

**STATE OF RHODE ISLAND  
DEPARTMENT OF BUSINESS REGULATION  
JOHN O. PASTORE COMPLEX, BLDG 68-69  
1511 PONTIAC AVENUE  
CRANSTON, RI 02920**

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**IN THE MATTER OF:**

**John P. Silvaggio,**

**Respondent.**

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**DBR No.: 23CN001**

**DECISION**

**I. INTRODUCTION**

This matter arose pursuant to an Order to Show Cause why Certification Should not be Denied and Certification Should be Refused, Notice of Hearing, and Appointment of Hearing Officer (“Order to Show Cause”) issued to John P. Silvaggio (“Respondent”) by the Department of Business Regulation (“Department”) on May 12, 2023. On March 24, 2021, pursuant to R.I. Gen. Laws § 9-5-10.1, the Respondent applied for a certification as a constable. The Department initially denied said application, but on January 21, 2022, the Department and Respondent entered into a consent agreement (“Consent Agreement”) that set forth how the Respondent could become certified as a constable. The Department issued the Order to Show Cause to deny the Respondent certification (“Certification”) as a constable alleging violations by Respondent of the Consent Agreement and the statutory and regulatory requirements for said Certification. A hearing was held on July 14 and September 27, 2023. The Department was represented by counsel and the Respondent was *pro se*. The parties timely filed briefs by October 18, 2023.<sup>1</sup>

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<sup>1</sup> The record was left open until October 4, 2023 for the Respondent to submit his training identification. This was not received by the undersigned. The record was also left open for the Department to submit the audio for Respondent’s Exhibit Two (2) which was received by the undersigned.

## **II. JURISDICTION**

The administrative hearing was held pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 9-5-10.1, and R.I. Gen. Laws § 42-35-1 *et seq.*

## **III. ISSUE**

Whether the Respondent's application for certification as a constable should be denied pursuant to R.I. Gen. Laws § 9-5-10.1.

## **IV. TESTIMONY AND MATERIAL FACTS**

Donald DeFedele ("DeFedele"), Associate Director, Commercial Licensing and Securities, testified on behalf of the Department. He testified that constables are one of the licensing programs for which he is responsible. He testified that the Consent Agreement sets forth the statutory prerequisites in paragraph 8(a) that the Respondent needed to comply with in order to proceed to the statutory training requirements set forth in paragraph 8(b). He testified that the Respondent complied with the paragraph 8(a) requirements and provided proof of that compliance to the Department. He testified that paragraph 8(b) sets forth the legal requirements for training needed to become certified as a constable. Department's Exhibit One (1) (Consent Agreement dated January 21, 2022). He testified that Luis DaSilva ("DaSilva") was identified as the constable who would train the Respondent. He testified that the Respondent was notified on June 27, 2022 that DaSilva would train him.

DeFedele testified that the Department received an email on August 1, 2022 from DaSilva stating that he was unable to train the Respondent, and that the Respondent was unable to comply with the process. Department's Exhibits Two (2) (email) and Three (3) (email attachment with reasons from DaSilva why cannot train). DeFedele testified that he decided to initiate that information as a complaint process. He testified that he spoke with DaSilva on November 18,

2022. He testified the Respondent's website and Facebook page on November 10, 2022 identified him as a constable. Department's Exhibit Six (6) (November 10, 2022 print out of Respondent's website listing him as a constable); and Seven (7) (November 10, 2022 print out of Respondent's Facebook page listing him as a constable). He testified that DaSilva dropped off information about the Respondent's training log which only showed four (4) services of process so were not in compliance with the requirements. Department's Exhibits Eight (8) and Ten (10) (Respondent's training log received by Department on November 25, 2022). He testified that the complaint (e.g. information from DaSilva) was forwarded to the Respondent to which the Respondent responded. Department's Exhibits Four (4) (November 29, 2022 letter to Respondent); and (5) (letter from Respondent). He testified that a notice was sent to the Respondent denying his application on February 11, 2023. Department's Exhibit 11.

