

STATE OF NORTH CAROLINA ^{BY: S. Smallwood}

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV035497-910

COUNTY OF WAKE

NORTH CAROLINA LANDSCAPE)
CONTRACTORS' LICENSING BOARD,)

Plaintiff,)

v.)

SHADOW CREEK, LLC,)

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 Board"), is an agency of the State of North Carolina created under the authority of Chapter 89D of the North Carolina General Statutes.
2. Defendant Shadow Creek, LLC, ("Defendant") is:
 - a. A limited liability company organized under the laws of North Carolina with a principal place of business of 7236 Old Staley Rd., Staley, North Carolina 27355. Cody Fincher is the Managing Member for Defendant; and
 - b. Not presently and was not previously licensed by Plaintiff Board as a "Landscape Contractor," as that term is defined by N.C. Gen. Stat. § 89D-11(3).
3. Plaintiff Board 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.

4. N.C. Gen. Stat. § 89D-11 defines “Landscape Contractor” as “[a]ny 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 constitutes 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.”

5. N.C. Gen. Stat. § 89D-11(2) defines “Landscape construction or contracting” as “[t]he act of providing services as a landscape contractor, as defined in this section for compensation or other consideration.”

6. N.C. Gen. Stat. § 89D-12(a) provides:

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.

7. N.C. Gen. Stat. § 89D-13(5) provides a limited exception for projects “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).”
8. Upon information and belief, Defendant engaged in the practice of landscape construction or contracting in violation of N.C. Gen. Stat. § 89D-12. Specifically, Defendant advertised and held itself out to be “fully licensed” and providing “landscape contractor services” in North Carolina.
9. By holding itself out as being a licensed “Landscape Contractor” without first obtaining requisite licensure from Plaintiff Board or qualifying for any of the licensure exceptions set forth in N.C. Gen. Stat. § 89D-13, Defendant has engaged in the unlicensed practice of landscape construction and contracting.
10. Plaintiff Board is entitled to have the Court restrain and permanently enjoin Defendant from any further conduct in violation of the law.
11. This Order is enforceable by the contempt powers of this Court, including the imposition of fines and/or imprisonment in the event of contempt of this Order.

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

- I. That Defendant be permanently enjoined from the practice of landscape construction or contracting in North Carolina, until such time, if ever, Defendant is properly licensed by Plaintiff Board.
- II. That Defendant be permanently enjoined from advertising as a licensed landscape contractor in North Carolina, until such time, if ever, Defendant is properly licensed by Plaintiff Board.

- III. That the costs of this action, including Plaintiff Board's reasonable costs associated with the filing and service of Defendant's violation, be taxed against Defendant in the amount of \$232.70. Defendant shall remit payment to the Board within thirty (30) days after service of the fully-executed Order.
- IV. That Defendant shall comply with all provisions set forth in N.C. Gen. Stat. § 89D-12 and 13.

2/4/2025 10:35:37 AM

This the ____ day of _____, 2025.

2/4/2025



Superior Court Judge Presiding

CONSENTS:

Consent to entry of the foregoing is hereby acknowledged.

SHADOW CREEK, LLC

By: *[Signature]*

Cody Fincher
Print Name

STATE OF MAINE)
COUNTY OF Maine) ss.:

I, Crystal Rix, a Notary Public of the aforesaid County and State do hereby certify that Cody Fincher, appeared before me this day and acknowledged the due execution of the foregoing Affidavit of Service.

Witness my hand and notarial seal, this the 13 day of January 2025.



[Signature]

Signature of Notary Public

Crystal Rix

Typed or Printed Notary Name

My Commission Expires: 3/12/31

CONSENTS:

Consent to entry of the foregoing is hereby acknowledged.

**NORTH CAROLINA LANDSCAPE
CONTRACTORS' LICENSING BOARD**

By: *Kerry Danger*
Kerry Danger, Chairman

STATE OF NORTH CAROLINA)
) ss.:
COUNTY OF Wake)

I, Frances Moredock, a Notary Public of the aforesaid County and State do hereby certify that Kerry Danger, appeared before me this day and acknowledged the due execution of the foregoing Affidavit of Service.

Witness my hand and notarial seal, this the 30th day of January, 2025.

**FRANCES MOREDOCK
NOTARY PUBLIC
Wake County
North Carolina
My Commission Expires: June 24, 2026**

Frances Moredock
Signature of Notary Public

Frances Moredock
Typed or Printed Notary Name

My Commission Expires: June 24, 2026

**HEDRICK GARDNER KINCHELOE
& GAROFALO, LLP**

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