

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
DIVISION OF COMMERCIAL LICENSING
1511 PONTIAC AVENUE, BLDGS 68-69
CRANSTON, RHODE ISLAND 02920**

IN THE MATTER OF:	:	
	:	
MICHAEL CLEMENTE,	:	DBR NO. 18CN003
	:	
RESPONDENT.	:	

CONSENT AGREEMENT

The Department of Business Regulation (“Department”) enters into this Consent Agreement with Michael Clemente (“Respondent”) to resolve the above-captioned matter pursuant to its authority under R.I. Gen. Laws § 42-35-9(d).

It is hereby agreed by and between the Department and Respondent that:

1. Respondent holds Rhode Island Certified Constable License No. CNS.0006042, which was first issued by the Rhode Island District Court (“District Court”) in 2004, and which expires on July 31, 2019.
2. On or about January 12, 2018, the Department’s Division of Commercial Licensing (“Division”) received a complaint against Respondent which alleged unprofessional behavior during an eviction. Various photographs and audio recordings of conversations between Respondent and Complainant were attached to the Complaint.
3. On or about February 16, 2018, the Complaint was sent to Respondent for a response, which the Division received on February 27, 2018. Respondent denied and disputed the allegations in the Complaint and asserted that he behaved appropriately at all times during the eviction.
4. The Division provided Respondent’s response to the Complainant who, thereafter, submitted a response on or about April 5, 2018.
5. The Division reviewed the Complaint, associated evidence, Respondent’s response, and Complainant’s rebuttal. The Division’s investigation revealed that the majority of the allegations were factual disagreements between the Respondent and Complainant that were not significant enough to merit further investigation. However, the Division found some parts of Respondent’s

conversations with Complainant on the audio recordings to be inappropriate, especially the following:

- a. Respondent stated that he had the same power as a sheriff and that he could kick the door down even though he took no such action.
- b. Respondent told Complainant about a prior eviction he conducted in which the woman who was going to be evicted committed suicide.
- c. Respondent told Complainant why he carried a pistol and discussed a prior altercation during his work as a Certified Constable in which he thought about using his weapon.
- d. Respondent told Complainant his age and that he was separated from his wife. Respondent asked about the age of Complainant's children.
- e. Respondent discussed Christianity with Complainant and asked her to pray with him.

6. On June 18, 2018, Respondent attended the Certified Constables' Board ("Board") meeting during executive session to discuss the allegations in the Complaint and the concerns identified by the Division above. After reviewing the evidence and Respondent's statements during the meeting, the Board concluded that:

- a. Respondent failed to take control of the premises during the eviction by allowing Complainant to remain on premises and return to premises after the Respondent took possession.
- b. Respondent made inaccurate statements about his authority as a Certified Constable.
- c. Respondent engaged in unnecessary and unprofessional conversations with Complainant in which he shared personal information, discussed his religion, engaged in prayer and talked about problems he had in past evictions involving a suicide and the use of weapons.
- d. Respondent carried an unconcealed weapon on him during the evictions.
- e. Respondent sounded as if he generally remained calm during the conversations that were recorded.

7. There is no record of discipline involving the Respondent since Certified Constable Licenses were transferred to the Department from the District Court in September 2015. However, Respondent's licensing history with the District Court reveals that six (6) complaints were filed from 2005 to 2012, but only the following two (2) complaints resulted in discipline.

- a. On April 18, 2006, Respondent was privately censured by the District Court in a complaint in which his behavior was found to be unprofessional and disruptive and he was ordered to send a letter of apology to all parties involved in the complaint.
 - b. On December 12, 2006, Respondent's license was placed on probation for three (3) months after misusing the police department and not properly identifying himself as a constable.
8. R.I. Gen. Laws § 9-5-10.1(a) provides:

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. Once issued by the department, such certification shall be effective for a period of two (2) years or until such approval is withdrawn by the department.

9. R.I. Gen. Laws § 9-5-10.3(b) provides: "Certified constables shall have no power or authority other than to serve process and execute writs as provided by this section."

10. R.I. Gen. Laws § 9-5-10.5(a)(4) provides:

Upon the receipt of a written complaint, request of the board, request of a judge of any court, or upon its own initiative, the department shall ascertain the facts and, if warranted, hold a hearing for the reprimand, suspension, or revocation of a certification. The director, or his or her designee, has the power . . . to suspend or revoke a certification or place an applicant on probation for any of the following reasons:

.....

