

BEFORE THE DELAWARE STATE FIRE PREVENTION COMMISSION

IN RE: JOSEPH J. OLIVERO)
)
EMT I.D. NO.: 168882) CASE NO.: 1821

NATURE OF THE PROCEEDINGS

Pursuant to due notice, a hearing was held before the Delaware State Fire Prevention Commission on May 21, 2019, concerning a disciplinary complaint against Joseph J. Olivero (“Respondent”). In a Complaint and Request for Temporary Suspension, the State of Delaware alleged that Respondent engaged in unprofessional misconduct in violation of Part 710, Section 14.4.1.6 of the Delaware State Fire Prevention Regulations. Specifically, the State alleged that Respondent was charged with (1) Third Offense Driving Under the Influence of Alcohol, a felony, in violation of 21 *Del. C.* § 4177A(a)(3); (2) Possession of a Controlled Substance in violation of 16 *Del. C.* § 4763; and (3) Leaving the Scene of an Accident in violation of 21 *Del. C.* § 4177A.

Zoe Plerhoples, Deputy Attorney General, presented the State’s case. Respondent appeared *pro se*.

SUMMARY OF THE EVIDENCE

The following documents were introduced and made part of the record:

- State Exhibit 1**, consisting of the State’s Complaint filed in this matter.
- State Exhibit 2**, consisting of a Delaware Superior Court docket for Respondent’s criminal case that is the subject of the Complaint.
- State Exhibit 3**, consisting of the Respondent’s guilty plea, dated February 14, 2019, and signed by Respondent.
- Respondent Exhibit 1**, consisting of letters submitted in support of Respondent.

The State called David Truax, the Commission’s Compliance Officer/Investigator. Mr. Truax testified that he received an arrest report for Respondent on August 25, 2018. The report

indicated that Respondent was involved in an automobile accident on August 24, 2018 on Limestone Road in Wilmington, Delaware. When the police arrived on the scene, they found that Respondent's vehicle had ran into a sign. Police subsequently located Respondent in a parking lot and administered field sobriety tests. He was then arrested for driving under the influence ("DUI"). An officer also found a baggy of what later tested positive for .43 grams of cocaine. To his credit, Respondent timely reported his arrest to the Commission. Mr. Truax testified that Respondent has no prior complaints of professional misconduct.

The State next called Respondent. Respondent readily agreed to the allegations in the State's Complaint. He confirmed his 2018 arrest for DUI and possession of cocaine and that he had been previously convicted of reckless driving, alcohol-related, on two prior occasions. Respondent confirmed that State's Exhibit 3 was his guilty plea to reckless driving, alcohol related and that he was sentenced to five years suspended sentence at Level 5 incarceration for Level 4. Respondent added that the Level 4 sentence was "almost immediately lifted to Level 3" probation because he had already completed treatment programs that had been requested by the prosecutor. He stated that within a month he was moved to Level 2 supervision. While on probation, Respondent must meet with his probation officer monthly and is to abstain from drug or alcohol use. Respondent also completed a statutory DUI course that was ordered. He attends Alcoholic Anonymous meetings regularly and sees treatment counselors at least a couple times per month. Respondent testified that he is currently employed at a garden shop (he obtained the position within a week of his arrest).

Respondent testified on his own behalf, reiterating the above testimony regarding his current treatment and identifying some of the letters he submitted supporting his licensure. Respondent provided further testimony showing his commitment to treating his substance abuse

issues. Respondent genuinely appeared contrite, as well as dedicated and committed to his newly-found sobriety. Respondent did not call any other witnesses.

In closing, the State recommended a three-year suspension of Respondent's EMT license, stayed for a three-year probation with zero tolerance for any other arrests or driving offenses for alcohol or drug-related offenses. The State indicated that this recommendation is consistent with what has been recommended in the past.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having been afforded all appropriate notice and having an opportunity to confront the evidence against him, the Commission finds that due process has been afforded Respondent in this matter. As noted above, Respondent was arrested and charged with (1) Third Offense Driving Under the Influence of Alcohol, a felony, in violation of 21 *Del. C.* § 4177A(a)(3); (2) Possession of a Controlled Substance in violation of 16 *Del. C.* § 4763; and (3) Leaving the Scene of an Accident in violation of 21 *Del. C.* § 4177A. He pled guilty to Reckless Driving Alcohol-Related, his third such offense. The Commission concludes that Respondent has violated the Commission Regulation 710, Section 14.4.1.6 of the Commission Regulations in that he has engaged in unprofessional conduct as defined by Section 14.4.2 in that he operated a motor vehicle under the influence of alcohol.

A majority of the Commission agrees with the State's position that, in light of the circumstances and evidence presented, it is appropriate that Respondent's EMT license should be suspended, rather than revoked. As recommended, Respondent's three-year suspension be stayed for a period of probation with zero tolerance for any arrests relating to drugs or alcohol. The Commission will also require that, during his three-year probation, Respondent submit to random drug and alcohol testing as requested by the Commission and its staff and that such testing be at

Respondent's own expense. The Commission therefore finds that the appropriate discipline in this case, in light of all of the testimony and other evidence, including Respondent's documentary mitigation evidence, shall be:

1. Respondent's EMT license shall be suspended for a period of three years, beginning on the date of this Order.

2. The three-year suspension shall be stayed immediately for a period of probation of same length during which time Respondent must comply with any requests by the Commission or its staff for random drug or alcohol tests and that results be provided so as to be received within ten calendar days of the date of the request. All costs associated with requested testing shall be borne by Respondent.

3. Any violation of the probationary terms will result in the automatic conversion of the probation to suspension. Successful completion of the probationary term will result in the immediate termination of the probation without further hearing or order.

IT IS SO ORDERED, this 18th day of June, 2019 by the Commission:



David J. Roberts, Chairman



Alan Robinson, Jr. Vice Chairman



Lynn Truitt



Ron Marvel



Joe Leonetti, Sr.



Richard T. Perillo



William Kelly