

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
19 SOS 06543

Tonya Maggio

Petitioner,

v.

North Carolina Department of the
Secretary of State

Respondent.

FINAL DECISION

1. THIS MATTER COMES before this Tribunal on a Petition for Contested Case Hearing (“Petition”) filed by Petitioner Tonya Maggio in the Office of Administrative Hearings (“OAH”) on 2 December 2019. Petitioner commenced this action to contest the Order of Permanent Revocation (“Order”) issued by Respondent North Carolina Department of the Secretary of State (“the Department”) with respect to her notary public commission.

2. Given the nature of Petitioner’s appeal to this Tribunal, the primary question to be answered in this proceeding is whether the Department acted in violation of the North Carolina Administrative Procedure Act in permanently revoking Petitioner’s notary public commission.

3. Having carefully considered the evidence presented at hearing, this Tribunal UPHOLDS the Department’s Order for the reasons explained below.

Oak City Law, LLP by Caroline Lindsey Trautman for Petitioner Tonya Maggio.

North Carolina Department of Justice by Jeremy Lindsley, Assistant Attorney General, for Respondent North Carolina Department of the Secretary of State.

T.S. Jacobs, Administrative Law Judge.

FINDINGS OF FACT

Based upon careful consideration of the sworn testimony of the witnesses presented at the hearing and the entire record in this proceeding, this Tribunal makes the following factual findings that are material to the resolution of the dispute presented in this contested case. See Flanders v. Gabriel, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612 (1993), aff'd, 335 N.C. 234, 436 S.E.2d 588 (1993) (recognizing “the trial court need not make a finding as to every fact which arises from the evidence; rather, the court need only find those facts which are material to the resolution of the dispute.”)

In making the following findings, this Tribunal has weighed all evidence and has assessed the credibility of the witnesses by considering the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interests, 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.

A. The Parties

1. Petitioner is the owner of Atlantic Process Services, Inc., a North Carolina business corporation doing business as Atlantic Legal Services pursuant to a Certificate of Assumed Name filed with the New Hanover County Register of Deeds.

The business is in Wilmington, North Carolina and offers, in part, service of legal process and documents in North Carolina. As of January 30, 2019, Petitioner held a commission as a North Carolina Notary Public.

2. Respondent, the North Carolina Department of the Secretary of State, is an agency of this State and is responsible for administering and enforcing the North Carolina Notary Public Act (the “Act”), N.C. Gen. Stat. §§ 10B-1 *et seq.* Respondent’s Notary Division handles disciplinary actions involving notaries public.

3. Both parties are properly before this Tribunal, which has jurisdiction over the subject matter and the parties pursuant to Article 3 of Chapter 150B and Chapter 10B of the North Carolina General Statutes.

B. The Department’s Investigation of Alleged Notary Violation

4. Respondent received a complaint from a Mr. Michael Wimer, an attorney in Asheville, North Carolina, about discrepancies in the alleged service of a summons and complaint in a New Hanover County civil case and the notarization of signatures on two separate Affidavits of Service executed in relation thereto.

5. Mr. Weimer hired Petitioner to serve a summons and complaint upon a Joel Berkowitz, a defendant in a civil lawsuit pending in Buncombe County, North Carolina. To serve the documents upon Mr. Berkowitz, Petitioner contracted with Mr. Penland, a reserve sheriff’s deputy with the Buncombe County Sheriff’s Department. Mr. Penland worked for Petitioner on an as-needed basis.

6. Mr. Wimer later received two Affidavits of Service from Petitioner. Dated December 5, 2018 and January 30, 2019, both affidavits: (i) state that Mr.

Berkowitz had been personally served and (ii) reflect a signature of “P. Penland” and a jurat notarization. (R’s Exs. 1 & 2) Petitioner’s employee, Linda Verdi Rice, notarized the December 15, 2018 Affidavit and Petitioner notarized the latter. Mr. Weimer later discovered that the summons and complaint were not, in fact, personally served upon Berkowitz but instead left in Berkowitz’s mailbox.

7. The Department assigned Special Agent Ronald McLeod, a sworn law enforcement agent with several years’ experience with criminal investigations, to conduct a criminal investigation of Mr. Wimer’s complaint.

