

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
20 CTY 00292

Mohamad Kodaimati Petitioner, v. Town of Mint Hill Respondent.	FINAL DECISION
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THIS MATTER came on for virtual hearing before the undersigned, Selina Malherbe, Administrative Law Judge, on August 14, 2020. Respondent submitted a Proposed Decision, which the Undersigned has reviewed and where she is in agreement she has incorporated it into this Final Decision.

APPEARANCES

For Petitioner: Mohamad Kodaimati
Pro Se
4621 Quail Ridge Drive.
Mint Hill, NC 28227
kodaimati@gmail.com

For Respondent: Karen K Wolter
Bringewatt Wolter & Snover, PLLC
PO Box 453
Davidson, NC 28036
karen@bwsnclaw.com

ISSUES

THE PETITIONER alleges issues concerning violations of due process rights, selective persecution and violations of civil rights, harassment, and discriminatory treatment. These issues are outside the jurisdiction of the Office of Administrative hearings pursuant to N.C.G.S. § 150B-23(a) and were not considered.

The remaining issues for consideration are:

1. Whether Petitioner owes a debt to Respondent; and

2. If owed, the amount of the debt.

APPLICABLE STATUTE AND RULES

N.C.G.S. § 160A-175

N.C.G.S. § 160A-193

N.C.G.S. § 150A-23

N.C.G.S. § 105A

The Town of Mint Hill Code of Ordinances

EXHIBITS

Petitioner offered no exhibits for admission.

Respondent's Exhibits 1-10 were admitted into evidence.

WITNESSES

Mohamad Kodaimati

Margie Nichols

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, Mohamad Kodaimati and Margie Nichols, Code Enforcement Officer for the Town of Mint Hill, and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact the Undersigned has weighed all of the evidence and has assessed the credibility of witnesses by taking into account the appropriate factors for judging credibility, including but not limited to, the demeanor of the witness, any interest, bias, or prejudice the witness may have, 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 believable evidence in the case.

FINDINGS OF FACT

1. On April 25, 2012, the Mecklenburg County District Court Division-Small Claims entered Judgment in Action to Recover Money or Personal Property in a case No. 12 CVM 8152, Town of Mint Hill v. Mohamad Kodaimati. The Judgment entered ordered the Town of Mint Hill to recover from Mohamad Kodaimati the principal sum of \$3,950 along with interest in the amount of \$259.95. (Resp. Exhibit 2).
2. Said Judgment has never been satisfied and the pay-off amount of that Judgment as of October 17, 2019 is \$6,728.89. (Resp. Exhibit 2).
3. On October 17, 2017 a Civil Penalty Citation and Order to Abate Public Nuisance Violation under Housing & Property Maintenance and Nuisance Abatement Ordinance: Article II, Section 12-40 of the Mint Hill Code of Ordinances was issued to Petitioner for Failure to cut the high grass and weeds throughout Petitioner's property and seeking payment for Citation penalties in the amount of fifty dollars (\$50). (Resp. Exhibit 4) Petitioner failed to

appeal the Notice and Citation and further failed to pay the citation penalty due and failed to abate the Nuisance on the property. The Town of Mint Hill abated the Nuisance condition on the property pursuant to authority granted by NCGS § 160A-193.

4. Petitioner has not paid the Civil Citation penalty in the amount of \$50 to Respondent.
5. On December 5, 2017, pursuant to § NCGS 160A-193, the Town of Mint Hill filed a Notice of Lien against Petitioner, 17 -M- 9145 in the Superior Court of Mecklenburg County in the amount of \$250 and interest accruing thereon at the rate permitted by statute from the date of filing until paid stating as follows:

“The property located at 4621 Quail Ridge Drive, Mint Hill, NC 28227 (the “Property”) was declared a public nuisance in violation of Article II, Section 12-40 of the Town of Mint Hill’s Code of Ordinances. After proper notice, the record owner of the Property failed to abate the nuisance. Pursuant to authority granted by NCGS 160A-193 and the Town of Mint Hill’s Code of Ordinances, Art. II, Sect. 12-43(c), the Town of Mint Hill abated the nuisance condition. The owner of the property has failed to reimburse the Town for the expenses incurred in abating the nuisance. Accordingly, pursuant to Authority granted to the Town of Mint Hill by NCGS 160A-193 and the Town of Mint Hill’s Cod of Ordinances Art. II, Sect. 12-43, the Town claims a lien on the Property in the amount of \$250.00 (two hundred and fifty dollars) for the following work:

- Cut the overgrowth of grass and weeds throughout the entire property and remove clippings when completed.” (Resp. Exhibit 5).

