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FILED

NORTH CAROLINA  
WAKE COUNTY

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IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
17 CVS 14453

WAKE CO., C.S.C.

NORTH CAROLINA LANDSCAPE )  
CONTRACTORS' LICENSING BOARD, )

Plaintiff, )

v. )

RED ROOSTER OF RALEIGH LLC and )  
RANDY W. KIZIAH, )

Defendants. )

**CONSENT JUDGMENT**

The undersigned Superior Court Judge, having reviewed the signatures of the parties to this document, makes the following findings of fact, conclusions of law, and orders accordingly:

**FINDINGS OF FACT**

1. Plaintiff, the North Carolina Landscape Contractors' Licensing Board (hereinafter "Plaintiff" and "Board"), is an agency of the State of North Carolina created under the authority Chapter 89D of the General Statutes of North Carolina.
2. Upon information and belief, Defendant Red Rooster of Raleigh LLC ("Red Rooster") is:
  - a. A corporation organized under North Carolina law. Randy W. Kiziah is the Registered Agent and Chief Executive Officer; and
  - b. Not presently and was not previously licensed as a Landscape Contractor, as defined by N.C. Gen. Stat. §89D-12, by Plaintiff Board.
3. Upon information and belief, Defendant Randy W. Kiziah ("Kiziah") is:

- a. A citizen and resident of North Carolina, who has his principal place of business at 521 Competition Road, Raleigh, Wake County, North Carolina 27603; and
  - b. Not presently and was not previously licensed as a Landscape Contractor, as defined by N.C. Gen. Stat. §89D-12, by Plaintiff Board.
4. Plaintiff is charged with the regulation of landscape contractors in North Carolina and is authorized to bring this action under N.C. Gen. Stat. § 89D-24(a), which provides:

If the Board finds that a person who does not have a license issued under this Chapter is engaging in the practice of landscape construction or contracting, the Board may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Chapter or the rules adopted by the Board.

5. N.C. Gen. Stat. § 89D-11 defines "Landscape Contractor" as "Any person who, for compensation or other consideration, does any of the following:
- a. Engages in the business requiring the art, experience, ability, knowledge, science, and skill to prepare contracts and bid for the performance of landscape services, including installing, planting, repairing, and managing gardens, lawns, shrubs, vines, trees, or other decorative vegetation, including the finish grading and preparation of plots and areas of land for decorative utilitarian treatment and arrangement.
  - b. Practices the act of horticulture consultation or planting design for employment purposes.
  - c. Constructs, installs, or maintains landscape drainage systems and cisterns; provided the landscaping contractor makes no connection to pipes, fixtures, apparatus, or appurtenances installed upon the premises, or in a building, to supply water thereto or convey sewage or other waste therefrom as defined in G.S. 87-21.
  - d. Designs, installs, or maintains low-voltage landscape lighting systems, provided (i) the work does not exceed the scope of the exception set forth in G.S. 87-43.1(7) and (ii) the low-voltage lighting systems do not exceed 50

volts and constitute a Class II or Class III cord and plug connected power system.

- e. Engages in the construction of garden pools, retaining walls, walks, patios, or other decorative landscape features.”
6. N.C. Gen. Stat. §89D-11(2) defines landscape construction or contracting as “The act of providing services as a landscape contractor, as defined in this section, for compensation or other consideration.”
7. N.C. Gen. Stat. §89D-12(a) provides:
  - (a) “Except as otherwise provided in this Chapter, no person shall engage in the practice of landscape construction or contracting, use the designation “landscape contractor,” or advertise using any title or description that implies licensure as a landscape contractor unless the person is licensed as a landscape contractor as provided by this Chapter. All landscape construction or contracting performed by a partnership, association, corporation, firm, or other group shall be performed under an individual who is readily available to exercise supervision over the landscape construction and contracting work and who is licensed by the Board under this Chapter.”
8. N.C. Gen. Stat. §89D-13(5) states that the provisions of chapter 89D shall not apply to “[a]ny landscaping work where the price of all contracts for labor, material, and other items for a given job site during any consecutive 12-month period is less than thirty thousand dollars (\$30,000). . . .”
9. Upon information and belief, Defendants engaged in the practice of landscape construction or contracting in North Carolina in violation of N.C. Gen. Stat. §§89D-12(a). Specifically, on or about October 5, 2016, Defendant Red Rooster entered into a yearly contract with Eagle Ridge HOA (“Eagle Ridge”) to provide landscaping services to the Eagle Ridge Subdivision in Raleigh, North Carolina. The contract amount to be paid annually by Eagle Ridge to Defendant Red

Rooster was \$79,875.00 with monthly payments for the work under the contract of \$6,656.25, more or less.