8. During his investigation, Agent McLeod received copies of the Affidavits of Service and interviewed Mr. Wimer, Ms. Rice, and Patrick Penland, the person whose name and signature appears on the Affidavits of Service as having served the documents in the civil case. He also took hand-written notes and published an investigative report, both of which were entered into evidence at the contested case hearing. (P’s Ex. 6 and R’s Ex. 6)

9. Agent McLeod’s in-person interview of Mr. Penland took place on March 5, 2019. Agent McLeod testified, as well as wrote in his investigative report, that Mr. Penland stated he did not sign either of the Affidavits of Service and that he was not present for their signing. (R’s Ex. 6) Agent McLeod further wrote in his report that Mr. Penland indicated that he had not actually served Mr. Berkowitz and claimed Petitioner told him it was acceptable to leave the papers in the mailbox. (Id.) Mr. Penland also indicated that he may have given Petitioner a power of attorney at some earlier time.

10. A few days later, Agent McLeod conducted an in-person interview of Linda Rice. Agent McLeod wrote in his report that Ms. Rice stated that at Petitioner's instruction, she regularly notarized documents like the Affidavits in question. Ms. Rice further admitted that she notarized the first Affidavit dated December 5, 2018 (Resp. Ex. 1) and stated that the signature of "P. Penland" was written by Petitioner. She also informed Agent McLeod that Mr. Penland was not present before her when she notarized the document. As for the January 30, 2019 Affidavit, Ms. Rice told Agent McLeod that Petitioner signed the name "P. Penland" on the second Affidavit (R's Ex. 2) dated January 30, 2019. Ms. Rice also informed Agent McLeod that Petitioner told her that Mr. Penland had given Petitioner a power of attorney allowing Petitioner to sign the Affidavits on Penland's behalf, but that she had never seen it.

11. Agent McLeod attempted to interview Petitioner in person on March 11, 2019 but was unable to do so.

12. On March 11, 2019, after the failed attempt to interview Petitioner, Agent McLeod obtained five felony warrants against Petitioner from a New Hanover County Magistrate as follows:

- a. 19 CR 52044 - felony forgery of endorsement
- b. 19 CR 52045 - felony uttering forged instrument
- c. 19 CR 52046 - felony notarizing without the principal present
- d. 19 CR 52047- felony forgery of endorsement
- e. 19 CR 52048 - felony uttering forged instrument.

13. Agent McLeod concluded his investigation and recommended that Petitioner's notary commission be permanently revoked.

C. Revocation of Petitioner's Commission

14. On September 19, 2019, Ozie Stallworth, Respondent's Director of Notary Enforcement, issued an Order of Permanent Revocation of Petitioner's notary public commission. (Resp. Ex. 4) The Order states that "following an investigation . . . the Department of Secretary of State determined that Tonya M. Maggio forged the signature of the principal and notarized the document with the forged signature of and without the personal appearance of the principal, which is a violation of North Carolina General Statute Chapter 10B-60(d)(1)(2) and 10B-22(a) and 18 North Carolina Administrative Code 07B.0901(1)(2)(3)(12)(13), 07B.0903(3)(4), and 07B.0904(b)(7)."

15. By letter dated September 19, 2019, Director Stallworth notified Petitioner of the results of Respondent's investigation and Order to revoke her notary public commission for violating the aforementioned provisions of the Notary Act and regulations. (Resp. Ex. 3)

D. Contested Case Hearing

16. Petitioner appealed Respondent's decision to revoke her notary public commission by commencing this contested case at the OAH. The Undersigned called this case for hearing on August 11 and August 13, 2020. Both parties were present and presented evidence, testimonial and documentary, at the hearing, which was held via remote videoconference.¹

¹ A list of witnesses and exhibits admitted into evidence is reflected in the Appendix attached hereto.

17. At hearing, Petitioner testified that she knew service upon Berkowitz would be difficult because Berkowitz had evaded service in a previous matter.

18. In her business, Petitioner uses a computerized program to track the status of service of legal documents. The program allows actual process servers to enter data about the circumstances of service attempts and completions.

19. Petitioner contended that Penland made entries into the computer program indicating that he had successfully completed personal service of the legal documents in the civil action as shown in P's Ex. 1.

20. Petitioner admitted during her testimony that she signed the name "P. Penland" to both Affidavits in question. (Resp. Exs. 1 & 2). She further admitted that Penland was not in her presence when she signed the Affidavits and that, in addition to signing Penland's name to the second Affidavit dated January 30, 2019, she also notarized that Affidavit.

