

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 SOS 01881

<p>Atena Tavassoli Asgari Petitioner,</p> <p>v.</p> <p>NC Department of the Secretary of State Respondent.</p>	<p>FINAL DECISION</p>
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THIS MATTER comes before the Honorable Fred G. Morrison Jr., Senior Administrative Law Judge, upon consideration of Respondent’s Motion for Summary Judgment (“Motion”) filed July 28th, 2022. The Undersigned issued a Notice of Request for Response to Motion to Petitioner on July 29, 2022, which response was due to be filed on or before August 10, 2022. As of the date of this final decision, no response has been received. Accordingly, this matter is ripe for disposition and having reviewed the entire file, the Undersigned rules as follows:

FINDINGS OF FACT

1. On April 4, 2022, Petitioner filed an Application for Initial Appointment as a North Carolina Notary Public (Application) with the North Carolina Department of the Secretary of State.
2. In Petitioner’s Application for Initial Appointment as a North Carolina Notary Public, Petitioner listed a South Carolina mailing address of “5010 Calder Court, Indian Land, SC 29707.” Petitioner did not identify any residential address in North Carolina on the Application.
3. Additionally, although Section 11 of the Application provides space for applicants to identify the applicant’s occupation, employment status, employer, business mailing address, and county where employed, Petitioner did not identify any of the aforementioned; wrote “N/A” on the occupation line, checked the “unemployed” box, wrote “N/A” on the business/employer line, and wrote “N/A” on the line for county where employed.

4. As the Petitioner did not identify either her occupation, employment status, employer, business mailing address, or the county where she was employed in her application, Petitioner failed to identify any regular place of work in North Carolina.

5. The Application for Initial Appointment as a North Carolina Notary Public was denied on April 25th, 2022, because Petitioner's application did not provide any information to establish that she either lives in or has a regular place of business in North Carolina.

6. Petitioner timely filed an appeal from the Respondent's denial of her application.

CONCLUSIONS OF LAW

1. This contested case is subject to dismissal pursuant to N.C. Gen. Stat. §§ 1A-1, Rule 56, 150B-33(b)(3a), and 26 NCAC 03 .0101(a).

2. The parties are properly before the Office of Administrative Hearings, and jurisdiction and venue are proper.

3. 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 labels given. Any such findings of fact are hereby incorporated into this section as a conclusion of law. *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).

4. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." N.C.G.S. § 1A-1, Rule 56.

5. An Administrative Law Judge is authorized to grant summary judgment under the provisions of the North Carolina Administrative Procedure Act. *See* N.C.G.S. § 150B-34(e) (an administrative law judge may grant "summary judgment, pursuant to a motion made in accordance with G.S. 1A-1, Rule 56 . . .").

6. The moving party bears the burden of proving that there is no genuine issue of material fact. *Liberty Mut. Ins. Co. v. Pennington*, 356 N.C. 571, 579, 573 S.E.2d 118 (2002). The moving party may meet this burden "by proving an essential element of the opposing party's claim

does not exist, cannot be proven at trial, or would be barred by an affirmative defense” *Dobson v. Harris*, 352 N.C. 77, 83, 530 S.E.2d 829 (2000).

7. “If the movant successfully makes such a showing, the burden then shifts to the nonmovant to come forward with specific facts establishing the presence of a genuine factual dispute for trial.” *Pennington*, 356 N.C. at 579, 573 S.E.2d 118.

8. Thus, the opposing party must come forward with facts, not mere allegations, which controvert the facts set forth in the moving party's case, or otherwise suffer a summary judgment. *Frank H. Conner Co. v. Spanish Inns Charlotte, Ltd.*, 294 N.C. 661, 675, 242 S.E.2d 785, 793 (1978). See Also N.C. R. Civ. P. 56(e)¹

9. N.C.G.S. § 10B-5 states, in pertinent part, that:

(b) A person qualified for a notarial commission shall meet all of the following requirements:

(2) *Reside or have a regular place of work or business in this State.*

-and-

(d) The Secretary may deny an application for commission or recommission if any of the following apply to an applicant:

(1) Submission of an incomplete application or an application containing material misstatement or *omission of fact*. (emphasis added)

10. In the instant matter, Respondent offered evidence that Petitioner failed to provide any information in her April 4th, 2022, Application for Initial Appointment as a North Carolina Notary Public to establish either North Carolina residency or a regular place of work, business, or employment in North Carolina.

11. The Application for Initial Appointment indicated that the Petitioner was an unemployed South Carolina resident.²

¹ The responding party may not “rest upon the mere allegations or denials” within its pleadings, but “must set forth specific facts showing that there is a genuine issue for trial.”

² Even if, arguendo, this tribunal were to presume that Petitioner, for whatever reason, failed to present accurate information on her application, Respondent was still within its legal authority to deny the application for omission of such facts.

12. As the Petitioner did not identify either her occupation, employment status, employer, business mailing address, or the county where she was employed in her application, Petitioner failed to identify any regular place of work in North Carolina.

13. Since Petitioner's application did not provide any information to establish that she either lives in or has a regular place of business in North Carolina, the Application did not meet minimum requirements on its face as required by statute.

14. Respondent has established that there is no genuine issue of material fact that Petitioner's Application did not meet the minimum statutory requirements for appointment as a North Carolina Notary Public.

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, and pursuant to N.C. Gen. Stat. § 1A-1, Rule 56 of the North Carolina Rules of Civil Procedure, and N.C. Gen. Stat. § 150B-33(b), the Undersigned hereby **GRANTS** Respondent's Motion for Summary Judgment and **DISMISSES** the claims in Petitioner's contested case petition.

NOTICE OF APPEAL

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 as indicated by 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.

IT IS SO ORDERED.

This the 30th day of August, 2022.

A handwritten signature in blue ink that reads "Fred Gilbert Morrison Jr." The signature is written in a cursive style and is positioned above a solid blue horizontal line.

Fred G Morrison Jr.
Senior Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service.

Atena Tavassoli Asgari
5010 Calder Court
Indian Land SC 29707
Petitioner

Jeremy D Lindsley
Assistant Attorney General
NC Department of Justice
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Attorney For Respondent

This the 31st day of August, 2022.



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