On cross-examination, DeFedele testified the Respondent was not notified right away of the initial complaint by DaSilva because the Department was reviewing the complaint and gathering information. He testified that training cannot be completed in less than 90 days and has to take over 90 days. He testified the Department did not hear from DaSilva after the August, 2022 email so he assumed that DaSilva felt he should continue until he heard from the Department. He testified that once the Respondent submitted his training log, the training period was finished.

DaSilva testified on behalf of the Department. He testified that he has been a constable for 20 years. He testified that he handles simple summons, subpoenas, protective orders, and eviction notices. He testified that he has a caseload of 100 to 150 at any time. He testified that he had trained constables prior to the Respondent and will usually meet with the trainee and talk about the job.

DaSilva testified that when he spoke to the Respondent, the Respondent usually would go off topic and talk about how he previously trained as a constable with the best so did not need to

be trained. He testified the Respondent accepted a job that he should not have in that it was a job for a private investigator. He testified that during training the Respondent did not follow directions, fell asleep, and appeared to give legal advice when should not. He testified that the Respondent accepted work as a constable when he should not have and accepted payment made out to "Rhode Island Constable." He testified that the Respondent's website and Facebook page called him a constable. Department's Exhibits Two (2) and Three (3).

DaSilva testified that he did not tell the Respondent to write the cover letter for him for the submission of the training log. Department's Exhibit Nine (9) (cover letter purportedly from DaSilva but DaSilva hand wrote on it that he did not write it). He testified that he told the Respondent that trainees are supposed to fill out the training log. He testified he explained to the Respondent that the log should show what he did, and it is to be an explanation of a constable's actions. He testified that the first and second page of Exhibit Ten (the training log for July 22 and 16, 2022) both have three (3) services on them. He testified that other pages just have information that appears to be copied from the constable manual. He testified that there are no other services listed. He testified that the hours on the log appear to be made up as the pages list hours that are too long for the given activity. For example, he testified that he would not have discussed the topics listed on June 27 and 29, 2023, for so long (six (6) hours). He testified that a trainee is supposed to keep accurate records especially since a constable has to be able to fill out affidavits of service. He testified that his best estimate is that the log could show 30 hours of training.

On cross-examination, DaSilva testified that during his first conversation with the Respondent, he told the Respondent not to wear clothing with logos and later the Respondent wore shorts and socks with cartoon characters. He testified that when he tried to speak to the Respondent about the job and being a constable, the Respondent would constantly go off topic to discuss other

topics. He testified the Respondent had a hard time following directions. He testified the training log should say the end time of services, and it does not. He testified at their first conversation, he told the Respondent not to take a job and not hold self out as a constable and not to give legal advice. He testified that the Respondent paid him \$1,000 in two (2) payments of \$500. He testified that he took the second check before filing his August complaint because he was still trying to train him. He testified that he did not accept the third check for \$500 from the Respondent because he felt bad for him. He testified in August, 2022, he told the Respondent to put the information in the log and told him in October, 2022 to sign the log. He testified that he continued to speak to the Respondent because he was waiting for clarification from the Department. He testified that he does not think the Respondent is qualified to be a constable.

Kimberly Precious was called by the Respondent. She testified that she is employed by the Department and reviews applications for constable licenses. She testified that she received DaSilva's August, 2022 correspondence and sent the standard complaint letter to the Respondent in November, 2022. She testified that does not know what happened during that time period. On cross-examination, she testified that DeFedele met with DaSilva during that time period. She testified that when she receives a complaint, she usually sends a complaint letter to the licensee.

The Respondent testified on his behalf. He testified he made a good faith effort to complete his training which started on June 27, 2022 with DaSilva. He testified that he met with DaSilva and talked about his training and accepted cases under his guidance. He testified that he made a good faith effort to generate the training log. He testified that it was distasteful that DaSilva spoke to him in October when DaSilva had told the Department in August that he, DaSilva, could not train him. He testified that he sent the log to DaSilva in October, 2022. He testified that DaSilva never documented what he, the Respondent, had not completed in his training. He testified that if

the license is not granted, he would like to have another trainer. He provided audio files of two (2) telephone conversations he had with DaSilva. Respondent's Exhibit Two (2) (November 13 and 29, 2022 recordings).

