

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 SOS 04106

<p>TIERA ANTWON WACTOR Petitioner</p> <p>v.</p> <p>NC DEPARTMENT OF THE SECRETARY OF STATE Respondent</p>	<p>FINAL DECISION ORDER GRANTING SUMMARY JUDGMENT FOR RESPONDENT</p>
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THIS MATTER is before the Honorable Donald W. Overby, Administrative Law Judge presiding, for consideration of Respondent's Motion for Summary Judgment filed with the Office of Administrative Hearings ("OAH") on July 25, 2016. A Request for Response to Motion was mailed to Petitioner at the address OAH has on file. To date, Petitioner has not filed a response.

Having considered the filings as well as matters of record appropriate for consideration, this Tribunal finds as fact and concludes as a matter of law that there exists no genuine issue of material fact and that this matter is appropriate for disposition by summary judgment.

Rule 56 of the North Carolina Rules of Civil Procedure provides that judgment shall be rendered if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that the party is entitled to judgment as a matter of law.

Under N.C. Gen. Stat. 10B-5(D)(2), the Secretary must deny a commission or recommission if the application is within 10 years after the applicant's release from prison, probation or parole, whichever is later.

On April 23, 2012, Petitioner pleaded guilty to and was convicted of misdemeanor failure to return rental property. As part of his sentence, the petitioner was placed on probation for 18 months. His probationary sentence for this charge ended on or about December 20, 2013.

The Petitioner's application for commission as a Notary Public was received on or about March 1, 2016, approximately 2 years after being released from probation. The Secretary denied Petitioner's application. Petitioner appealed the denial.

Petitioner's application was submitted less than 10 years after his release from the probation associated with his criminal conviction and per statute, denied. Accordingly, there is no genuine issue of material fact and, Respondent is entitled to judgment as a matter of law.

NOW THEREFORE, Respondent's Motion for Summary Judgment is **GRANTED**. This contested case is dismissed with prejudice.

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 it was enclosed in a wrapper and placed in an official depository of the United States Postal Service, as evidenced by the postmark date of the wrapper.** 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 11th day of August, 2016.

Donald W Overby
Administrative Law Judge