21. Petitioner stated that at the time she signed the Affidavits she had a power of attorney granted by Penland which gave her permission to sign the Affidavits in Penland's name. Petitioner stated that she destroyed or discarded the power of attorney after Attorney Wimer raised questions about the way the civil process was served and the way the Affidavits were executed. Neither the original power of attorney nor a copy thereof was offered or admitted into evidence.

22. Petitioner gave contradictory testimony about whether she held powers of attorney for other process agents with whom she did business and about whether she regularly signs affidavits in the names of other process servers.

23. Petitioner contended that the power of attorney she had from Penland gave her authority to sign the Affidavits on Penland's behalf. She further contended that her only violation of the Notary Act resulted from her failure to include in the notarial certificates that she was signing the Affidavits in a representative capacity on Penland's behalf.

24. On April 18, 2019, in New Hanover County criminal court file no. 19 CR 1847, Petitioner pleaded guilty to taking an oath or affirmation without the principal appearing in person before her in violation of N.C. Gen. Stat. § 10B-60(c)(1).

25. At the hearing, Agent McLeod testified that after completing interviews of Attorney Wimer and Penland, and upon his review of the Affidavits in question, he had determined sufficient grounds existed to seek the above-referenced criminal charges against Petitioner.

26. Though Agent McLeod would have preferred to interview Petitioner, he testified that the interview was unnecessary to his criminal investigation.

27. Director Stallworth testified, and this Tribunal finds as a fact, that a notary public is a public official who is trusted to witness the execution of documents and certify that the principal, or person signing the document, is who they purport to be. Notaries also administer oaths and affirmations when the principal makes a sworn statement in a document such as in an affidavit.

28. Director Stallworth stated that the tasks performed by notaries are critical to the ability of courts, governmental bodies, and other entities to rely on the veracity of the document and its contents. This is especially true for documents like

the Affidavits in question which are used by our courts to verify that technical requirements of service of process have been met and that the court has jurisdiction over the parties.

29. Petitioner testified that she was familiar with affidavits of service and the purpose they serve in the legal process. She also admitted on cross-examination that, to obtain her notary commission, she was required to complete course work relating to the responsibilities of a notary public and take an examination covering notary law.

30. Director Stallworth stated that a bedrock foundation of the notary law is the requirement that the principal signer of a document personally appear before the notary so that the notary can perform the notary's statutory duty of verifying the principal's identity and/or administer an oath or affirmation when required. The integrity of the notarial system depends upon notaries adhering to the requirements of the Notary Act.

31. Director Stallworth stated that even if the notarial certificate does not say so explicitly, the notarial certificate is the notary's certification that, among other things, the principal appeared in person before the notary and that the notary administered the required oath or affirmation.

32. Director Stallworth testified that there are circumstances in which a notary is permitted to notarize a document signed by a person acting in a representative capacity. This occurs routinely as a notarial "acknowledgement" in which the attorney in fact is authorized to sign the document for someone else. When

this occurs, the notarial certificate must indicate that the attorney in fact personally appeared before the notary.

33. However, the Notary Act does not allow any person to take an oath or affirmation on behalf of another under any circumstances. A notary cannot administer an oath or affirmation to any person other than the principal. Director Stallworth testified that this information is taught to prospective notaries during the required educational instruction all notaries undertake prior to their commissioning.

34. On its face, the December 5, 2018 Affidavit (Resp. Ex. 1) required that the principal be sworn requiring the notary to administer an oath or affirmation to the principal. It states “I, P. Penland, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was affected, I was authorized by law to make service of the documents and informed said person of the contents herein.” The Affidavit also indicates that personal service of the documents was completed on December 3, 2018. The notarial certificate states: “Subscribed and sworn before me by the affiant who is personally known to me. The Affidavit is signed by Petitioner in the name of “P. Penland” and by Linda Rice as notary public.

35. Likewise, the January 30, 2019 Affidavit required that the principal be placed under oath or affirmation. It states, in part, “Patrick Penland, being duly sworn on his oath, testifies as follows: . . .” The notarial certificate also states, “Subscribed and sworn before me on January 30, 2019.” The Affidavit was signed by Petitioner in the name “P. Penland” and was notarized by Petitioner as well.