On cross-examination, the Respondent testified that he took handwritten notes on his training and then in October, 2022, DaSilva said the notes were not good enough, and he had to type up the log, so he did. He testified that he did take notes contemporaneously with his training. He provided five (5) pages of handwritten notes. Respondent's Exhibit Three (3). He testified that he used those notes and other notes that he had at home to write up his training log. He testified that he used the training log form from the Department website.

## V. DISCUSSION

### A. **Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, "the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. DEM*, 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

## **B. Standard of Review for an Administrative Hearing**

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the moving party. 2 Richard J. Pierce, *Administrative Law Treatise* § 10.7 (2002). Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail. *Id.* See *Lyons v. Rhode Island Pub. Employees Council* 94, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the “normal” standard in civil cases). This means that for each element to be proven, the fact-finder must believe that the facts asserted by the proponent are more probably true than false. *Id.* When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. v. Carbone*, 898 A.2d 87 (R.I. 2006).

## **C. Relevant Statute and Regulation**

R.I. Gen. Laws § 9-5-10.1 states in part as follows:

(a)(1) A person at least twenty-one (21) years of age who complies with the statute and the requirements set forth in any regulations promulgated by the department of business regulation may file an application with the department requesting that the applicant be certified as a constable. \*\*\*

(2) A person to be certified as a constable shall provide documentation and evidence satisfactory to the department of business regulations that the person possesses the specified minimum qualifications to include:

(i) Sixty (60) hours of earned credit from an accredited college, university, or institution; or

(ii) Four (4) years of honorable military service; or

(iii) Twenty (20) years of honorable service with a local, state, or federal law enforcement agency; and

(iv) United State citizenship; and

(v) Possession of a valid motor vehicle operator’s license; and

(vi) Successful completion of unlawful drug use screening; and

(vii) Successful completion of psychological testing approved by the department of business regulation.

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(3) Training.

(i) Following review of the application, the board shall determine whether the applicant should be recommended for training to be conducted by a volunteer training constable. If the board determines that training is appropriate, the applicant shall be assigned to a training constable who shall be a constable in good standing for a minimum of ten (10) years and who is approved by the department.

(ii) Training shall consist of a minimum of ninety (90) hours to be completed no sooner than ninety (90) days from the date of the referral by the board.\*\*\*

(iii) Within thirty (30) days from the conclusion of training, a written report shall be submitted by the training constable to the board with a copy to the department that reflects the dates and times of training and comments on the aptitude of the trainee.

(iv) If the board concludes that training is not appropriate or if the report of the training constable concludes that the applicant does not have the aptitude to perform the duties of a constable, the board shall so inform the department which shall deny the application on that basis.

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(5) Final review. The department shall review the application, training record, test scores, and such other information or documentation as required and shall determine whether the applicant shall be approved for certification and the person authorized to serve process in the state.

#### 230-RICR-30-40-1, *Certified Constables* regulation (“Regulation”)

provides in part as follows:

##### 1.5 Licensing

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D. Training. Pursuant to R.I. Gen. Laws § 9-5-10.1(3)(i), any applicant that is recommended by the Board for training as a Certified Constable after review of his or her application may be assigned the Training Constable identified in § 1.5(B)(5) of this Part or a Training Constable randomly assigned by the Department pursuant to § 1.13 of this Part.

1. Applicants who are recommended by the Board for training must complete ninety (90) hours of training no sooner than ninety (90) days of recommendation by the Board, pursuant to R.I. Gen. Laws § 9-5-10.1(b)(3)(ii).

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2. An applicant must actively participate in the constable activity in which the Training Constable is involved. An applicant’s observation of his or her Training Constable’s training activity is permitted provided that the applicant is in such physical proximity to the Training Constable to understand the content and context of the Training Constable’s actions and communications.

3. The applicant must wear his or her Trainee Identification at all times during his or her training with his or her Training Constable.

