified grounds for denying Vivint's application (*i.e.*, the "qualified party issues" and South Carolina Code § 40-1-110), the Court found that the Board had failed to follow the law and remanded this matter back to the LLR. (Order at 5 (June 15, 2012).)

Despite the Court's directives, the LLR appears insistent on ignoring the Court's prior ruling. As the attached correspondence indicates, the LLR is attempting to re-invoke exactly the same "actions in other states" basis for potentially denying Vivint's renewal application that the agency cited in its original "notice" letters back in Fall 2010 and Spring 2011. The LLR even attached pages out of the Record on Appeal—complete with the Record's pagination—as the same factual "support" for potentially denying Vivint's renewal application at this upcoming hearing.

The Court has already has already rejected this basis as improper. In 2010, the Board did give Vivint notice that complaints in other jurisdictions may serve as the agency's basis for denying Vivint's renewal application. But on appeal, this Court reversed that decision, stated that the agency's ruling was not "proper on the merits," and

remanded for the LLR to hold a hearing on the other remaining issue that the Board cited as a reason for denying the renewal application; namely, the Board's mid-appeal reliance on South Carolina Code § 40-1-110.² The LLR never asked the Court to reconsider or to clarify that ruling, nor did it appeal the Court's decision.

Because the Court's June 15th Order was never appealed or otherwise challenged, the Court's rejection of the LLR's efforts to deny Vivint's renewal application based on "actions in other states" is the law of the case and cannot be revisited now. See Judy v. Martin, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) ("Under the law-of-the-case doctrine, a party is precluded from re-litigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court."). This rule "applies both to issues explicitly decided and to those issues which were necessarily decided in the former case." Ross v. Med. Univ. of S.C., 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997). And it applies even when new evidence is introduced if that evidence is of the "same class and character" that was previously before the court. See, e.g., Nelson v. Charleston & W. Carolina Ry. Co., 231 S.C. 351, 357, 98 S.E.2d 798, 800 (1957) ("Additional evidence cumulative in nature will not take the case out of the rule and constitute a material change where evidence of the same class and character was considered on the former appeal.").

Vivint asks the Court to enforce this well-established rule against the LLR in these proceedings. Though the Court remanded this matter back to the agency, the agency cannot attempt to re-do precisely what the Court has already held to be improper. Vivint respectfully requests that the Court prohibit the LLR's conduct in this regard.

² As noted above, the LLR abandoned on appeal its reliance on unspecified "qualifying party issues" as a reason for denying Vivint's renewal application.

CONCLUSION

The LLR cannot prevent Vivint from operating in South Carolina for the exact same reason it tried, and failed, to invoke in 2010 and 2011. The law-of-the-case doctrine bars the agency's current efforts to obstruct Vivint's operations and investment in South Carolina. Vivint respectfully seeks the Court's assistance in enforcing its June 15, 2012 Order in this matter and enjoining the LLR from conducting license-renewal proceedings based on grounds that the Court previously rejected.

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: Butch Bowers

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Attorneys for Appellant Vivint, Inc. f/k/a APX Alarm
Security Solutions, Inc.

October 5, 2012
Columbia, South Carolina

Exhibit

Notice of Hearing from LLR



Nikki R. Haley
Governor

Holly G. Pisarik
Director

South Carolina
Department of Labor, Licensing and Regulation
South Carolina Contractors' Licensing Board

August 27, 2012



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
(803) 896-4686
FAX: (803) 896-4814
www.llronline.com

By certified mail and regular mail to:

Vivint, Inc. (formerly known as APX)
4931 N. 300 W.
PROVO, UT 84604

Re: Renewal of License No.: BAC.5569 M

Dear Sir or Madame:

As you know, your South Carolina Renewal Applications for 2010 and 2012 could not be approved at staff level based upon the affirmative answers contained in the Renewal Applications. Because of this, the South Carolina Contractors' Licensing Board will review your renewal applications and attachments at its next meeting scheduled for **October 18, 2012 at 10:00 a.m., Room 105**, Kingstree Building, 110 Centerview Drive, Synergy Business Park, Columbia, SC, 29211.