(4) Where a certified constable, in performing or attempting to perform any of the acts mentioned in this section, is found to have committed any of the following:

(i) Inappropriate conduct that fails to promote public confidence, including failure to maintain impartiality, equity, and fairness in the conduct of his or her duties;

(ii) Neglect, misfeasance, or malfeasance of his or her duties;

(iii) Failure to adhere to court policies, rules, procedures, or regulations;

(iv) Failure to maintain the highest standards of personal integrity, honesty, and truthfulness, including misrepresentation, bad faith, dishonesty, incompetence, or an arrest or conviction of a crime.

11. Respondent's license has not been subject to any discipline since 2006 and he has cooperated with the investigation into the instant matter.

12. It is the Department's position that Respondent's failure to take control of the premises during the eviction and unprofessional conversations with Complainant violated the prohibitions contained in R.I. Gen. Laws § 9-5-10.5(a)(4)(i), (ii) & (iv).

13. To affect a timely and amicable resolution of this matter without an administrative hearing, the parties agree as follows:

- a. Respondent shall participate in two evictions conducted by a Certified Constable selected by the Department in order to review appropriate conduct and protocol by June 30, 2019.
- b. Respondent shall conduct himself in a professional manner in performing his duties as a Certified Constable and shall refrain from discussing his personal information, stories about other cases or evictions, use of weapons or suicides.
- c. Respondent shall not discuss religion or engage people in prayer in the course of his duties as a Certified Constable.
- d. Respondent shall comply with all applicable laws related to carrying firearms in this state. In the event of any safety concerns, Certified Constables should contact local law enforcement.

14. The Department and Respondent agree that this Consent Agreement and its terms represent the final determination of this matter.

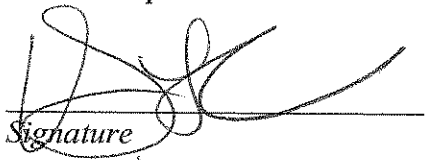
15. *Waiver of Hearing and Appeal.* By agreeing to enter into this Consent Agreement, Respondent knowingly and voluntarily waives any right to an administrative hearing in the instant matter and waives any right to pursue an appeal to the Superior Court under the Rhode Island Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

16. *Enforcement.* If Respondent fails to comply with any term or condition of this Consent Agreement within any applicable time period set forth herein, Respondent will be in violation hereunder and the Department shall be entitled to immediately take enforcement or other action in accordance with applicable law. Any such enforcement action would be subject to administrative procedures including notice and opportunity for hearing in accordance with the Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

17. *Compliance; Laws.* Compliance with the terms of this Consent Agreement does not relieve Respondent of any obligation to comply with other applicable laws or regulations administered by or through the Department or any other governmental agency.

18. *Notice to Court:* In accordance with R.I. Gen. Laws § 9-5-10.5(a)(5), upon issuance, a copy of this Consent Agreement will be forwarded to the Chief Judge of the District Court.

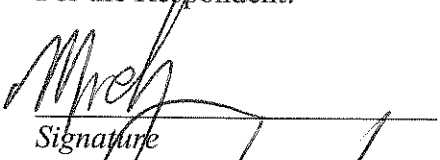
For the Department:


Signature

Date: 4/4/19

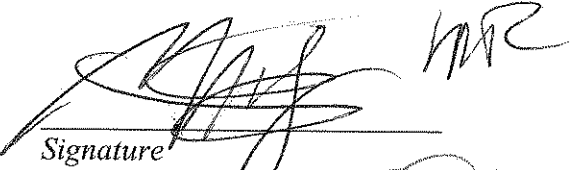
Donna Costantino
Associate Director,
Division of Commercial
Licensing and Regulation

For the Respondent:


Signature

Date: 3/26/19

Michael Clemente
Respondent


Signature

Date: Forrest C. Crooks

Forrest C. Crooks, Esq. 3/30/19
Counsel for Respondent

CERTIFICATION

I hereby certify on this 4th day of *April* 2019, that a copy of the within Consent Agreement was sent by first class mail, postage prepaid, to:

Forrest C. Crooks, Esq. Crooks & Sparr, LLC 293 South Main St., Suite 1 Providence, RI 02903	Michael Clemente PO Box 626 West Warwick, RI 02893
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AND BY E-MAIL TO:

1. Forrest C. Crooks, Esq., (fcrooks1@verizon.net)
2. Donna Costantino, DBR Associate Director
3. Kimberly Precious, DBR Implementation Aide
4. Amy Stewart, Esq., DBR Senior Legal Counsel



A handwritten signature in cursive script, appearing to read "Amy Stewart", is written over a horizontal line.