6. Petitioner has not satisfied the Lien nor paid the debt identified in Respondent’s Exhibit 5. With interest as of October 31, 2019 the amount due and owing on this debt is \$286.66.
7. On September 12, 2019 a Civil Penalty Citation and Order to Abate Public Nuisance Violation under Housing & Property Maintenance and Nuisance Abatement Ordinance: Article II, Section 12-40 of the Mint Hill Code of Ordinances was issued to Petitioner for Failure to cut the high grass and weeds throughout Petitioner’s property and remove clippings when complete and further seeking payment for past due and current citation penalties in the amount of \$450. (Resp. Exhibit 7) Petitioner failed to appeal the Notice and Citation and further failed to abate the Nuisance on the property. The Town of Mint Hill abated the Nuisance condition on the property pursuant to authority granted by NCGS § 160A-193.
8. Petitioner has not paid the Civil Citation penalties in the amount of \$450 to Respondent.
9. On September 16, 2019 a Civil Penalty Citation and Order to Abate Public Nuisance Violation under Housing & Property Maintenance and Nuisance Abatement Ordinance: Article II, Section 12-40 of the Mint Hill Code of Ordinances was issued to Petitioner for Failure to remove all junk, debris and rubbish, including but not limited to rusted, discarded

bicycles, broken chairs, cardboard, bags and all manner of litter from the entire property and further seeking payment for past due and current citations in the amount of \$150. (Resp. Exhibit 7) Petitioner failed to appeal the Notice and Citation and further failed to abate the Nuisance on the property. The Town of Mint Hill abated the Nuisance condition on the property pursuant to authority granted by NCGS § 160A-193.

10. Petitioner has not paid the Civil Citation penalty in the amount of \$150 to Respondent.
11. On October 17, 2019, pursuant to § NCGS 160A-193, the Town of Mint Hill filed a Notice of Lien against Petitioner, 17 -M- 9145 in the Superior Court of Mecklenburg County in the amount of \$530 plus interest accruing thereon at the rate permitted by statute from the date of filing until paid, stating as follows:

“The property located at 4621 Quail Ridge Drive, Mint Hill, NC 28227 (the “Property”) was declared a public nuisance in violation of Article II, Section 12-40 of the Town of Mint Hill’s Code of Ordinances. After proper notice, the record owner of the Property failed to abate the nuisance. Pursuant to authority granted by NCGS 16A-193 and the Town of Mint Hill’s Code of Ordinances, Art. II, Sect. 12-43(c), the Town of Mint Hill abated the nuisance condition. The owner of the property has failed to reimburse the Town for the expenses incurred in abating the nuisance. Accordingly, pursuant to Authority granted to the Town of Mint Hill by NCGS 160A-193 and the Town of Mint Hill’s Cod of Ordinances Art. II, Sect. 12-43, the Town claims a lien on the Property in the amount of \$530.00 (five hundred and thirty dollars) for the following work:

 - Removed junk, debris and rubbish, including but not limited to rusted, discarded bicycles, broken chairs, cardboard, bags, all manner of litter from the entire property.
 - Cut overgrown grass and weeds and removed clippings from entire property.” (Resp. Exhibit 8).
12. Petitioner has not satisfied the Lien nor paid the debt identified in Respondent’s Exhibit 8.
13. On October 31, 2019, Respondent mailed “Notice of Debts Owed the Town of Mint Hill- Regarding 4621 Quail Ridge Drive, Mint Hill, NC 28227, Intent to setoff debt against NC State Tax Refund for Mohamad Kodaimati identifying debt owed by Petitioner to Respondent in the amount of \$6,728.89. (Resp. Exhibit 1).
14. On October 31, 2019, Respondent mailed “Notice of Debts Owed the Town of Mint Hill- Regarding 4621 Quail Ridge Drive, Mint Hill, NC 28227, Intent to setoff debt against NC State Tax Refund for Mohamad Kodaimati identifying debt owed by Petitioner to Respondent in the amount of \$336.66 (Resp. Exhibit 3).
15. On October 31, 2019, Respondent mailed “Notice of Debts Owed the Town of Mint Hill- Regarding 4621 Quail Ridge Drive, Mint Hill, NC 28227, Intent to setoff debt against NC

State Tax Refund for Mohamad Kodaimati identifying debt owed by Petitioner to Respondent in the amount of \$1,230.00 (Resp. Exhibit 6).

