

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 SOS 07239

Angel L Simpson Petitioner, v. NC Department of the Secretary Of State Respondent.	FINAL DECISION
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THIS MATTER came on for hearing before Hon. J. Randolph Ward, Administrative Law Judge, on January 26, 2016 in Raleigh, North Carolina. Following receipt of the parties' post-hearing submissions, this Decision was prepared.

APPEARANCES

For Petitioner: Angel L. Simpson, *pro se*
Lewis & Anderson
Chapel Hill, N.C.

For Respondent: Daniel S. Johnson
Special Deputy Attorney General
North Carolina Department of Justice
Raleigh, N.C.

ISSUE

Did Respondent act erroneously in denying Petitioner's 2015 application to be re-commissioned as a Notary Public?

EXHIBITS

Petitioner: 1. October 3, 2015 letter from attorney Susan H. Lewis
2. January 26, 2016 letter from attorney Christy Malott

Respondent: 1. May 15, 2015 application for re-commissioning

2. July 15, 2015 explanation of previous nondisclosure of conviction with documentation regarding Petitioner's 2007 DUI conviction in Georgia
3. September 30, 2015 decision denying Notary Public commission
4. Petition for Contested Case Hearing
5. 2010 Application for initial Notary Commission that states "no convictions"
6. Petitioner's Prehearing Statement
7. Respondent's Prehearing Statement and Document Constituting Final Agency Action

UPON DUE CONSIDERATION of the arguments of counsel; the exhibits admitted; and the sworn testimony of the witness; and, upon assessing the evidence in the record as a whole in accordance with the applicable law, the undersigned makes the following:

FINDINGS OF FACT

1. On April 23, 2007, in Atlanta, Georgia, the Petitioner Angel L. Simpson pled guilty to, and was convicted of, the misdemeanor of Driving Under the Influence of Alcohol, a charge substantially equivalent to the North Carolina offense of Driving under the Influence of alcohol.
2. Petitioner was sentenced to probation for a period of twelve (12) months, but was released early from probation on October 24, 2007.
3. In 2010, Petitioner applied for a commission as a Notary Public. On the Notary application, she inadvertently answered "No" to Question 15, which asked: "Have you ever been convicted by any court of a felony or misdemeanor? Have you been charged with an offense for which trial is still pending?" Respondent's Exhibit No. 5 (hereinafter, "R Ex 5").
4. In May 2015, Petitioner applied for recommissioning as a Notary Public. When answering the question on the application, "Have you ever been convicted by any court of a felony, a misdemeanor, or charged with an offense for which trial is still pending?," Petitioner answered "Yes." (R Ex 1 & 2.)
5. After further inquiry, the Respondent denied Petitioner's recommission as a Notary Public on September 30, 2015.
6. Petitioner timely appealed for a contested case hearing.

BASED UPON the foregoing Findings of Facts, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The parties and cause are properly before the undersigned. N.C. Gen. Stat. §§ 150B-1(e) and 150B-23.

2. To the extent that the foregoing Findings of Fact contain conclusions of law, or that the Conclusions of Law below are findings of fact, they should be so considered without regard to their given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011).

3. N.C. Gen. Stat. §10B-5 provides, in pertinent part:

(d) The Secretary may deny an application for commission or re-commission if any of the following apply to an applicant: *** (2) **In no case may a commission be issued to an applicant within 10 years after release from prison, probation, or parole, whichever is later.** (Emphasis added).

4. Respondent has the authority and duty to enforce the laws pertaining to commissioning of Notaries Public in this State.

5. “It is well settled that, where the language of the statute is clear and is not ambiguous, we must conclude that the legislature intended a statute to be implemented according to the plain meaning of its terms.” *Hylar v. GTE Prods. Co.*, 333 N.C. 258, 262, 425 S.E.2d 698, 701 (1993).

DECISION AND ORDER

Based upon the undisputed facts and the unambiguous statute, Respondent’s decision to deny Petitioner’s application for re-commission as a Notary Public must be, and is hereby, **AFFIRMED**.

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 21st day of April, 2016.

J Randolph Ward
Administrative Law Judge