

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 SOS 18496

COUNTY OF FRANKLIN

LAURA HOLLINGSWORTH,)
 Petitioner,)
)
 vs.)
)
 NORTH CAROLINA DEPARTMENT of the,)
 SECRETARY of STATE,)
 Respondent.)

FINAL DECISION

THIS MATTER came on to be heard before the undersigned Administrative Law Judge, Augustus B. Elkins II, on May 6, 2014 in Raleigh, North Carolina. After presentation of testimony and exhibits, a ruling in favor of Petitioner was rendered and Petitioner’s counsel was directed to draw up a draft order for submission to Respondent before submission to the Undersigned. Mailing time was allowed for submissions including the day of mailing as well as time allowed for receipt by the Administrative Law Judge. The case was closed for further testimony and exhibits but the record was held open for submission of the draft order. A letter dated July 8, 2014 with an attached draft generally agreed on by both parties was filed with the Office of Administrative Hearings (OAH) on that same date and the record was closed.

APPEARANCES

For Petitioner: Perry Mastromichalis
Law Offices of Perry Mastromichalis
100 E. Six Forks Road, Suite 305
Raleigh, NC 27609

For Respondent: Brandon Truman
Assistant Attorney General
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602

ISSUE

Whether, on February 26, 2013, Latosha Tyson's signature upon a North Carolina Department of Motor Vehicle Title Application document was taken in the presence of Petitioner Laura Hollingsworth, a commissioned North Carolina Notary Public.

EXHIBITS

Respondent's Exhibits 1-3, 9-13, 16-18, and 31 were admitted into evidence.

WITNESSES

The following witnesses were called and examined by both parties: Latosha Tyson, Laura Hollingsworth, Walter Hollingsworth, Beaty Hollingsworth, Ozzie Stallworth, and Michael King (now Michael Jordan)

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 by a preponderance of the evidence. 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 this case.

FINDINGS OF FACTS

1. In April of 2013, Respondent received a complaint that Petitioner had notarized a document without the personal appearance of the signer, Latosha Tyson who specified to Respondent that she was alleging that Petitioner "altered the date on the title of 2/26/13 when I did not even come in to sign paperwork. . ." (R.Ex. 1)

2. On February 26, 2013, Ms. Tyson signed a document entitled *Buyers Guide* at Hollingsworth Auto Sales of Raleigh ("Hollingsworth Auto") where she "acknowledged receipt of the Buyers Guide at the closing of this sale," regarding a 2003 Range Rover automobile. (R.Ex.3)

3. Upon taking the stand in this case, Ms. Tyson proclaimed that she had been to Hollingsworth Auto Sales of Raleigh on February 20, 2013 to take a vehicle on a test drive. Ms. Tyson testified that she was not in Hollingsworth Auto on February 26 and had never seen any Buyers Guide of any kind.

4. Ms. Tyson stated that today at the hearing was the first time she had ever seen the Petitioner. She further testified that any and all documents bearing her signature stemming from Hollingsworth Auto were forgeries of her signature.

5. Both Petitioner's counsel and Respondent's counsel ended further inquiry of Ms. Tyson's very brief testimony and she was not recalled by either side. Ms. Tyson's testimony is not consistent with all other believable evidence in this case.

6. The preponderance of the evidence including testimony of several witnesses reveals that Ms. Tyson was present in Hollingsworth Auto and purchased a 2003 Land Rover Sport Utility Range Rover on February 26, 2013. She was properly presented the Title Application and Buyers Guide regarding the Range Rover. She knowingly signed all paperwork in front of Petitioner, a Notary Public.

7. A Cashier's Check dated February 27, 2013 drawn on the State Employees' Credit Union listed the remitter as Latosha A. Dozier with a Pay to the Order of Hollingsworth Auto Sales and in the Memo section stated that the purpose of the check was "Car Purchase Down Payment." (R.Ex. 31). It does not follow logic or reason that Ms. Tyson would render any payment of any vehicle in which she asserts under oath is the result of forged documents.

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.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this action. Petitioner timely filed the petition for contested case hearing. The parties received proper notice of the hearing in the matter.

2. To the extent that certain portions of the foregoing Findings of Fact constitute mixed issues of law and fact, such Findings of Fact shall be deemed incorporated herein by reference as Conclusions of Law.

3. A court need not make findings as to every fact that arises from the evidence and need only find those facts which are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, *aff'd*, 335 N.C. 234, 436 S.E.2d 588 (1993).

4. The issue before the Undersigned was whether or not Latosha Tyson's signature upon a North Carolina Department of Motor Vehicle Title Application document was taken in the presence of Petitioner. The Undersigned did not entertain any other issues involving third party disagreements other than the sole issue presented in this matter.

5. Petitioner, Laura Hollingsworth's testimony is credible and supported by a greater weight of the evidence that she completed the notary certificate on the Title Application document in the presence of Latosha Tyson on February 26, 2013, in compliance with Chapter 10B of the North Carolina General Statutes and 18 N.C. Administrative Code 07.

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following Final Decision.

FINAL 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. The Undersigned enters the following Final Decision based upon the preponderance of the evidence, having given due regard to the demonstrated knowledge and expertise of the Agency with respect to facts and inferences within the specialized knowledge of the Agency.

Based on those conclusions and the facts in this case, the Undersigned holds that Petitioner did carry her burden of proof by a greater weight of the evidence that Respondent was in error when it suspended Petitioner's Notary Public commission for four (4) months. The Undersigned finds that Respondent's actions were not willful but based on untruthful information that Respondent was unaware of during its investigation.

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 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. N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties.

In conformity with the Office of Administrative Hearings' Rules, 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.

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 is the 7th day of August, 2014.

Augustus B. Elkins II
Administrative Law Judge