The 2010 Renewal Application has the following questions answered affirmatively:

"3. Since your last application for renewal, have there been judgments, liens or claims filed against you or any organization of which you are or were an officer, principal, or major shareholder?" and

"4. Since your last application for renewal, do you have any complaints pending, under investigation, or has any action been taken against your license in any jurisdiction?"

Additionally, the 2012 Renewal Application has the following questions answered affirmatively:

"1. Since your last application for renewal, have you had a license, certification or registration cancelled, surrendered, revoked, suspended, restricted or disciplined by and Federal or state authority or contracted without proper licensure?" and

"4. Since your last application for renewal, do you have any complaints pending, under investigation, or has any action been taken against your license in any jurisdiction?"

Attached hereto and incorporated herein are the attachments you included with the 2010 and 2012 Renewal Applications that set forth your explanations for the affirmative answers set forth above.

Please be advised that pursuant to SC Code Ann § 40-79-130, the Board may deny a license, certification, or registration to an applicant based on the same grounds for which the Board may take disciplinary action against a licensee. Specifically, section 40-79-130(1) provides (in relevant part) that a license or registration may be refused to any applicant who has:

- (a) failed to meet the minimum qualifications set forth in this chapter or regulations promulgated under this chapter;
- (b) had a license or registration denied, suspended, canceled, revoked, or otherwise disciplined; or
- (e) committed an act, which would be grounds for disciplinary action under this chapter.

Additionally, section 40-79-130(2) directs that a license or registration may not be issued to any applicant who:

- (a) had a similar license or certificate revoked by any federal, state, or local jurisdiction. Such an applicant is eligible to apply for licensure, in the Board's discretion, or after not less than one year from the date of revocation;
- (b) is presently under suspension or on probation by a professional licensing entity in this or any other state or jurisdiction; or
- (c) has unresolved complaints or charges pending against him before this or any other professional licensing board in this or any other state.

Lastly, section 40-1-130 provides that the Board may deny an authorization to practice to an applicant who has committed an act that would be grounds for disciplinary action under this article or Title 40, Chapter 79. This section further directs that the Board must deny authorization to practice to an applicant who has failed to demonstrate the qualifications or standards for licensure contained Title 40, Chapter 79. The applicant shall demonstrate to the satisfaction of the Board that the applicant meets all the requirements for the issuance of a license.

This matter will be held in accordance with the South Carolina Administrative Procedures Act, S.C. Code Ann. § 1-23-310, *et seq.* (1976, as amended), which describes your procedural rights, including, but not limited to, the right to respond and present evidence and testimony on all issues involved. You have the right, at your expense, to be represented by legal counsel. If you plan to be represented by an attorney other than Mr. Bowers (currently your attorney of record in this matter), please provide me with their name and contact information as soon as possible.

You may present any documents and character witnesses that you deem appropriate to support your request for renewal of your licensure. If you wish to submit documentary evidence, please bring at least twelve (12) copies of each document. The staff will supply the Board with a copy of your applications along with any other information you submitted and a copy of the correspondence from staff.

If for any reason, you decide not to appear before the Board, please notify me immediately.

If your application is approved by the Board without conditions, your credentials will be issued within twenty-four (24) hours of the Board's approval.

Please do not hesitate to contact us directly should further information be desired.

Sincerely,

Lil Ann Gray

Lil Ann Gray, Esq.
Program Coordinator

cc: Karl S. Bowers, Jr, Esq.
(via regular mail and email to:
Butch.bowers@wcsr.com)

Arkansas

Arkansas Board of Private Investigators and Private Security Agencies, File C109-043, 7W30- Against License #E 07-009 and Qualifying Manager (Larry Steve Evers).