4. Upon completion of the applicant’s training, the Training Constable must submit:

a. A letter with comments on the aptitude of the applicant;



- b. A training log for the applicant's training period on a form provided by the Department; and
  - c. Verification of the Certified Constable applicant's compliance with § 1.13(A)(3) of this Part.
5. Training Log Requirements
- a. The training log must include without limitation:
    - (1) The dates and times the applicant trained,
    - (2) The Court from which the particular summons, civil arrest or other order originated,
    - (3) The time the particular summons, civil arrest or other order was served or acted upon, and
    - (4) A detailed description of the training session.
  - b. The training log must be submitted within thirty (30) days of the last day of the applicant's training.

#### **D. Arguments**

The Department argued that the Respondent did not complete the required 90 hours of training. It also argued that the Respondent did not correctly fill out the training log and held himself out as a constable when he was not. It also argued that the training was not completed to the satisfaction of the Department and the Consent Agreement.

The Respondent argued that he made a good faith effort to receive training from DaSilva. He argued that he completed the training log at the direction of DaSilva, and only accepted work at direction of DaSilva and passed it on to him. He argued that he turned on previous marketing on social media and that DaSilva was alright with that.

#### **E. Whether the Respondent's Application Should be Denied**

Paragraph 8(b) of the Consent Agreement required that the Respondent successfully complete training in accordance with R.I. Gen. Laws § 9-5-10.1(b)(3). Paragraph 8(c) required the "satisfactory performance of the requirements set forth in ¶8(b) and the receipt of sufficient and appropriate documents evidencing the same." The statutory requirement for the 90 hours of training is described in §1.5 of the Regulation. Thus, the training log must include dates and times

the applicant trained, the Court from which the particular summons originated, the time the particular summons was served or acted upon, and a detailed description of the training session.

The Respondent's training log is 16 pages. The total numbers of hours listed is 96.5 (one page does not list a number of hours). The training log is pre-printed to have space to enter the date, the court, and the type of service, time, and notes. Only two (2) pages include information about the different summons being served. Three (3) are listed for July 16, 2022 and three (3) are listed for July 22, 2022. Those two (2) days are listed as eight (8) hours each. For the six (6) summons, no time is given for the time of service. The court is listed for each summons, but the type of summons is not listed. The Respondent's handwritten notes from which he derived information for the log lists some summons but do not include the date or time for any of them.

Almost the rest of the training log indicates that the Respondent was studying materials about being a constable. However, one page lists 8.5 hours on October 24, 2022 for the time spent by the Respondent transcribing handwritten notes and calculating the hours spent with DaSilva. Thus, the Respondent included as part of his training, the time to write up his log. Writing up the log is to show that an applicant has completed training, but it is not part of the training.

The Respondent did not explain when he testified why the times for service and the types of service were missing from the training log. He did not explain why the log had hours for transcribing notes and copying information from the constable's manual. Rather the Respondent offered that he made a good faith effort to comply. However, the issue is not the effort but rather whether there has been compliance with the statutory and regulatory requirements. The Respondent did not provide any evidence that he completed 90 hours of training.

The Respondent felt it was unfair that DaSilva spoke to him after DaSilva initially contacted the Department in August, 2022 regarding DaSilva's issues with training. Indeed, the Respondent

even recorded two (2) telephone conversations that he had with DaSilva.<sup>2</sup> During the conversations, DaSilva and the Respondent spoke about training and the log and the payment checks. Regardless of the conversations, the issue is whether the Respondent met the statutory requirements for training and otherwise complied with the Consent Agreement and statutory and regulatory requirements. What DaSilva said or did not say when speaking to the Respondent does not change whether the Respondent complied with those requirements.

Indeed, DaSilva told the Department and testified that the Respondent was not qualified to be a constable. R.I. Gen. Laws § 9-5-10.1(3)(iv) provides that a basis for a denial an application is if a training constable finds that an applicant does not have the aptitude to be a constable. Here, DaSilva testified that the Respondent was not qualified to be a constable. His testimony was based on his experience with the Respondent from June to November, 2022 as he testified to at hearing.

