

BEFORE THE NORTH CAROLINA LANDSCAPE CONTRACTORS' LICENSING BOARD

Complaint File No. 21.122.S

In the Matter Of:

BRIAN DALE ELKS

(License No. 1950)

ELKS LAWN CARE AND

LANDSCAPING, INC.

(License No. CL 0720)

**CONSENT ORDER**

THIS MATTER is before the North Carolina Landscape Contractors' Licensing Board ("Board"), pursuant to G.S. § 89D-22 and with the Consent of Brian Dale Elks ("Respondent Licensee Elks") and Elks Lawn Care and Landscaping, Inc. ("Respondent Licensee Elks Lawn Care") (collectively "Respondent Licensees"), for consideration of an entry of a Consent Order in lieu of an administrative hearing.

With Respondent Licensee's consent, the Board makes the following:

**FINDINGS OF FACT**

1. On August 1, 2015, Respondent Licensee Elks Lawn Care was issued a landscape contractor's corporate license, license no. CL 0720. The license was last renewed on August 1, 2021 and is currently active.
2. Respondent Licensee Elks Lawn Care is a corporation organized under North Carolina law. Brian Elks is the President of Respondent Licensee.
3. On August 1, 2015, Respondent Licensee Elks was issued a landscape contractor's license, license no. 1950. The license was last renewed on August 21, 2021 and is currently active.
4. On June 3, 2021, David Bell ("Bell") filed a complaint against Respondent Licensees alleging that Respondent Licensees failed to uphold minimum standards and engaged in poor workmanship. The Board subsequently commenced an investigation.

5. On or about January 13, 2021, Respondent Licensees submitted an estimate to Bell for work to be performed at 407 Camilla Drive, Washington, Beaufort County, North Carolina. The total estimate was for \$16,800.00 and listed the following work to be performed:
  - a. Outdoor fireplace;
  - b. Outdoor kitchen island;
  - c. Delta Heat 32 inch grill;
  - d. Wood work; and
  - e. Sink installation.
6. During the course of the project, Bell paid Respondent Licensees \$8,400.00.
7. Upon investigation, the Board investigator identified violations of 21 N.C.A.C. 28B .0501(a)(7), (9), and (12) in that the estimate did not meet the minimum requirements under the rule.
8. Upon investigation, the Board investigator identified violations of 21 N.C.A.C. 28B .0508(b)(1) in that tops of the footings were above grade.
9. Upon investigation, the Board investigator identified violations of 21 N.C.A.C. 28B .0509(1), (3), and (9), in that Respondent Licensees did not meet the minimum requirements under the rule.
10. Upon investigation, the Board investigator identified the following general workmanship issues:
  - a. Uneven unit masonry spacing and coursing;
  - b. Unlevel foundations;
  - c. Outdoor cabinetry that is not watertight;
  - d. Poorly applied finishes with sloppy appearance;

- e. Split lumber; and
- f. Oversized hardware.

11. Respondent Licensees dispute the findings by the Board's Investigator but recognize that Landscape Contractors are required to adhere to specific requirements for estimates that were not followed for the estimate to Bell.

### **CONCLUSIONS OF LAW**

The actions of Respondent Licensees, as described above in paragraphs 7-10 are violations of G.S. § 89D-22(a)(3) and (6) and constitute the following:

1. A willful violation of any provisions of Chapter 89D and the rules adopted by the Board.

Based on the foregoing, and with Respondent Licensee's consent, IT IS, THEREFORE, ORDERED as follows:

1. License number CL 0720 issued to Respondent Licensee Elks Lawn Care and license number 1950 issued to Respondent Licensee Elks are hereby suspended for a period of twelve (12) months commencing upon the Effective Date of this Consent Order.
2. With Respondent Licensees' consent, the suspension shall be stayed and the licenses shall be conditionally restored.
3. Respondent Licensees shall take and pass the following five (5) online course modules offered by Interlocking Concrete Pavement Institute (ICPI):
  - a. Tech Spec 2—Construction of Interlocking Concrete Pavement;
  - b. Site Management;
  - c. Material Calculations;
  - d. Raised and Multi-Level Patios; and
  - e. Fireplaces, Fire Pits, Grills, and Outdoor Kitchens.



A record of completion issued by ICPI shall be provided to the Board on or before July 31, 2022. For the remainder of the suspension period, Respondent Licensees shall notify the Board in writing of all projects involving hardscape. Notification shall be submitted as follows:

- f. By email to [administrator@nccllb.com](mailto:administrator@nccllb.com) or
- g. By U.S. Mail to:

NC Landscape Contractors' Licensing Board  
C/O Calvin Kirven  
3901 Barrett Dr. #202  
Raleigh, NC 27609

Respondent Licensees shall ensure receipt of notification by the Board.