16. On December 3, 2019, Petitioner appealed the Notices of Intent to Setoff Debt to the Town of Mint Hill. (Resp. Exhibit 10)
17. A Hearing was held on December 17 which was attended by Mr. Kodaimati. On December 18, 2019 the Town of Mint Hill rendered a decision on the Appeal finding that the entire debt, in the amount of \$8,295.55 was owed to the Town of Mint Hill. (Resp. Exhibit 10).
18. On January 17, 2020 Petitioner filed a Petition for Contested Case Hearing with the Office of Administrative Hearings.
19. On August 14, 2020 a virtual contested case hearing was held.
20. Margie Nichols, Code Enforcement Officer for the Town of Mint Hill testified that she has had numerous conversations with the Petitioner related to the violations that are subject of the debt owed the Town of Mint Hill. Ms. Nichols further testified that Mr. Kodaimati has never appealed the Citations and Notices of Violations that are subject of this hearing notwithstanding the notice of such right to appeal which appears on the face of the Notices.
21. To date, Petitioner has not paid the judgment owed, the citations owed nor the cost of abatement owed to Respondent in the total amount of \$8,295.55.

CONCLUSIONS OF LAW

BASED UPON the foregoing Findings of Fact, the Undersigned Administrative Law Judge makes the following Conclusions of Law:

1. The Office of Administrative Hearings does not have the jurisdiction to determine the propriety of Respondent's administration or enforcement of the Mint Hill Code of Ordinances. Petitioner failed to file an appeal of the Notices of Violation and Citations subject to this matter to the Mint Hill Board of Commissioners within 15 days of the Notice of Violation as required by Mint Hill Code of Ordinances Article II Section 12-45.
2. The Office of Administrative Hearings does not have the jurisdiction to determine the propriety of a Judgment entered by the District Court of Mecklenburg County. The Judgment entered in Case No.: 12-CVM-8152, Town of Mint Hill v. Mohamad Kodaimati is presumed valid and enforceable as a debt.

3. The Office of Administrative Hearings has jurisdiction to determine whether the Town of Mint Hill can seek enforcement and/or collection/debt setoff from Petitioner for the Notices of Violations and Citations subject to this matter pursuant to N.C.G.S. § 105A.
4. Pursuant to N.C.G.S. § 160A-175 the Town of Mint Hill has the “power to impose fines and penalties for violation of its ordinances.”
5. Pursuant to N.C.G.S. §160A-193 the Town of Mint Hill has the authority to abate everything in the city limits that is dangerous or prejudicial to the public health or public safety and the expense of that action shall be paid by the person in default. Should the defaulting person fail to pay, the debt becomes a lien on the property.
6. The Setoff Debt Collection Act allows a local agency to submit a debt owed by a debtor for the collection by setoff after notice to the debtor pursuant to N.C.G.S. § 105A-5.
7. In a contested case involving the imposition of civil fines or penalties by a State agency for violation of the law, the burden of showing by clear and convincing evidence that the person who was fined actually committed the act for which the fine or penalty was imposed rests with the Respondent pursuant to N.C.G.S. § 150B-25.1(b).
8. Respondent has met its burden of proof and established by clear and convincing evidence that Petitioner committed the act for which the fine or penalty was imposed in accordance with N.C.G.S. § 150B-25.1(b).

FINAL DECISION

NOW, THEREFORE, based on the foregoing, the Undersigned determines that:

1. The Judgment entered in Case No.: 12-CVM-8152, Town of Mint Hill v. Mohamad Kodaimati is a valid and enforceable debt and Respondent can seek collection of said debt owed by Petitioner pursuant to NCGS 105A in the amount of \$6,728.89 along with interest accruing from October 31, 2019 until paid.
2. Liens filed by Respondent Against Petitioner pursuant to N.C.G.S. § 160A-193 for abatement services represent valid and enforceable debt and Respondent can seek collection of said debt owed by Petitioner pursuant to NCGS 105A in the amounts of \$286.66 plus interest accruing from October 31, 2019 and in the amount of \$530.00 plus interest accruing from October 31, 2019.
3. The Petitioner committed the violations of the Mint Hill Code of Ordinances for which the fine or penalty was imposed and that the Respondent can seek collection of said debt owed by Petitioner pursuant to NCGS 105A.

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 18th day of September, 2020.



Selina Malherbe
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:

Mohamad Kodaimati
kodaimati@gmail.com
Petitioner

Karen Kelley Wolter
Bringewatt, Wolter & Snover, PLLC
karen@bwsnclaw.com
Attorney for Respondent

This the 18th day of September, 2020.



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