36. Director Stallworth opined that because neither Affidavit indicates that Petitioner signed them in a representative capacity, a recipient would be misled to believe that Penland had himself, in fact, been placed under oath and affixed his signature thereto. This undermines the confidence in the notarial system.

37. Moreover, Director Stallworth testified that even had Petitioner indicated that she signed the Affidavits in a representative capacity, the documents could not be legally notarized because Petitioner could not take an oath or affirmation on behalf of Penland.

38. Petitioner admitted, and this Tribunal finds as a fact, that Penland was not present when Petitioner signed the Affidavits or when the Affidavits were notarized.

39. Director Stallworth stated it was his position that because Petitioner knew that the signature on the January 30, 2019 Affidavit was not Penland's and that Penland had not been sworn as indicated in the jurat, Petitioner had knowledge that the jurat was false or fraudulent and that she completed the notarial act with the intent to commit fraud.

40. Director Stallworth testified that he considers a violation of the personal appearance requirement to be one of the most serious because of the resulting potential for error and fraud. Likewise, Director Stallworth considers the failure to administer an oath or affirmation to be a serious violation because of the reliance of our judicial system upon information and testimony provided by sworn individuals.

These types of violations pose the greatest danger to the integrity of the notarial system and are, therefore, deserving of the strongest disciplinary action.

41. Agent McLeod's investigation revealed that at least one of the Affidavits in question was, in fact, filed with the civil court and had to be later withdrawn because of the questions surrounding its validity. He also discovered that Petitioner paid several thousands of dollars to the attorneys in the civil matter due to the erroneous Affidavits she provided.

42. Director Stallworth considered the information collected during Agent McLeod's investigation along with the seriousness of the violations and the actual harm to the public and judicial proceedings before deciding to revoke Petitioner's commission.

43. Director Stallworth testified that he typically relies upon the report of the Department's Special Agents, and the information contained therein, when considering administrative disciplinary matters.

44. Based upon the information contained in Agent McLeod's investigative file, Director Stallworth determined that there was sufficient reason to believe that Petitioner had violated the Notary Act as set forth in the Order of Revocation. (Resp. Ex. 4) Director Stallworth testified that the only appropriate discipline for such serious and consequential violations was permanent revocation.

45. Director Stallworth further stated that due to the serious nature of the violations, the permanent revocation of Petitioner's commission was warranted even in the absence of intentional fraud.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, and upon the preponderance of the evidence, the Undersigned makes the following Conclusions of Law for purposes of this Final Decision.

1. The primary issue to be resolved in this contested case involves the Notary Public Act and the discipline authorized thereunder for individuals subject to its provisions.

2. The purpose of the Notary Public Act, N.C. Gen. Stat. § 10B-1 *et. seq.*, among other things, is to promote, serve, and protect the public interests, prevent fraud and forgery, and promote ethical conduct among notaries. N.C. Gen. Stat. § 10B-2.

3. N.C. Gen. Stat. § 10B-60(a) provides that Respondent may issue a warning to a notary or restrict, suspend, or revoke a notarial commission for a violation of Chapter 10B or upon any ground for which a commission may be denied under the Chapter.

4. N.C. Gen. Stat. § 10B-60(c)(1) provides that a notary is guilty of a Class 1 misdemeanor if the notary administers an oath or affirmation without the principal appearing in person before the notary.

5. N.C. Gen. Stat. §10B-60(d) provides that a notary is guilty of a Class I felony if the notary administers an oath or affirmation (1) if the notary knows that it is false or fraudulent or (2) without the principal appearing in person before the notary if the notary does so with the intent to commit fraud.

6. The Notary Act does not permit a notary to take an oath or affirmation from a person acting in a representative behalf of the principal signer to a sworn document. The latest edition of the North Carolina Notary Public Manual (2016) states on page 54 that “no one may take an oath on behalf of another individual.”

7. N.C. Gen. § 10B-5(d)(5) provides that the Secretary may deny a commission if any of the following apply:

....

- (5) A finding that the applicant has engaged in official misconduct, whether or not disciplinary action resulted.

8. N.C. Gen. Stat. § 10B-3(15)(a) and (b) defines “official misconduct” as either of the following:

- a. A notary’s performance of a prohibited act or failure to perform a mandated act set forth in this Chapter or any other law in connection with notarization.
- b. A notary’s performance of a notarial act in a manner found by the Secretary to be negligent or against the public interest.

