

NORTH CAROLINA
WAKE COUNTY

FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
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LOST FOREST DEVELOPMENT, LLC, CO., O.S.C.
and its successors,

PETITIONER,

v.

COMMISSIONER OF LABOR OF THE
STATE OF NORTH CAROLINA,

RESPONDENT.

ORDER AND JUDGMENT
FOLLOWING JUDICIAL REVIEW

(OSHANC 2018-6058)

This matter comes before this Court upon the Petition of Lost Forest, LLC, (Petitioner) for Judicial Review of the Order of the North Carolina Occupational Safety and Health Review Commission (NCOSHRC or "Review Commission"). Following a hearing on June 25, 2019, Administrative Law Judge Reagan H. Weaver entered an Order dated June 26, 2019, denying the Commissioner of Labor's (Respondent's) Motion to Dismiss. Respondent timely filed its Petition for Review with NCOSHRC and the matter was heard on September 26, 2019. On November 21, 2019, the Review Commission entered an Order reversing Judge Weaver's decision (OSHANC 2018-6058). Petitioner timely filed its Petition for Judicial Review on December 23, 2019, in which the Petitioner asserted that the NCOSHRC decision was contrary to law, arbitrary and capricious, an abuse of discretion and not supported by substantial evidence. Specifically, Petitioner alleges that Findings of Fact 6, 7, 8, 9, and 10 are unsupported by substantial evidence and that Conclusions of Law 4 and 5 are erroneous, arbitrary and capricious and an abuse of discretion.

This Court held a hearing in this matter on August 12, 2020. Present at this hearing were Michael C. Lord, Williams Mullen, counsel for the Petitioner, and Stacey A. Phipps, Assistant Attorney General, North Carolina Department of Justice, counsel for the Respondent. The Court heard argument on the Petition and has considered the full record in this case, including all briefs as to the issues presented, and the entire record of proceedings before NCOSHRC.

Based on the consideration of these matters, this Court makes the following FINDINGS and CONCLUSIONS pursuant to N.C. Gen Stat. §§95-141 and 150B-51:

- (1) The proper standard for review of an agency decision is determined by the nature of the error asserted in judicial review. For an asserted error of fact, the standard of review is the "whole record" test, which requires the Court to examine the entirety of the administrative record to determine whether the administrative agency's decision is supported by substantial evidence and whether it is arbitrary, capricious or an abuse of discretion. In its role as an appellate court, the superior court reviews the agency's decision, but is not allowed to replace the agency's judgment with its own when there are two reasonably conflicting views, even though the court could have reached a

different result upon de novo review. Rector v. North Carolina Sheriffs' Educ. & Training Stds. Comm'n., 103 N.C. App. 527, 406 S.E.2d 613 (1991).

- (2) The standard of review for errors of law is *de novo*. The reviewing court may substitute its judgment for that of the Review Commission if the Commission's decision was affected by an error of law. N.C. Dep't of Corr. v. Brunson, 152 N.C. App. 430, 567 S.E.2d 416 (2002). Having conducted a *de novo* review, this court finds there is no error of law herein.
- (3) The Review Commission's Findings of Fact, Conclusions of Law, and Order with respect to whether Petitioner failed to timely file its notice of contest are supported by competent, material and substantial evidence and are not otherwise erroneous. The court further finds that the Findings of Fact made by the NCOSH Review Commission provided substantial evidence for the conclusions reached by the Review Commission.
- (4) The Review Commission's Findings of Fact, Conclusions of Law, and Order with respect to Petitioner's untimely filing are not arbitrary, capricious or an abuse of discretion.
- (5) Because there is no error of law or fact as to the Review Commission's Findings of Fact, Conclusions of Law, and Order with respect to its ruling that Petitioner untimely filed its Notice of Contest, the Order of the Review Commission is upheld.

Based on the foregoing, Petitioner's exceptions as set forth in the Petition for Judicial Review are without merit and are accordingly overruled.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Order of the North Carolina Occupational Safety and Health Review Commission in this case is AFFIRMED.

IT IS FURTHER ORDERED that Petitioner is to pay the assessed penalty of \$7,800.00 within thirty (30) days of the filing of this Order.

This ORDER was entered out of session with the prior consent of both parties.

This 19th day of August, 2020.



Rebecca W. Holt
Superior Court Judge Presiding