



**WITNESSES**

**For Petitioners:** Jamyan Brooks, Petitioner  
Jackie Poole, Petitioner

**For Respondent:** Irene Phipps, Animal Control Manager

**EXHIBITS**

**For Petitioners:** No Exhibits were presented.

**For Respondent:** Exhibits 1 through 9 were submitted and admitted.

**BASED UPON** careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following Findings of Fact. In making these Findings of Fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in the case.

**FINDINGS OF FACT**

1. Petitioners Jamyan Brooks and Jackie Poole are residents of Orange County, North Carolina. They reside at 8006 Rogers Road, Chapel Hill, North Carolina 27516.
2. Respondent Orange County, is a political subdivision of the State of North Carolina, organized and operating as a county government, pursuant to North Carolina General Statute §153A-10 and § 153A-11.
3. In 2005, Mr. Brooks received citations for violations of the Orange County Animal Control Ordinance. Orange County Animal Services filed a Complaint for Money Owed in Small Claims Court in January 2006 against Mr. Brooks for failure to pay those citations. Mr. Brooks was served, and the case was heard by a Magistrate in Small Claims Court. The Magistrate granted judgment against Mr. Brooks in favor of Orange County in the amount of \$305.00—\$80.00 for court costs and \$225.00 for the violations plus 8% interest.

4. Since the award of judgment against Mr. Brooks, interest has accrued and the total amount due on the judgment is approximately \$420.00. As of this date, the judgment is still active.

5. In 2006, Ms. Poole received a citation for a violation of the Orange County Animal Control Ordinance. Orange County Animal Services filed a Complaint for Money Owed in Small Claims Court in March 2006 against Ms. Poole for failure to pay that citation. Ms. Poole was served, and the case was heard by a Magistrate in Small Claims Court. The Magistrate granted judgment against Ms. Poole in favor of Orange County in the amount of \$180.00—\$80.00 for court costs and \$100.00 for the violations plus 8% interest.

6. In 2007, Ms. Poole received a citation for a violation of the Orange County Animal Control Ordinance. Orange County Animal Services filed a Complaint for Money Owed in Small Claims Court in October 2007 against Ms. Poole for failure to pay that citation. Ms. Poole was served, and the case was heard by a Magistrate in Small Claims Court. The Magistrate granted judgment against Ms. Poole in favor of Orange County in the amount of \$190.00—\$90.00 for court costs and \$100.00 for the violations plus 8% interest.

7. Since the award of judgments against Ms. Poole, interest has accrued and the total amount due on the 2006 and 2007 judgments are approximately \$230.00 and \$227.00 respectively. As of this date, the judgments are still active.

8. On or about January 25, 2012, the County sent written notices to Petitioner Poole and to Petitioner Brooks, informing them that it intended to submit the debt owed by each of them to collection by setoff as provided by Chapter 105A of the NC General Statutes, the Setoff Debt Act. The notice informed the Petitioners of a collection assistance fee, that the debtor has a right to contest the matter, the procedure for requesting a hearing to do so, and that failure to request a hearing will result in setoff of the debt.

9. Petitioner Brooks testified that he did not live at the address the January 25<sup>th</sup> letter was mailed to and did not get the letter. He stated that he did request a hearing and knew to be at a hearing as a result of a conversation with his mother, Petitioner Poole. Both Petitioners Brooks and Poole challenged issues that had been before the Magistrate including dog ownership issues and Orange County Animal Control Officer interactions regarding the violations and notices they received fines for. They understood from the Undersigned that the Office of Administrative Hearings was not the proper appeals forum regarding Small Claims Court decisions. Petitioners Brooks and Poole testified that they did not appeal the decisions rendered in Small Claims Court.

10. Petitioners exercised their right to request a hearing to contest the setoff. A hearing was scheduled and occurred on Tuesday, March 6, 2012. Petitioners attended the hearing. The County sent Petitioners a letter on March 7, 2012, providing notice that the debt had been upheld. This notice informed Petitioners of their right to file a petition for a contested case if they disagreed with the decision of the Hearing Officer.

**BASED UPON** the foregoing findings of fact and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following:

### CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case regarding adherence by Respondent to the requirements of the Setoff Debt Collection Act.

