

STATE OF NORTH CAROLINA  
COUNTY OF FORSYTH

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
13SOS18521

Cheryl A Tatum Petitioner  v.  DEPARTMENT OF SECRETARY OF STATE Respondent	<b>FINAL DECISION</b>
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This matter was heard by Administrative Law Judge J. Randolph Ward, at the Guilford County Courthouse in High Point on March 28, 2014. Following the hearing, the parties were given a period of thirty days from the date of the hearing, up to and including April 28, 2014, within which to submit Statements of Contentions in support of their respective positions.

**APPEARANCES**

Petitioner: Steven D. Smith, Attorney for Petitioner

Respondent: Lareena J. Phillips, Assistant Attorney General, Attorney for Respondent

**WITNESSES**

For Petitioner: Petitioner Cheryl Tatum and William R. Hicks

For Respondent: Ozie Stallworth, Director, Notary Enforcement Section

**EXHIBITS**

During the hearing, Respondent's Exhibits ("R. Exs.") 1 through 10 were entered into evidence without objection, as follows:

1. Complaint Form to Respondent including:
  - a. 2012 License Renewal Application
  - b. Response from attorney dated April 2, 2012
  - c. Email dated January 30, 2012
  - d. Notarized letter from Robert David Carr dated March 12, 2012
2. May 3, 2013 letter from Respondent to Petitioner
3. May 8, 2013 letter from Petitioner to Respondent
4. July 16, 2013 letter from Respondent to Petitioner with Order of Revocation

5. N.C. Gen. Stat. §10B-5
6. N.C. Gen. Stat. §10B-60
7. 18 NCAC 07B.0903
8. 18 NCAC 07B.0901
9. Pamela Nickles v. Dept. of Secretary of State, 09 SOS 03120
10. Elizabeth Jackson v. Dept. of Secretary of State, 09 SOS 05528

### **ISSUE**

Whether Respondent properly revoked Petitioner's Commission as a North Carolina Notary Public?

**UPON DUE CONSIDERATION** of the written Contentions of the parties, and the sworn testimony of each witness presented at the hearing, assessing its weight and credibility in light of the demeanor of the witness; the opportunity of the witness to see, hear, know, and recall relevant facts and occurrences; the interests and predisposition of the witness; whether the testimony of the witness is reasonable and consistent with the other credible evidence; taken together with the exhibits admitted, weighing all the evidence of the alleged facts or lack thereof, and the record as a whole, and the reasonable inferences to be drawn therefrom, the undersigned Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. Petitioner Cheryl A. Tatum was commissioned as a Notary Public on January 2, 2009, and remained in that capacity until her commission was revoked by Respondent N.C. Department of the Secretary of State, Notary Enforcement Section (hereinafter, "Respondent"), on July 16, 2013.
2. On January 30, 2012, Petitioner was the office manager and provided clerical services at an office building housing several small firms, including ProTech Restoration Services, Inc. ("ProTech"), a construction firm. ProTech was co-owned by contractors William R. Hicks and David K. Carr, and the latter's son, Robert David ("Robby") Carr, was a construction manager for the firm. Robby Carr was generally out of the office on jobs. He tended to communicate with people in the company through his father, and Mr. Hicks testified that even when a question was addressed directly to him, Robby Carr usually responded through his father.
3. As a building contracting firm, ProTech was required to maintain licensure with the North Carolina Licensing Board for General Contractors (hereinafter, "Contractors Licensing Board"), and its license application and renewals had to bear the signature of a licensed general contractor who owned or was employed by the firm, designated as the "qualifier." 21 N.C. Admin. Code 12.0205(b) & .0408(a). On January 30, 2012, ProTech's license was due for renewal. Robby Carr was the qualifier on the prior application and had signed before Petitioner, who had notarized the signature. Although Mr. Hicks also could have signed the renewal application as qualifier, David K. Carr

insisted that he wanted his son to do so for ProTech. Mr. Hicks testified there were professional benefits to signing in that capacity. He also described tensions and ongoing disagreements at that time between himself and David K. Carr, which eventually led to their business relationship dissolving later that year and subsequent lawsuits.

