

STATE OF NORTH CAROLINA

HALIFAX COUNTY

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15-MIS-5295

GLORIA CAUDLE,

Petitioner,

v.

THE TOWN OF ENFIELD,

Respondent.

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FINAL DECISION

This matter came on for hearing before the undersigned on October 22, 2015, at the Historic Halifax County Courthouse, Commissioners Meeting Room. Petitioner Gloria Caudle ("Petitioner") appealed the Town of Enfield's ("Respondent") submission of a claim under the Setoff Debt Collection Act, G.S. § 105A-1, *et. seq.*, to the North Carolina Department of Revenue for money owed on account by Petitioner for utility services provided by Respondent.

APPEARANCES

For Petitioner: Gloria Caudle, *Pro Se*
203 Dr. Martin Luther King, Jr. Ave.
Enfield, North Carolina 27823

For Respondent: Kris Gardner, Esq.
Tharrington Smith, L.L.P.
150 Fayetteville Street, Suite 1800
Post Office Box 1151
Raleigh, North Carolina 27602-1151

WITNESSES

For Petitioner: Gloria Caudle

For Respondent: None

EXHIBITS

The following exhibits were received into evidence and considered by the Court:
Petitioner's Exhibits: A, A1, A2, A3, A4, A5, A5a, A6, A6a, A6b, B, B1, B2, B3, B4,
B5, B6, B7, B8, C, C1, C2, C3, D, E, E1, F, G, G1, G2

Respondent's Exhibits: 1 (*social security number redacted after exhibit introduced*)

The exhibits have been retained as part of the official record of this contested case.

ISSUES

The issue is whether the Respondent properly filed a claim against Petitioner with the N.C. Department of Revenue under the Setoff Debt Collection Act for money owed on account arising from utility services provided to Respondent and her nonprofit organization

Based upon the evidence presented and arguments made at the contested case hearing, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

In making the following findings of fact, the Court has considered the testimony and exhibits introduced at the hearing. The Court has weighed such evidence and has assessed the credibility of the witness by taking into account the appropriate and traditional factors for judging credibility, such as the demeanor of the witness, the manner and appearance of the witness, any interests, bias, or prejudice the witness may have, the apparent understanding and fairness of the witness, 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 credible evidence in the case. Based upon these standards, the Court makes the following findings of fact:

1. Respondent Town of Enfield is a municipal corporation organized and existing under Chapter 160A of the North Carolina General Statutes. It provides utility services to businesses and residents in town, including Petitioner/Faith House.

2. Petitioner is the chief organizer and primary representative of Faith House, Inc., a nonprofit organization incorporated in the State of North Carolina. Faith House's primary mission was to provide shelter and counseling to victims of domestic violence.

3. Petitioner served on the Town of Enfield Board of Commissioners for several years before the incorporation of Faith House. Petitioner resigned from the Board of Commissioners in or around November 2012. (**Ex. D**).

4. Utility bills for service provided to Faith House went unpaid. For several years, Respondent attempted to work with Petitioner/Faith House to find a reasonable solution. (*See Ex. C-C3*). Respondent and Petitioner/Faith House entered into repayment agreements in an effort to maintain utility service to Faith House while also enabling Respondent to collect money owed on the account. (*See Ex. G-G2*). The final repayment agreement was entered into on or about December 29, 2010. (**Respondent's Ex. 1**).

5. Petitioner has failed to make regular payments to Respondent pursuant to these repayment agreements despite multiple attempts by Respondent to modify the repayment terms and try to help Petitioner.

6. Respondent followed the procedure necessary to submit a claim against Petitioner under the Debt Setoff Collection Act. G.S. § 105A-1, *et. seq.* (See **Ex. A-A6**). The purpose of the submission is to redirect any potential income tax refunds that would otherwise be paid to Petitioner to instead be paid to Respondent to offset money owed on the utility account. At the time of the submission to Debt Setoff, Petitioner/Faith House owed Respondent approximately \$11,132.66 in outstanding utility bills. (**Ex. A**).