The Arkansas Board of Private Investigators and Private Security Agencies charged APX Alarm with violating A.C.A. 17-40-350(a)(1) with two Arkansas customers and alleged that APX Alarm had 45 licensing paperwork violations. The Board dismissed the claim with respect to one of the customers, found that APX Alarm had failed to submit certifications for 41 employees within 6 months of their employment in order to continue their registration as apprentices, that an APX Alarm sales representative had misrepresented information to a potential customer, and that APX Alarm had violated licensing application requirements for another employee for not submitting an application within the required time period. The Board ordered that APX Alarm pay the State approximately \$42,000.00 in civil penalties and revoked the license of APX Alarm's manager in Arkansas, Steve Evers. APX Alarm's license remains in good standing and APX Alarm is in the process of appealing the decision of the Board.

Florida:

Florida Dept. of Business Professional Regulation, Case No: 2008-05011

APX Alarm (through Mr. Larry S. Evers, the license holder), entered into a stipulation regarding two installations in Florida in 2008 that were contrary to Florida law. Specifically, APX Alarm technicians installed an alarm system with a smoke detector in two residential structures that had been converted to commercial use. APX Alarm was not licensed at the time to remove or install smoke alarms in commercial establishments. APX Alarm has stipulated to refrain from violations of Florida law, pay \$750.00 in an administrative fine, and pay administrative costs of \$181.02. During a hearing in November 2009, to confirm the stipulation, the Board rejected the stipulation and voted to amend the stipulation and send a new proposal to APX Alarm.

Louisiana

Department of Public Safety and Corrections Office of State Fire Marshal, Louisiana, File: 5427, 5431, 5436, 5438, 5440- Against License F1068 and Employees.

On June 9, 2008, the Louisiana Office of the State Fire Marshal issued a Cease and Desist Order stating that APX Alarm did not have a current qualifying person and that all Security related business should be suspended until all the company's employees were properly licensed in Louisiana. The proper explanation and documentation for each situation was submitted to the Fire Marshal and the Cease and Desist Order was lifted on June 16, 2008. On June 27, 2008, the Fire Marshal issued another Cease and Desist Order. In this second Order, the Fire Marshal alleged that APX Alarm had permitted two unlicensed representatives to engage in sales of security systems in Louisiana, performed installations of a poor quality, and had made misrepresentations. APX Alarm entered into a settlement agreement with the Louisiana Office of the State Fire Marshal and did not renew its License.

Maryland

Maryland State Police - 1111 Reister Town Road, Baltimore, MD 21208- Against License 107-1302

Allegation of violation of state licensing laws: sales representatives who were licensed in Virginia crossed into Maryland and sold accounts to customers without first obtaining a Maryland license. APX Alarm resolved the issue with the Attorney General and Maryland State Police by offering to cancel any customers' contract and refund any amounts paid. No action was taken against APX Alarm's license.

Minnesota

Minnesota Department of Labor and Industry, 443 Lafayette Rd N., St. Paul, MN 55155.
File # EL2900443/CMW - License # TS01618.

Formal action against APX Alarm's technology systems contractor license based on allegations that APX Alarm engaged in violation of Minn. Stat 326B.082, Subd. 11 (b) (2) (2008), 326B.082, Subd. 11 (8) (2008), 326B.082, Subd. 12 (2008), 326B.082, Subd. 13 (2008), 326B.082, Subd. 14 (2008) and Minn. R. 3800.3540, surp 3 (2007). APX Alarm entered into a settlement of consent order agreement with the Minnesota Department of Labor and Industry. No action was taken against any licensing for APX Alarm in Minnesota.

Mississippi

Mississippi Fire Marshal's Office - Cease and Desist Order

On July 23, 2008, the Mississippi Fire Marshal's Office issued a Cease and Desist Order stating that APX Alarm did not license for each operating location in the State (Violation of Mississippi Code, Title 73, chapter 69). The proper explanation and documentation for the situation was submitted to the State Fire Marshal's office and the Cease and Desist Order was lifted one week later.

North Carolina

North Carolina Alarm Systems Licensing Board; Case Number 2009-ASL-038

1. Sherry Couey filed complaint with Consumer Protection for "Poor Business Practices", possible violation of 74D-10(5). Hearing will be held on January 13, 2010.