4. Petitioner was instructed that ProTech's renewal application needed to be mailed to the Contractors Licensing Board on Friday, January 30, 2012, and she made multiple attempts to arrange for Robby Carr to sign the application, including an inter-office e-mail to his father at 3:49 PM that day. At 4:29 PM, David K. Carr replied: "*You probably need to send them.* Robby is out of town and cannot get here to sign." (Emphasis added) (See R. Ex. 1)
5. David K. Carr subsequently called Mr. Hicks and Petitioner into his office and displayed "them" -- a 4-page renewal application bearing Robby Carr's signature -- and urged Petitioner to notarize it. Mr. Hicks added his signature as an "owner."
6. Petitioner notarized the signature of Robert David ("Robby") Carr on ProTech's license renewal application on Friday, January 30, 2012, without Mr. Carr appearing in person before her, in violation of N.C. Gen. Stat. §10B-60(c)(1) (2012).
7. Petitioner testified that she did not know how Robby Carr's signature got on the renewal application; but that it matched his signature on the previous license application and that she recognized his signature from that and other documents signed before her for notarization. Mr. Hicks' testimony described David K. Carr as manipulative, and he specifically testified that it would have been in character for the elder Mr. Carr to have held back the application bearing his son's signature until late in the day to increase pressure on Petitioner to notarize the document without his son being personally present.
8. Based on all of the evidence, the undersigned finds that the fact that David K. Carr possessed the renewal application bearing Robby Carr's signature could reasonably cause Petitioner to believe that the signature was authentic.
9. Petitioner reasonably believed that Robert David ("Robby") Carr wanted her to notarize his signature on the subject renewal application, due to his signature in her presence on the prior application, the familiar appearance of the signature on the application, and the request of his father who she reasonably believed spoke for Robby Carr.
10. By appearance, the signatures purported to be that of Robert David ("Robby") Carr on the subject renewal application and on the notarized complaint letter of March 12, 2012 to the Contractors Licensing Board, relied on by Respondent in initiating this inquiry, could be signatures of the same person. (See R. Ex. 1)
11. There is no evidence that Petitioner acted out of any motive other than her business relationship with ProTech and its officers and employees.

12. Petitioner did not notarize Robert David (“Robby”) Carr’s signature with the intent to defraud any person or firm. Consequently, Petitioner did not commit forgery.
13. Mr. Hicks testified that signing an application as a qualifier was beneficial--e.g., a contractor cannot sign as qualifier if (s)he has not been a qualifier during the four years preceding the application--but that no contractor can sign as a qualifier for more than two companies, and Mr. Hicks testified that David K. Carr owned other companies. 21 N.C. Admin. Code 12.0205(b).
14. If ProTech’s renewal had not been “effected” in January 2012, the company’s “certificate of license” would have expired. NC Gen. Stat. 87-10(e). David K. Carr wanted his son to sign the application as the “qualifier” for his son’s benefit, and/or he did not want Mr. Hicks to be the “qualifier” for the company.
15. Based on the preponderance of the direct and circumstantial evidence, and the reasonable inferences that can be drawn therefrom, David K. Carr procured the signature of Robert David (“Robby”) Carr on the subject application, by whomever it was made, for this form’s intended purpose, with his son’s knowledge, consent, and authority. Consequently, Petitioner did not commit forgery.
16. Respondent produced a letter, dated March 12, 2012, over the notarized signature of “Robert David Carr,” addressed to the Contractors Licensing Board, “concerning [his] license qualifier status,” noting that his signature appeared as qualifier on ProTech’s application and alleging that he had “not worked for the company or authorized my name to be used as a qualifier since October 28, 2011,” and refers to the application as a “forgery.” (Emphasis in letter) (See R. Ex. 1) No evidence of the context for this letter was presented by Respondent, but it is consistent with a scenario in which Robert David (“Robby”) Carr had tried to act as qualifier for two of his father’s other companies while the ProTech license renewed with his signature remained in effect.
17. In light of all of the evidence, the “forgery” allegations against Petitioner in this letter are not worthy of belief. Most obviously, the claim that, “I...have not worked for the company...since October 28, 2011,” cannot be reconciled with the email exchange between Petitioner and David K. Carr on January 30, 2012 (See R. Ex. 1), or the consistent, credible, and uncontradicted testimony of the witnesses present when the application was prepared. Secondly, no plausible motive for a forgery on January 30, 2012--requiring David K. Carr as a malevolent co-conspirator--has been suggested. Finally, Mr. Stallworth testified that he made multiple attempts to interview both the Carrs and could not obtain their cooperation. The complaint filed with the Secretary of State was prepared and sent by an employee of the Contractors Licensing Board--presumably after unsuccessfully urging the putative victim to do it--some ten (10) months after Robby Carr’s complaint letter. The complaint contains no facts that were not in that letter or ProTech’s application, nor any elaboration to suggest that the Contractors Licensing Board had interviewed Robby Carr or acquired any information other than the letter on which to base the complaint.