9. A notary is prohibited from performing a notarial act if the principal is not in the notary’s presence at the time the notarial act is performed or if the notary is the signer of the record that is to be notarized. N.C. Gen. Stat. § 10B-20(c)(1)(5)

10. N.C. Gen. Stat. § 10B-22(a) provides, “A notary shall not execute a notarial certificate containing information known or believed by the notary to be false.”

11. 18 NCAC 07B .0903 EXECUTED DOCUMENT VIOLATIONS provides:

The Director shall revoke the commission of a notary who performs a notarial act knowing that the document or information contained in it is false or fraudulent, or that the intent of the executed document is dishonest. Acts of fraud or dishonesty include:

....

- (3) Forgery;
- (4) Fraud;

12. 18 NCAC 07B .0904 COMPLETE AND LAWFUL NOTARIAL ACT

VIOLATIONS provides:

- (a) The Director may take disciplinary action against a notary for an offense relating to failure to meet the statutory requirements for a notarial act.
- (b) Offenses relating to failure to meet the statutory requirements for a complete and lawful notarial act include:

....

- (7) Failure to require personal appearance;

13. N.C. Gen. Stat. § 10B-3(8) defines “jurat” in the Notary Public Act as a “notary’s certificate evidencing the administration of an oath or affirmation.”

14. N.C. Gen. Stat. § 10B-3(16) defines “personal appearance and appear in person before a notary as:

An individual and a notary are in close physical proximity to one another so that they may freely see and communicate with one another and exchange records back and forth during the notarization process.

15. N.C. Gen. Stat. § 10B-3(18)(c) defines “principal” in the case of an oath or affirmation as “the individual who makes a vow of truthfulness on penalty of perjury.”

16. Respondent issued an Order of Permanent Revocation of Petitioner’s notary public commission based upon a violation of N.C. Gen. Stat. §§ 10B-5(d)(5), 10B-60(d)(1)(2), 10B-22(a) and 18 NCAC 07B.0903(3)(4), and 07B.0904(b)(7).

17. Petitioner in this contested case has the burden of proving the facts alleged in the petition by a preponderance of the evidence. N.C. Gen. Stat. §150B-25.1(a).

18. To meet her burden, Petitioner must show by a preponderance of the evidence that, in permanently revoking of Petitioner’s notary public commission, Respondent deprived Petitioner of property, ordered Petitioner to pay a fine or civil penalty, or has otherwise prejudiced Petitioner’s rights and that the Respondent:

- a. exceeded its authority or jurisdiction;
- b. acted erroneously;
- c. failed to use proper procedure;
- d. acted arbitrarily or capriciously;
- e. failed to act as required by rule or law.

N.C. Gen. Stat. §§ 150B-23(a) and 150B-25.1(a).

19. There was insufficient evidence presented at the hearing to meet Petitioner’s burden of proof. Rather, the preponderance of the evidence shows that

Petitioner violated the Notary Public Act when she notarized the Affidavit of Service dated January 30, 2019 because she:

- a. failed to administer the required oath or affirmation to the principal, Mr. Penland, knowing it was false or fraudulent to complete a notarial certificate indicating she had administered the oath or affirmation in violation of N.C. Gen. Stat. § 10B-60(d)(1);
- b. performed the notarial act without the principal appearing in person with the intent to commit fraud in violation of Chapter 10B-60(d)(2);
- c. engaged in official misconduct by performing a prohibited act or failing to perform a mandated act set forth in Chapter 10B or any other law in connection with notarization in violation of N.C. Gen. Stat. § 10B-5(d)(5);
- d. performed the notarial act knowing that the document or information contained in it is false or fraudulent, or that the intent of the executed document is dishonest in violation of 18 NCAC 07B.0903; and
- e. failed to meet the statutory requirements for a complete and lawful notarial act in violation of 18 NCAC 07B.0904(a)(b).

20. Petitioner admitted, and other evidence shows, that Penland was not in Petitioner's presence when she notarized the January 30, 2019 Affidavit of Service.

21. Petitioner admitted, and other evidence shows, that Petitioner did not administer an oath or affirmation to Penland when she notarized the January 30, 2019 Affidavit.