North Carolina Alarm Systems Licensing Board; Case Number 2009-ASL-032

2. Possible violation of 74D. Mr. Charles Deaton filed complaint with Consumer Protection alleging that an APX representative cursed at Deaton who is 73 years old and checked his credit without authorization on January 13, 2010.

New York

Investigation by Andrew Cuomo, Attorney General of the State of New York. -

Assurance of Discontinuance-

In January 2009, Attorney General of the State of New York filed an action against APX Alarm relating to improper sales practices. APX Alarm entered into an agreement of assurance of discontinuance with the Attorney General of the State of New York. No action was taken against any licensing for APX Alarm in New York.

Oregon

Department of Justice, 1162 Court Street NE, Salem, OR 97301-4096

Alleged violation of Oregon Unlawful Trade Practices Act, ORS 646.605 through ORS 646.585. This matter relates to allegations of improper trade practices in 2008 and a violation of Oregon's telephone solicitation laws. APX Alarm and the Oregon Department of Justice are in the process of negotiating an Assurance of Voluntary Compliance which does not include any adverse action against APX Alarm's licenses to do business in Oregon.

South Carolina

South Carolina Department of Labor, Licensing and Regulation before the South Carolina Contractor's Licensing Board OIE Case# 2008-159 (Smith), OGC File# 09-0024 - Against License # BAC5569

The Attorney General's Office for the state of South Carolina filed an action against APX Alarm relating to a sales team in that state in 2008. The allegation relates the State's claim that APX Alarm had a branch office in South Carolina in 2008, but did not have a separate qualifying agent for that office. APX Alarm disputed this allegation in 2008, when it was first raised, and.

has attempted to resolve the matter with the Attorney General's Office. At a hearing held on October 15, 2009, the Board announced that it intended to issue a \$4,000 fine and some form of a public reprimand; however, no written order has been issued.

Tennessee

*State of Tennessee Department of Commerce and Insurance Office of Legal Counsel,
500 James Robertson Parkway, Davy Crockett Tower, 5th Floor, Nashville, Tennessee 37243
(615) 741-3072- Consent Order from Tennessee Alarm Systems Contractors Board - License #
1253*

Failure to timely renew Alarm Systems Contractor's certification during which time APX solicited and installed an alarm system in a private residence in violation of Tennessee Alarm Contractors Licensing Law and Rules. Failure to respond to inquiry forwarded by Tennessee Alarm Systems Contractors Board regarding these allegations. APX Alarm was issued a \$1,000 fine.

Texas

*Texas Department of Public Safety, Private Security Bureau, Investigator Steven Stone,
P.O. Box 130040, Tyler, TX 75713, 903-939-6066 - Against License # B13684*

September 2008- Investigation into alleged unlicensed activity performed by one of APX Alarm's employees. The Department of Public Safety issued a \$200 fine which APX Alarm has paid. No action was taken against APX Alarm's licenses in Texas. (Documentation enclosed)
June 2008 - Investigation into alleged unlicensed activity. APX Alarm failed to register 78 Canadian employees within first 14 days of employment. Employees were waiting for issuance of social security cards, required for registration application. APX Alarm entered into a settlement agreement with Texas Department of Public Safety, Private Security Bureau. No adverse action was taken against APX Alarm's licenses in Texas.
Since its last renewal, APX Alarm has had various licenses or permits to engage in door-to-door marketing denied or revoked. These licenses or permits are typically issued to individual representatives of APX Alarm.

Supplement to Vivint, Inc. Burglar and Fire License Renewal Application

July 31, 2012

1. Since your last application for renewal, have you had a license certification or registration cancelled, surrendered, revoked, suspended, restricted, or disciplined by any Federal or state authority or contracted without proper licensure?

Yes. In re: APX Alarm Security Solutions, Inc.; Complaint #2011-005-PSP, State of Montana, Department of Labor and Industry, Business Standards Division, 301 South Park, Helena, MT 59620. In July 2010, a complaint was filed by the Board of Private Security which alleges that actions taken in other jurisdictions might be a basis for disciplinary action against APX Alarm's (n/k/a Vivint, Inc.) license. APX Alarm received a letter of reprimand and this matter was resolved through a letter of warning and the payment of a fine. No other actions have been taken against any Vivint fire alarm license or burglar alarm license since the last application for renewal.

