

NORTH CAROLINA
RANDOLPH COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 16 CVS 201

JERRY OLIVER EARNHARDT)
Petitioner)
v.)
NORTH CAROLINA SUBSTANCE ABUSE)
PROFESSIONAL PRACTICE BOARD,)
Respondent)

**ORDER ON PETITION FOR
JUDICIAL REVIEW**

THIS CAUSE came on to be heard before the undersigned Superior Court Judge presiding over the April 18, 2016 Civil session of the Randolph County Superior Court, as regularly calendared and noticed for hearing on the Petition for Judicial Review filed, on January 28, 2016, by Petitioner Jerry Oliver Earnhardt ("Earnhardt").

Earnhardt was represented by Robert O. Crawford, III of the Raleigh, North Carolina law firm of Crawford & Crawford, LLP. Respondent North Carolina Substance Abuse Professional Practice Board ("the Board") was represented by Nelson G. Harris of the Raleigh, North Carolina law firm of Harris & Hilton, P.A.; and by E. Ann Christian.

In the Petition for Judicial Review, Earnhardt sought judicial review of that Final Decision of the Board dated December 29, 2015.

The Court, having reviewed the whole Record filed by the Board, and having heard the arguments of counsel, finds as fact, or concludes as a matter of law, the following:

1. In the Petition For Judicial Review, Earnhardt sought judicial review of Final Decision Finding Of Fact 161, Conclusion of Law 21, and Decretal paragraph 3, all relating to recovery of attorney's fees and costs by the Board. Issues relating to Finding of Fact 161, Conclusion of Law 21, and Decretal paragraph 3 will be the subject of a separate Order.

2. N.C. Gen. Stat. § 150B-51(b) provide that "[t]he court reviewing a final decision may affirm the decision or remand the case for further proceedings. It may also reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because of the findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional provisions;
- (2) In excess of the statutory authority or jurisdiction of the agency or administrative law judge;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or

(6) Arbitrary, capricious or an abuse of discretion.

3. Earnhardt contends in the Petition For Judicial Review that the Final Decision is in error to the extent that Findings of Fact 23-26, 59, 84, 100, 102, 107, 119-120, 127, 129, 159 and 160, are irrelevant, immaterial, and/or not supported by substantial, material and competent evidence in the entire record.

4. The Court finds that Findings of Fact 23-26, 59, 84, 100, 102, 107, 119-120, 127, 129, 159 and 160, are supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted, and that no other grounds exist to reverse or modify the same.

5. Earnhardt further contends in the Petition For Judicial Review that the Final Decision is in error because the Board failed to find as a fact that Earnhardt demonstrated appropriate and genuine remorse, regret and sorrow for his inappropriate and boundary violating relationship. While Earnhardt presented evidence from which the proposed finding of fact could be made, construing the Record as a whole, the Board could reasonably find otherwise, reject those proposed findings, and conclude that Earnhardt did not demonstrate genuine remorse, regret or sorrow, and its failure to include such a finding of fact is not grounds to reverse or modify the Final Decision.

6. Earnhardt further contends in the Petition For Judicial Review that the Final Decision is in error because the Board failed to find as a fact that Earnhardt has demonstrated genuine rehabilitation of his moral character. While Earnhardt presented evidence from which such a finding of fact could be made, construing the Record as a whole, the Board could reasonably find otherwise, reject those proposed findings, and conclude that Earnhardt did not demonstrate rehabilitation of his moral character, and its failure to include such a finding of fact is not grounds to reverse or modify the Final Decision.

7. Earnhardt further contends in his Petition For Judicial Review that the Final Decision is in error because the Board did include as findings of fact that Earnhardt transmitted a proposed Consent Order for the revocation of his licenses; and a signed Voluntary Surrender of his licenses. While certainly true, those findings, by themselves, would be misleading; are not arguably necessary given the Court's decision with respect to attorney's fees and costs, and the Board's failure to include those findings of fact is not grounds to reverse or modify the Final Decision.

8. Earnhardt further contends that various Conclusions of Law in the Final Decision, specifically Conclusions of Law 7, 9, 11, 19 and 20, are in error. Conclusions of Law made by the Board in the Final Decision are reviewed *de novo*. Applying that standard, the Findings of Fact made the by Board support the Board's Conclusions of Law; and those Conclusions of Law are not made in excess of the statutory authority of the Board; are not made upon unlawful procedure; are not affected by other error of law; and are otherwise not grounds to reverse or modify the Final Decision.

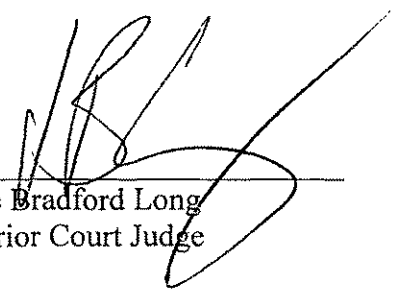
9. The decision of the Board, reflected in decretal paragraphs 1 and 2 of the Final Decision, are supported by the Board's Findings Of Fact and Conclusions of Law; and there is no reversible error in the Board's decision to revoke Earnhardt's license as a Licensed Clinical Addictions Specialist, and his license as a Certified Clinical Supervisor-Intern.

BASED UPON THE FOREGOING, IT IS NOW, THEREFORE, ORDERED, ADJUDGED AND DECREED THAT, except with respect to Finding of Fact 161; Conclusion of Law 21, and Decretal Paragraph 3, all of which are the subject of a separate Order, the Final Decision is affirmed.

Earnhardt's license to practice as a Licensed Clinical Addictions Specialist (LCAS License No. 2514) is permanently revoked; and Earnhardt's certification as a Certified Clinical Supervisor Intern (CCS-I Certificate No. 14018) is permanently revoked.

IT IS FURTHER ORDERED THAT the Record in this case, not to include the Petition For Judicial Review and any orders entered herein, shall remain sealed.

This the 5 day of May, 2016.



The Honorable Vance Bradford Long
Senior Resident Superior Court Judge