22. Petitioner admitted, and other evidence shows, that Petitioner signed the January 30, 2019 Affidavit in Penland's name. However, the record does not contain sufficient evidence that Petitioner had the apparent authority to sign the Affidavit on Mr. Penland's behalf because Petitioner did not offer or introduce into evidence the power of attorney Petitioner testified Penland provided to her granting her the specific authority to sign such documents on his behalf.

23. Petitioner knew that the signature "P. Penland" appearing on the January 30, 2019 Affidavit was not a genuine signature of Mr. Penland and that Penland had not been sworn when she notarized the Affidavit and, therefore, knew that the notarial certificate indicating Penland was in her presence, was sworn, and signed the Affidavit was therefore false or fraudulent.

24. Petitioner's actions as set forth herein support a reasonable inference that Petitioner performed the notarial act with the intent to commit fraud.

25. The evidence at hearing established that Director Stallworth considered all the information gathered by Agent McLeod during his criminal investigation before making the decision to revoke Petitioner's commission.

26. The evidence at hearing established that pursuant to 18 NCAC 07B.0901 Director Stallworth considered a variety of factors in determining the

disciplinary action to be taken including the nature, number and severity of any acts, offenses, official misconduct and crimes involved.

27. Petitioner received proper notice of the reasons for the revocation of her notary commission and of her rights to appeal therefrom.

28. Respondent's permanent revocation of Petitioner's notary commission was within its statutorily granted authority.

29. 18 NCAC 07B .0903 states that the Respondent shall revoke the commission of a notary who performs a notarial act knowing that the document contains false or fraudulent information. Thus, upon finding Petitioner in violation of this section, Respondent was required to revoke Petitioner's commission.

30. N.C. Gen. Stat. §§ 10B-60 and 10B-5(d)(5) and 18 NCAC 07B.0904 and 18 NCAC 07B.0905 provide that Respondent may impose discipline, including revocation, for violations of the Notary Act and rules created thereunder. Thus, even in the absence of grounds requiring the revocation of Petitioner's commission, Respondent could exercise its discretion in deciding whether to revoke the commission.

31. Discretionary decisions are reviewed for an abuse of discretion. Matter of Patron, 250 N.C. App. 375, 379, 792 S.E.2d 853, 857 (2016) (further explaining that the word "may" connotes a discretionary decision, not a mandatory one"). An abuse of discretion occurs when a decision is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision. In re: TLH, 368 N.C. 101, 107, 772 S.E.2d 451, 455 (2015).

32. An act is arbitrary or capricious if it is done with a lack of fair and careful consideration of the evidence or fails to display a reasoned judgment. A court reviewing a discretionary agency decision does not have the power “to override decisions within agency discretion when that discretion is exercised in good faith and in accordance with law.” White v. NC Dep’t of Env’t., Health & Natural Resources, 117 N.C. App. 545, 547, 451 S.E.2d 376, 378 (1995), quoting Lewis v. N.C. Dept. of Human Resources, 92 N.C. App. 737, 740, 375 S.E.2d 712, 714 (1989).

33. Respondent’s decision was based upon consideration of the seriousness of violations of fundamental rules that exist for the protection of the public and that caused actual harm to the public in this case. Thus, Respondent’s decision was supported by the evidence and the result of a reasoned decision.

34. The evidence presented did not prove by a preponderance of the evidence that Respondent exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or otherwise failed to act as required by law or rule in permanently revoking Petitioner’s notary public commission.

FINAL DECISION

35. BASED UPON the foregoing Findings of Fact and Conclusions of Law, this Tribunal determines that Respondent’s Order of Permanent Revocation of Petitioner’s notary public commission is UPHELD.

APPENDIX

List of Witnesses and Exhibits

A. Witnesses

The following witnesses provided testimony at the contested case hearing:

For Petitioner

1. Petitioner, Tonya Maggio
2. Special Agent Ronald McLeod
3. Attorney Meritt Wagoner (via offering his deposition transcript)

For Respondent

1. Director Ozie Stallworth

B. Exhibits

The following exhibits were offered and admitted into evidence at the contested case hearing for this matter:

For Petitioner:

1. Petitioner's Exhibits ("P's Ex."), 1-4 & 6.

For Respondent:

1. Respondent's Exhibits ("R's Ex.") 1-4 & 6-8.

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.

SO ORDERED, this the 4th day of December, 2020.



Tenisha S Jacobs
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:

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This the 4th day of December, 2020.



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