In addition to the deficient training log, the Respondent misrepresented himself as a constable on his own website and Facebook. On November 10, 2022, the Respondent's own website called him a "State Constable." It also listed him as a "Former Rhode Island Constable." The Respondent's Facebook page listed him as a "State Constable" since June 27, 2022. Department's Exhibits Six (6) and Seven (7). The Respondent was training as a constable. He was not a Certified Constable. Indeed, § 1.3(D)(3) of the Regulation requires that applicants must wear their training identification during their training with their Training Constable. The Respondent was training as a constable but held himself out on social media as Certified Constable.

At hearing, the Respondent did not testify about his social media, but in his closing, he wrote that he turned on his old website, and DaSilva was alright with this. Thus, he excused his misrepresentations on his website by saying he turned on his old website and DaSilva approved it.

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<sup>2</sup> One recording was a 30 minute conversation on November 13, 2022, and the other recording was a 52 minute portion of a conversation on November 29, 2022. Respondent's Exhibit Two (2) (audio of telephone conversations).

Assuming that the Respondent did speak to DaSilva about his old website, such a conversation does not mean that DaSilva said it was OK for the Respondent to misrepresent his status as a constable. If such a conversation occurred, it may have just been about a website. (Indeed, DaSilva has no authority to allow the Respondent to misrepresent himself as a constable on his website). The Respondent appears not to understand his misrepresentation but rather excuses it with baseless reasons. His misrepresentation is a violation of R.I. Gen. Laws § 9-5-10.1 as the Respondent is and was not a Certified Constable.

There are several grounds to deny the Respondent's Application. They are as follows: 1) He did not complete 90 hours of training; 2) He failed to complete the training log in that it was deficient in terms of what services he made and did not demonstrate 90 hours of training; 3) He misrepresented his status as a training constable on social media; 4) DaSilva found him not qualified to be a constable; and 5) the Respondent failed to comply with ¶8(c) of the Consent Agreement as he did not satisfactorily comply with the statutory training requirements set forth in ¶8(b) nor provide the appropriate documentation.

Based on the foregoing, the Respondent has not complied with the Consent Agreement nor the relevant statutory and regulatory provisions to be registered as a constable.

## **VI. FINDINGS OF FACT**

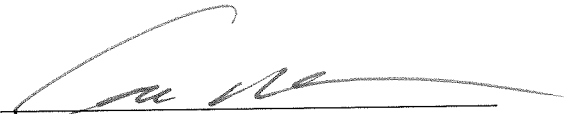
1. An Order to Show Cause was sent by the Department to the Respondent on May 12, 2023.
2. A hearing was held on July 14 and September 27, 2023. Briefs were timely filed by October 18, 2023.
3. The Respondent did not complete 90 hours of training as required by the relevant statute and Regulation and Consent Agreement.

4. The Respondent's training log was deficient.
5. The Respondent misrepresented himself as a constable on his social media sites.
6. The Respondent's training constable found that he was not qualified to be a constable.
7. The Respondent did not satisfactorily comply with ¶8(b) and ¶8(c) of the Consent Agreement
8. The facts contained in Section IV and V are reincorporated by reference herein.

**VII. CONCLUSIONS OF LAW**

Based on the foregoing, the undersigned recommends that the Respondent's application for Certification as a constable be denied pursuant to R.I. Gen. Laws § 9-5-10.1.

Entered this day 18 November, 2023.

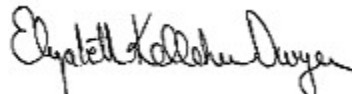
  
 Catherine R. Warren, Esquire  
 Hearing Officer

**ORDER**

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

         ADOPT  
          REJECT  
          MODIFY

Dated: 11-01-2023

  
 Elizabeth Kelleher Dwyer, Esquire  
 Director

**NOTICE OF APPELLATE RIGHTS**

**THIS ORDER CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.**

**CERTIFICATION**

I hereby certify that on this 1st day of November, 2023, that a copy of the within decision was sent by first class mail, postage prepaid, and certified mail to Mr. John P. Silvaggio, 126 Hedley Avenue, Johnston, R.I. 02919 and by electronic delivery to the Respondent at jsilvaggio@gmail.com and by electronic delivery to Sara K. Tindall-Woodman, Esquire, and Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI.

*Megan Mikara*  
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