2. The Office of Administrative Hearings (OAH) does not have jurisdiction over the issue of whether Petitioners were in violation of the Orange County Control Ordinances which were previously addressed by the Parties before a Magistrate in Small Claims Court and which appeal lies through other courts.

3. To the extent that the findings of fact contain conclusions of law, or that the conclusions of law are findings of fact, they should be so considered without regard to the given labels.

4. “The North Carolina courts have generally allocated the burden of proof in any dispute on the party attempting to show the existence of a claim or cause of action, and if proof of his claim includes proof of negative allegations, it is incumbent on him to do so.” *Peace v. Empl. Sec. Com’n of N.C.*, 349 N.C. 315, 507 S.E.2d 272 (1998) citing *Johnson v. Johnson*, 229 N.C. 541, 50 S.E.2d 569 (1948). Petitioners in this case carry the burden of proof. To meet this burden, Petitioner must show that Respondent substantially prejudiced its rights and exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule. “The party with the burden of proof in a contested case must establish the facts required by G.S. 150B-23(a) by a preponderance of the evidence.” *Britthaven v. N.C. Dept. of Human Resources*, 118 N.C. App. 379, 455 S.E. 2d 455, rev. den., 341 N.C. 418, 461 S.E. 2d 754 (1995).

5. In accordance with *Painter v. Wake County Bd of Ed.*, 217 S.E.2d 650, 288 N.C. 165 (1975), absent evidence to the contrary, it will be presumed that “public officials will discharge their duties in good faith and exercise their powers in accord with the spirit and purpose of the law. Every reasonable intendment will be made in support of the presumption.” See also *Huntley v. Potter*, 122 S.E.2d 681, 255 N.C. 619 (1961). The burden is upon the party asserting the contrary to overcome the presumption by competent and substantial evidence. “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Rusher v. Tomlinson*, 119 N.C. App. 458, 465, 459 S. E. 2d 285, 289 (1995), *aff’d*, 343 N.C. 119, 468 S.E. 2d 57 (1996); *Comm’r of Insurance v. Fire Insurance Rating Bureau*, 292 N.C. 70, 80, 231 S.E.2d 882, 888 (1977). In weighing evidence which detracts from the agency decision, “[i]f, after all of the record has been reviewed, substantial competent evidence is found which would support the agency ruling, the ruling must stand”

*Little v. Bd. of Dental Examiners*, 64 N.C. App. 67, 69, 306 S.E.2d 534, 536 (1983)(citations omitted).

6. The Petitioners are debtors as set out in North Carolina Gen. Stat. § 105A-2. Pursuant to North Carolina Gen. Stat. § 105A-3, Respondent may submit a debt owed to it for collection, provided it establishes the debt by following the procedure provided in North Carolina Gen. Stat. § 105A-5.

7. The testimony and evidence at the hearing showed that the Respondent complied with the statutory requirements of the Setoff Debt Collection Act. A valid debt was established based on judgments obtained in Small Claims Court. The County sent written notice to the Petitioners of its intention to setoff the debt, a hearing was held at the request of the Petitioners to contest the proposed setoff, and the decision of the hearing officer was sent to the Petitioners, which included information detailing their right to file a petition for a contested case.

**BASED UPON** the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following:

### **DECISION**

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above.

Based on those conclusions and the facts in this case, the Undersigned holds that the Petitioners have failed to carry their burden of proof by a greater weight of the evidence that Respondent did not properly comply with the requirements of the Setoff Debt Collection Act. The finder of fact cannot properly act upon the weight of evidence, in favor of the one having the *onus*, unless it overbear, in some degree, the weight upon the other side. Petitioners' evidence does not overbear in that degree required by law the weight of evidence of Respondent.

### **NOTICE**

**This is a Final Decision** issued under the authority of N.C. GEN. STAT. § 150B-34.

**UNDER** the provisions of NORTH CAROLINA GENERAL STATUTES Chapter 150B, Article 4, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code

03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

**IT IS SO ORDERED.**

This the 8th day of November, 2012.

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Augustus B. Elkins II  
Administrative Law Judge