18. On May 3, 2013, Respondent sent a letter to the Petitioner inquiring about the allegation “that [Petitioner] notarized the forged signature of Robert David Carr.” (R. Ex. 2) Petitioner responded May 8, 2013, with the admission that, although she was familiar with Robby Carr’s signature from witnessing and notarizing it numerous times, “He did not personally appear before me on January 30, 2012,” when she notarized David K. Carr’s “renewal with the signature on file.” Otherwise, Petitioner did not discuss the origin of the signature, as none of the questions in the letter specifically inquired about that.
19. The foregoing facts constituted ample grounds for Respondent to take disciplinary action against Petitioner. N.C. Gen. Stat. §10B-60(a) and (c)(1).
20. Petitioner was negligent in failing to require the personal presence of Robert David (“Robby”) Carr before notarizing his signature. 18 NCAC 07B .0901(13).
21. Other than the notarial statement that Robert David (“Robby”) Carr signed the document in Petitioner’s presence, there is no evidence that any fact stated in the application was false or misleading in any way. Consequently, there was no actual or potential monetary or other harm to the general public, or any group, individual, or client due to Petitioner’s negligence. 18 NCAC 07B .0901(3).
22. There is no evidence of Petitioner committing any other infractions, or engaging in any dishonest acts, or making dishonest statements before or during the investigation of this matter. 18 NCAC 07B .0901.
23. Petitioner instigated this proceeding pursuant to G.S. 10B-2 and 18 NCAC 07B .0907, and the parties were timely and properly served with notice of this hearing.
24. To the extent that portions of the following Conclusions of Law include findings of fact, such are deemed incorporated into these Findings of Fact.

### **CONCLUSIONS OF LAW**

1. To the extent that portions of the foregoing Findings of Fact include conclusions of law, such are deemed incorporated into these Conclusions of Law.
2. The parties and the controversy are properly before the Office of Administrative Hearings upon the Notary Public’s timely Petition appealing Respondent’s final agency decision of July 16, 2013, pursuant to N.C. Gen. Stat. §150B-23(a), Chapter 10B, and 18 NCAC 07B .0907.
3. N.C. Gen. Stat. §10B-60(a) & (c)(3) provides that, “The Secretary [of State] may issue a warning to a notary or restrict, suspend, or revoke a notarial commission” for specified acts, including “if the notary ... takes an acknowledgment or administers an oath or

affirmation without the principal appearing in person before the notary,” which is denominated “a Class 1 misdemeanor.”

4. Respondent properly determined that Petitioner’s error was an act of “negligence” within the meaning of 18 NCAC 07B .0901(13).
5. “[A]n intent to defraud is an essential element of forgery[.]” 15A N.C. Index 4th Forgery § 1. “[T]hree elements are necessary to constitute the offense of forgery: (1) There must be a false making or other alteration of some instrument in writing; (2) there must be a fraudulent intent; and (3) the instrument must be apparently capable of effecting a fraud. *State v. Greenlee*, 272 N.C. 651, 159 S.E.2d 22; *State v. Brown*, 9 N.C.App. 498, 176 S.E.2d 881.” *State v. Bauguess*, 13 N.C. App. 457, 461, 186 S.E.2d 185, 187 (1972); *State v. Guarascio*, 205 N.C. App. 548, 696 S.E.2d 704 (2010). Consequently, Petitioner did not commit forgery.
6. If the purported signer of a document “is a real person and actually exists, [to prove forgery] the State is required to show not only that the signature in question is not genuine, but *was made by defendant without authority.*” *State v. Phillips*, 256 N.C. 445, 448, 124 S.E.2d 146, 148 (1962). This is because the *law generally presumes that one signing another's name has authority to do so.*” 37 C.J.S. *Forgery* Sec. 80 (1943). (Emphasis added) Consequently, Petitioner did not commit forgery.
7. The lack of prior offenses, or of any record of acts of moral turpitude or dishonesty, and the absence of actual or potential damage to the public or individuals involved, weigh heavily in mitigation in determining appropriate discipline for Petitioner’s serious breach of an essential notarial duty.

### **FINAL DECISION**

Respondent’s finding that Petitioner, *by negligence*, breached her notarial duty to require a principal to appear personally before her before notarized his signature, in violation of N.C. Gen. Stat. §10B-60(c)(3), is AFFIRMED.

Based upon the foregoing, the undersigned orders that the Secretary of State suspend Petitioner’s Notarial Commission for a period of one (1) year, commencing July 16, 2013.

### **NOTICE**

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

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 the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the

contested case which resulted in the final decision was filed. **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 03.0102, 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 9th day of June, 2014.

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J. Randolph Ward  
Administrative Law Judge