

FILED

NORTH CAROLINA
DARE COUNTY

2020 JAN 16 PM 4:24

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 577

NORTH CAROLINA LANDSCAPE
CONTRACTORS' LICENSING BOARD,
Plaintiff,

Wjm

v.

ALBEMARLE LANDSCAPES, INC. dba
ALBEMARLE LANDSCAPE AND TREE
SERVICES,
Defendant.

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 Albemarle Landscapes, Inc. dba Albemarle Landscape and Tree Services ("Albemarle") is:
 - a. A corporation organized and existing under the laws of the State of North Carolina, with its principal office located at 934 W. Kitty Hawk Road, Kitty Hawk, Dare 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, Defendant bid to perform landscape management services in North Carolina in violation of N.C. Gen. Stat. §§ 89D-12(a), specifically:
 - a. On or about June 25, 2019, Plaintiff received a complaint alleging that Defendant was offering to perform landscape contracting where the cost of the project exceeded \$30,000 while unlicensed.
 - b. On or about June 21, 2019, Albemarle submitted a bid in response to the Dare County Tourism Board (“DCTB”) Request for Proposals to provide landscaping and maintenance services at its properties known as The Soundside event site located at 6900 South Croatan Highway, and the sites located at 6714 and 6716 South Croatan Highway in Nags Head, Dare County, North Carolina.
10. The Board is entitled to have the court restrain and permanently enjoin Defendant from any further conduct in violation of the law.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED

AS FOLLOWS:

1. That Defendant Albemarle Landscapes, Inc. dba Albemarle Landscape and Tree Services be permanently enjoined from the practice of landscape construction or contracting in North Carolina, until such time as it is properly licensed by the Board.
2. That the cost of this action, including Plaintiff's reasonable costs associated with the investigation and prosecution of Defendant's violation, be taxed against Defendant in the amount of \$1,000.00. Defendant shall remit payment to the Board within thirty (30) days after service of the fully-executed Order.

This the 16th day of JAN, 2020.

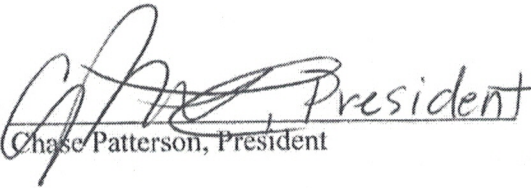


Superior Court Judge Presiding

CONSENTS:

Consent to entry of the foregoing is hereby acknowledged.

ALBEMARLE LANDSCAPES, INC. dba
ALBEMARLE LANDSCAPE AND TREE SERVICES.

By  President
Chase Patterson, President


STATE OF NORTH CAROLNA

COUNTY OF Dare

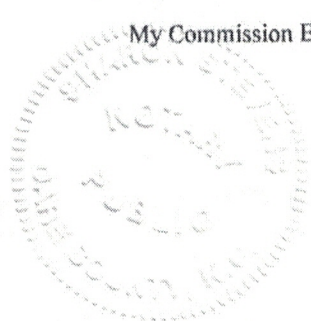
I certify that Chase Patterson appeared before me this day, acknowledging to me that he is the President of Albemarle Landscapes, Inc. dba Albemarle Landscape and Tree Services., and as such is authorized to sign and has voluntarily signed the foregoing document:

Sworn to and subscribed before me

This the 18 day of Nov 2019.


Notary Public
Sharon Stevens
Typed or Printed Notary Name

My Commission Expires: 3.18.23

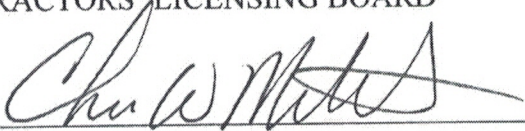


WE CONSENT:

Consent to entry of the foregoing is hereby acknowledged.

This the 2nd day of December 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 2nd day of December 2019.

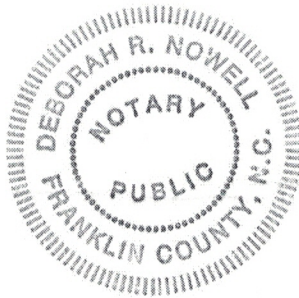
Deborah R. Nowell

Notary Public

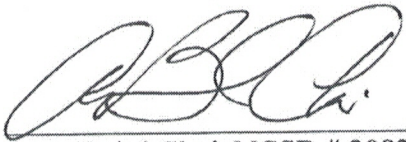
Deborah R. Nowell

Typed or Printed Notary Name

My Commission Expires: 6-1-2020



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