10. Defendants Red Rooster and Kiziah entered into a contract for landscaping services in excess of \$30,000.00 during a consecutive 12-month period while neither held a license issued by the Board and/or without qualifying for any of the exemptions as provided by N.C. Gen. Stat. §89D-13.
11. The Board is entitled to have the court restrain and permanently enjoin Defendants from any further conduct in violation of the law.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED  
AS FOLLOWS:**

1. That Defendants be permanently enjoined from the practice of landscape construction or contracting in North Carolina until such time as they are properly licensed by the Board.
2. That cost of this action, including Plaintiff's reasonable costs associated with the investigation and prosecution of Defendants' violation, be taxed against Defendants in the amount of \$600.00. Defendants shall remit payment to the Board within thirty (30) days after service of the fully-executed Order.
3. That Plaintiff have and recover such other and further relief against Defendants as the Court may deem proper and just.

This the 13 day of March 2018.

  
\_\_\_\_\_  
Superior Court Judge Presiding

**I CONSENT:**

Consent to entry of the foregoing is hereby acknowledged.

Randy W. Kiziah  
RED ROOSTER OF RALEIGH LLC  
By: RANDY W. KIZIAH

COUNTY OF FRANKLIN

I certify that Randy W. Kiziah appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document:

Sworn to and subscribed before me;

This the 16th day of January 2018.

Laurie Jo Dement  
Notary Public

Laurie Jo Dement  
Typed or Printed Notary Name

My Commission Expires: 11/27/21



**I CONSENT:**

Consent to entry of the foregoing is hereby acknowledged.

Randy W. Kiziah  
RANDY W. KIZIAH

COUNTY OF FRANKLIN

I certify that Randy W. Kiziah appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document:

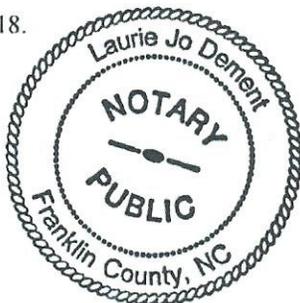
Sworn to and subscribed before me;

This the 16th day of January 2018.

Laurie Jo Dement  
Notary Public

Laurie Jo Dement  
Typed or Printed Notary Name

My Commission Expires: 11/27/21



**WE CONSENT:**

Consent to entry of the foregoing is hereby acknowledged.

This the 20 day of February 2018.

NORTH CAROLINA LANDSCAPE  
CONTRACTORS' LICENSING BOARD

By: *Cornelia I. Hoyes*  
Cornelia I. Hoyes, Chairman

STATE OF NORTH CAROLINA

COUNTY OF Wake

I certify that Cornelia I. Hoyes personally appeared before me this day, acknowledging to me that she voluntarily signed the foregoing document:

Sworn to and subscribed before me;

This the 20<sup>th</sup> day of February 2018.

*RPD*

Notary Public  
Robert P. Davitt

Typed or Printed Notary Name

My Commission Expires: 10/19/2018



NICHOLS, CHOI & LEE, PLLC

By: 

Anna Baird Choi  
Attorneys for NCLCLB  
4700 Homewood Court, Suite 320  
Raleigh, NC 27609

COUNTY OF Wake

I certify that Anna Baird Choi personally appeared before me this day, acknowledging to me that she voluntarily signed the foregoing document:

Sworn to and subscribed before me;

This the 21<sup>st</sup> day of February 2018.

Dena Jordan Brown  
Notary Public

DENA Jordan Brown  
Typed or Printed Notary Name

My Commission Expires: 6/15/2021