- 4. Within thirty (30) days from the date on which the Board approves this Consent Order and pursuant to G.S. § 89D-23, Respondent Licensees shall pay jointly \$1,500.00 cost recovery to the Board. Cost recovery shall be remitted directly to the Board as follows:

NC Landscape Contractors' Licensing Board  
C/O Calvin Kirven  
3901 Barrett Dr. #202  
Raleigh, NC 27609

- 5. Respondent Licensees shall comply with Chapter 89D of the N.C. General Statutes and the Board's rules and regulations.
- 6. Noncompliance: If Respondent Licensees fail to comply with any provision of this Consent Order or breach any term or condition thereof, either in substance or timing, upon written demand, Respondent Licensees shall surrender their licenses to the Board for the period of stayed suspension described above and the stayed suspension shall be activated. If Respondent Licensees dispute that such a violation of the conditions has occurred, they must file a written objection with the Board WITHIN TEN BUSINESS DAYS of the date of the notice of the violations to request a show cause hearing. The notice to the Board shall contain

with specificity the violations disputed. Upon receipt of this notice of objection, Board staff shall schedule a show cause hearing before the Board at the next scheduled meeting date for which appropriate notice can be provided or scheduled by consent of the parties.

7. Waiver: Failure to file a written objection with the Board within the designated time period will be construed to mean that Respondent Licensees are not contesting the matter and all further proceedings to which Respondent Licensees are otherwise entitled by law are hereby waived.
8. Modification: Any request for modification of this Consent Order must be submitted in writing to the Board and approved prior to the modification occurring.
9. Effective Date: The effective date of this Consent Order shall begin on the date that it is approved by the Board; provided that the Board will not consider the Consent Order unless an original, signed by Respondent Licensees, is received prior to the Board meeting at which the Consent Order is being considered. **However, if Respondent Licensees' license is invalid as of the date on which the Consent Order is approved by the Board, the effective date shall be the date on which Respondent Licensees' license is subsequently renewed. Active suspension shall be served only while the license is in valid status.**

Approved by the Board this the 7 day of June, 2022.

NORTH CAROLINA LANDSCAPE  
CONTRACTORS' LICENSING BOARD

By:

  
Calvin Kirven

Executive Administrator

STATEMENT OF CONSENT

The undersigned does hereby certify that he has read the foregoing Consent Order in its entirety and that he freely and voluntarily admits that there is a factual basis for the Findings of Fact set forth therein, that the Findings of Fact support the Conclusions of Law, that he will not contest the Findings of Fact should further disciplinary action be warranted in this matter, and that Respondent Licensee assents to the terms and conditions set forth therein.

The undersigned consents to service of the fully-executed Consent Order via first-class mail addressed as follows:

Kenneth C. Haywood  
Howard, Stallings, From, Atkins, Angell & Davis, P.A.  
5410 Trinity Road, Suite 210  
Raleigh, NC 27607

This the 17<sup>th</sup> day of May, 2022.

Elks Lawn Care and Landscaping, Licensee

BY: \_\_\_\_\_

TITLE: PRESIDENT

STATE OF NORTH CAROLINA

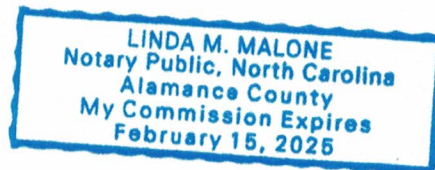
COUNTY OF Craven

Sworn to and subscribed before me this  
the 17<sup>th</sup> day of May, 2022.

[Signature]  
Notary Public

Linda M. Malone  
Typed or Printed Notary Name

My Commission Expires: 2/15/25





STATEMENT OF CONSENT

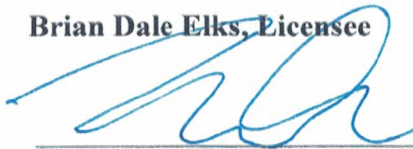
The undersigned does hereby certify that he has read the foregoing Consent Order in its entirety and that he freely and voluntarily admits that there is a factual basis for the Findings of Fact set forth therein, that the Findings of Fact support the Conclusions of Law, that he will not contest the Findings of Fact should further disciplinary action be warranted in this matter, and that Respondent Licensee assents to the terms and conditions set forth therein.

The undersigned consents to service of the fully-executed Consent Order via first-class mail addressed as follows:

Kenneth C. Haywood  
Howard, Stallings, From, Atkins, Angell & Davis, P.A.  
5410 Trinity Road, Suite 210  
Raleigh, NC 27607

This the 17<sup>th</sup> day of May, 2022.

**Brian Dale Elks, Licensee**



Brian Dale Elks

STATE OF NORTH CAROLINA

COUNTY OF Craven

Sworn to and subscribed before me this  
the 17<sup>th</sup> day of May, 2022.

  
Notary Public

Linda M. Malone  
Typed or Printed Notary Name

My Commission Expires: 2/15/25

LINDA M. MALONE  
Notary Public, North Carolina  
Alamance County  
My Commission Expires  
February 15, 2025