7. The Court finds that Faith House was the alter ego of Petitioner.

8. According to Petitioner, initially Faith House's Board of Directors met every month, but when questioned about specifics, Petitioner acknowledged that the Board did not meet every month.

9. Petitioner could not identify all of the members of the Faith House Board of Directors.

10. Petitioner stated that she explained the terms of the first repayment agreement to the Faith House Board of Directors but did not convene a meeting for Board approval despite testifying the Board met every month. (**Ex. G**) Despite the fact that Faith House's by-laws required Petitioner to obtain approval of the agreement from legal counsel, Petitioner failed to do so. (**Ex. B3**).

11. With respect to the second repayment agreement Petitioner did not get permission from the Faith House Board of Directors to enter into the agreement despite stating that the Board of Directors continued to have regular meetings. (**Ex. G1**) As required by the corporate by-laws, legal counsel did not review or approve this agreement either.

12. With respect to the third and fourth repayment agreements, Petitioner did not get permission from the Faith House Board of Directors to enter into the agreement. (**Ex. G2** and **Respondent's Ex. 1**) By this time, the Faith House Board of Directors were no longer conducting regular meetings. Legal counsel did not review or approve this agreement. Petitioner acknowledged that Faith House has never had legal counsel.

13. According to Petitioner, she did not have access to any of Faith House's meeting minutes or other records from the time of the second repayment agreement to the time Faith House closed its doors because the house was padlocked by the owner and the records have since been destroyed. (**Ex. G1**)

14. Petitioner's *Petition for a Contested Case Hearing* alleged Respondent's submission of the claim to the Department of Revenue under the Setoff Debt Collection Act was improper and without legal authority for the following reasons:

- a. Petitioner was ordered to pay a fine or civil penalty and her rights were otherwise substantially prejudiced; and
- b. Respondent failed to use proper procedure, acted arbitrarily and capriciously, and failed to act as required by law or rule.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over this case pursuant to Chapters 105A and 150B of the North Carolina General Statutes. *See, e.g.*, G.S. § 105A-9. To the extent that the Findings of Fact contain conclusions of law, or that the Conclusions of Law are findings of fact, they should be so considered without regard to the given labels.

2. Petitioner is a “debtor” under the Setoff Debt Collection Act. G.S. § 105A-2(3).

3. Respondent is a “Claimant agency” under the Setoff Debt Collection Act. G.S. § 105A-2(1)(b).

4. Petitioner has the burden of proof in this contested case and must satisfy that burden by a preponderance of the evidence. N.C. Gen. Stat. §150B-34(a).

5. Respondent followed the proper procedures for submitting a claim under the Setoff Debt Collection Act in this matter. G.S. § 105A-5.

6. Petitioner timely filed an appeal arising from Respondent’s submission. G.S. § 105A-9.

7. To the extent the utility debt at issue here was not a personal obligation of Petitioner, Petitioner was the *alter ego* of Faith House for the reasons cited above. Therefore, the Court finds that the corporate veil of Faith House should be pierced such that this debt is the personal liability of Petitioner for purposes of the Setoff Debt Collection Act. *Glenn v. Wagner*, 313 N.C. 450 (1985).

8. In particular, the Court concludes that:

- a. Petitioner completely dominated and controlled Faith House to the extent that Faith House did not have its own identity;
- b. Faith House was inadequately capitalized; and
- c. Faith House and Petitioner failed to recognize most corporate formalities and requirements of the organization’s bylaws.

9. As a result, Faith House was a “mere instrumentality” of Petitioner.

10. Respondent properly submitted its claim individually against Petitioner under the Setoff Debt Collection Act for money owed on the utility account.

FINAL DECISION

1. Petitioner failed to meet her burden of proof or burden of production to establish that Respondent ordered her to pay a fine or civil penalty, or that her rights were otherwise substantially prejudiced by Respondent.

2. Petitioner further failed to meet her burden of proof and burden of production to establish that Respondent failed to use proper procedure, acted arbitrarily and capriciously, and failed to act as required by law or rule.

3. Therefore, Petitioner's *Petition for a Contested Case* is hereby **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 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 the 2nd day of December, 2015.

Donald W Overby
Administrative Law Judge