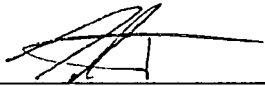
4. Since your last application for renewal, do you have any complaints pending, under investigation, or has any action been taken against your license in any jurisdiction?

Yes. Customer complaints are pending before the licensing authority in North Carolina. In addition, Vivint has received requests for information and documents pursuant to investigations by the Attorney General's office in Illinois, Kansas, Minnesota, North Carolina, Ohio, and Wisconsin. No action has been taken against a Vivint license in any of these states based on these inquiries.

CERTIFICATE OF SERVICE

I certify that I have served a copy of Appellant's Motion to Compel Compliance with Court Order and Enjoin Further Agency Proceedings by mailing a copy, postage prepaid, to Respondent's attorney of record, Lil Ann Gray, P.O. Box 11329, Columbia, South Carolina 29211-1329.

WOMBLE CARLYLE SANDRIDGE & RICE LLP

By: 

Todd Mathis

Columbia, South Carolina
October 5, 2012

FILED

OCT 05 2012

SC ADMIN. LAW COURT

Exhibit F

Administrative Law Court's Order Denying
Motion to Compel Compliance

FILED

OCT 16 2012

STATE OF SOUTH CAROLINA
THE ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

APX Alarm Security Solutions, Inc.,

Appellant,

v.

South Carolina Department of Labor,
Licensing, and Regulation, South Carolina
Contractors Licensing Board

Respondent.

Docket No. 11-ALJ-11-0320-AP

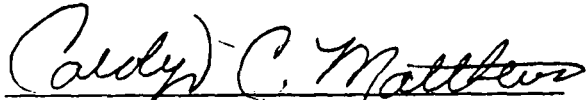
**ORDER DENYING APPELLANT
MOTION TO COMPEL
COMPLIANCE WITH COURT
ORDER AND ENJOIN FURTHER
AGENCY PROCEEDINGS**

The above-captioned matter was heard by the Administrative Law Court ("Court") on February 22, 2012 and a decision was issued on June 15, 2012. On October 5, 2012, the Appellant filed a Motion to Compel Compliance with Court Order and Enjoin Further Agency Proceedings. The Appellant filed a Response on October 9, 2012. The Appellant filed a Reply on October 10, 2012.

The Court disagrees with the Appellant's argument. The Court found that the notice of the original Board hearing was insufficient to comport with procedural due process and remanded the decision to LLR, directing the agency to rehear the Appellant's license renewal application. Therefore,

IT IS HEREBY ORDERED that the Appellant's Motion to Compel Compliance with Court Order and Enjoin Further Agency Proceedings is denied. The Respondent shall schedule and rehear the case at a meeting of the Board.

AND IT IS SO ORDERED.

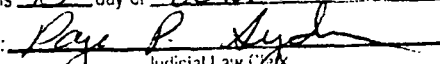

CAROLYN C. MATTHEWS
Administrative Law Judge

October 15, 2012
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy thereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 15 day of October 2012

By: 
Judicial Law Clerk

PROOF OF SERVICE

I, the undersigned Legal Assistant of the law offices of Womble Carlyle Sandridge & Rice, LLP, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) hereinbelow specified by depositing a copy of it in the United States Mail, postage prepaid, to the following address(es):

PLEADING: RETURN IN OPPOSITION TO MOTION TO DISMISS

PARTIES SERVED:

Suzanne Hawkins, Esq.
Assistant General Counsel
South Carolina Department of Labor, Licensing &
Regulation
Post Office Box 11329
Columbia, South Carolina 29211-1329
(803) 896-4481
Attorneys for Respondent

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: _____

Todd Mathis

January 7, 2013
Columbia, South Carolina

RECEIVED
JAN 07 2013
SC COURT OF APPEALS