

FILED

NORTH CAROLINA
WAKE COUNTY

2019 OCT 31 PM 3:36
WAKE CO., C.S.C.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 008333

NORTH CAROLINA LANDSCAPE)
CONTRACTORS' LICENSING BOARD,)
Plaintiff,)

v.)

DEREK HARMAN, and)
TURF TAMERS LAWN AND)
LANDSCAPE, INC.,)
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 of Chapter 89D of the General Statutes of North Carolina.
2. Upon information and belief, Defendant Derek Harman ("Harman") is:
 - a. A citizen and resident of New Hanover County, North Carolina;
 - b. Not presently and was not previously licensed as a Landscape Contractor, as defined by N.C. Gen. Stat. § 89D-12, by Plaintiff Board; and
 - c. President of Turf Tamers Lawn and Landscape, Inc.
3. Upon information and belief, Defendant Turf Tamers Lawn and Landscape, Inc. ("Turf Tamers") is:
 - a. A corporation organized and existing under the laws of the State of North Carolina, with its principal office located at 3705 Chukka Way, Wilmington, New Hanover County, North Carolina; and

- b. Not presently licensed 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 June 6, 2018, Defendants entered into a landscaping contract with Camilla Fullmer to provide landscaping services at her residence in Hampstead, North Carolina. The invoice from Harman and Turf Tamers paid by Ms. Fullmer totaled \$44,217.00. (See attached Exhibit A.)
10. Defendants entered into a contract for landscaping services in excess of \$30,000.00 during a 12-month period while Harman and Turf Tamers did not hold 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 Defendant Harman be permanently enjoined from the practice of landscape construction or contracting in North Carolina, until such time as he is properly licensed by the Board.
2. That Defendant Turf Tamers Lawn and Landscape, Inc., be permanently enjoined from the practice of landscape construction or contracting in North Carolina, until such time as it provides services “under an individual who is readily available to exercise supervision over the landscape construction and contracting work and who is licensed by the Board.”
3. That the 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 \$300.00. Defendants shall remit payment to the Board within thirty (30) days after service of the fully-executed Order.

This the 22 day of October, 2019.



Superior Court Judge Presiding

CONSENTS:

Consent to entry of the foregoing is hereby acknowledged.

TURF TAMERS LAWN AND LANDSCAPE, INC.

By 
Derek Harman, President


STATE OF NORTH CAROLNA

COUNTY OF New Hanover

I certify that Derek Harman appeared before me this day, acknowledging to me that he is the President of Turf Tamers Law and Landscape, Inc., and as such is authorized to sign and has voluntarily signed the foregoing document:

Sworn to and subscribed before me

This the 26th day of September 2019.


Notary Public
Leigh Cramer Vaughan
Typed or Printed Notary Name



My Commission Expires: April 7, 2024

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Consent to entry of the foregoing is hereby acknowledged.


DEREK HARMAN


STATE OF NORTH CAROLNA

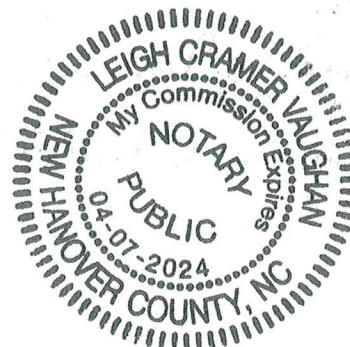
COUNTY OF New Hanover

I certify that Derek Harman appeared before me this day, and acknowledging to me that he voluntarily signed the foregoing document:

Sworn to and subscribed before me

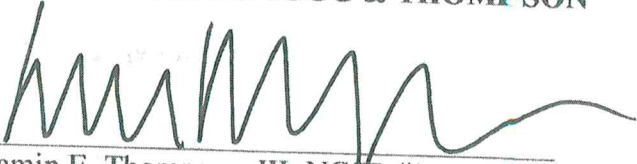
This the 26th day of September 2019.


Notary Public
Leigh Cramer Vaughan
Typed or Printed Notary Name



My Commission Expires: April 7, 2024

BROUGHTON WILKINS SUGG & THOMPSON

By: 

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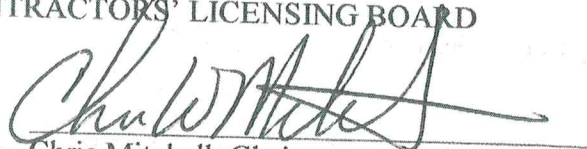
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WE CONSENT:

Consent to entry of the foregoing is hereby acknowledged.

This the 15 day of October 2019.

**NORTH CAROLINA LANDSCAPE
CONTRACTORS' LICENSING BOARD**

By: 
Chris Mitchell, Chairman

STATE OF NORTH CAROLINA
COUNTY OF Wake

I certify that Chris Mitchell personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document:

Sworn to and subscribed before me

This the 15th day of October 2019.

Deborah R. Nowell

Notary Public

Deborah R. Nowell
Typed or Printed Notary Name

My Commission Expires: 6-1-2020



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