

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13SOS10113

<p>TRVUUN B. ALSTON, Petitioner,</p> <p>v.</p> <p>NORTH CAROLINA DEPARTMENT OF THE SECRETARY OF STATE, Respondent.</p>	<p>FINAL DECISION GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT</p>
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THIS MATTER is before Beecher R. Gray, Administrative Law Judge, on Respondent's Motion for Summary Judgment filed in the Office of Administrative Hearings on June 06, 2013. Petitioner has not filed a response to the motion and has not responded to either of two orders for prehearing statements. Having considered the motion, the legal memorandum filed by counsel, and the whole record, including certified criminal records for Petitioner, I find that Respondent's Motion for Summary Judgment should be granted.

UNDISPUTED FACTS OF RECORD

1. On October 8, 2012, Respondent received Petitioner's Application for Initial Appointment as a North Carolina Notary Public. Petitioner answered "Yes" to question 15 of the application, which asks, "Have you ever been convicted by any court of a felony or misdemeanor?"
2. Petitioner provided information to Respondent that she was found guilty of the misdemeanor offenses of assault on a government official/employee and resisting a public officer. Petitioner received two sentences of eighteen (18) months of probation each. Petitioner was released from probation on August 2, 2008.
3. Respondent denied Petitioner's application under N.C. Gen. Stat. §10B-5(d)(2) and 18 N.C.A.C. 07B.0201(b)(2)(30).
4. N.C. Gen. Stat. §10B-5(d)(2) states:
 - (d) The Secretary may deny an application for commission or recommission if any of the following apply to an applicant:
 - ...
 - (2) The applicant's conviction or plea of admission or nolo contendere to a felony or any crime involving dishonesty or moral turpitude. In no

case may a commission be issued to an applicant within 10 years after release from prison, probation, or parole, whichever is later.

5. 18 N.C.A.C. 07B.0201(b)(2)(30) states:

(b) Criminal Record. An applicant shall list on his or her application all misdemeanor and felony convictions related to crimes of dishonesty and moral turpitude. For purposes of this Chapter, those crimes include:

...

(2) Assault;

...

(30) Resisting Arrest.

6. A Notice of Contested Case and Assignment and an Order for Prehearing Statements were filed and served on the Petitioner and Respondent on April 4, 2013.
7. The Order for Prehearing Statements required the parties to file a Prehearing Statement within (30) days.
8. Petitioner did not file the Prehearing Statement within the time ordered.
9. A Second Order for Prehearing Statements was filed and served on Petitioner on June 6, 2013.
10. The Second Order for Prehearing Statements required Petitioner to file a Prehearing Statement by June 17, 2013.
11. Petitioner has not filed a Prehearing Statement or otherwise disputed the facts as alleged by Respondent.

BASED ON the foregoing Undisputed Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge has jurisdiction of the subject matter and the parties herein under the General Statutes of North Carolina, Chapters 150B and 10B.
2. There are no genuine issues of material fact in dispute.
3. As a matter of law, Respondent properly denied Petitioner's application for a North Carolina Notary Public Commission under N.C. Gen. Stat. §10B-5(d)(2) based on Petitioner being convicted of crimes of moral turpitude and being released from probation within 10 years of her application for a North Carolina Notary Public Commission.

BASED UPON the foregoing undisputed facts of record and conclusions of law, the undersigned hereby orders and decrees as follows:

FINAL DECISION

Respondent's Motion for Summary Judgment is GRANTED. Respondent's denial of Petitioner's application for a North Carolina Notary Public Commission is affirmed.

NOTICE

Under the provisions of North Carolina General Statute 150B-45, 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.

This the 8th day of August, 2013.

Beecher R. Gray
Administrative Law Judge