

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT



DOCKET NO. 2014-CP-04-01780

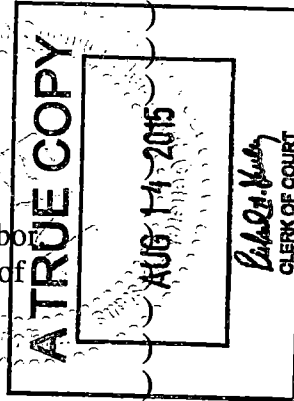
Nancy C. Perez,

Petitioner,

vs.

South Carolina Department of Labor
Licensing and Regulation, Board of
Nursing

Respondent.



ORDER OF DISMISSAL
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COMMON PLEAS AND
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This matter came before this Court pursuant to Respondent's Motion to Dismiss Nancy Perez's *pro se* Amended Petition for a Writ of Mandamus and Declaratory Judgment, or in the Alternative, Inverse Condemnation Proceedings ("Complaint"). This Court grants Respondent's Motion to Dismiss because this Court does not have subject matter jurisdiction to judicially review Respondent's occupational licensing decisions regarding Ms. Perez. Furthermore, even if this Court had subject matter jurisdiction to hear the case, it could not grant the relief Ms. Perez seeks in the Complaint.

1. Rule 12(h) (3), SCRCPP, states "[w]henver it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the case." (Emphasis added). Subject matter jurisdiction may not be waived by the parties, and may be raised by the court itself. *Ex Parte Cannon*, 385 S. C. 643, 685 S. E. 2d 814 (Ct. App. 2009). Denial of occupational licensure is a contested case under the South Carolina Administrative Procedures Act (APA). S. C. Code §1-23-310 (3)-(4) (Supp. 2014). A party who has exhausted all administrative remedies with a licensing board administered by the South Carolina Department of Labor, Licensing and Regulation must appeal the board's decision to the Administrative Law Court, not to this Court. S. C. Code §§1-23-600(D)-(E) (Supp. 2014), 40-1-160, and 40-33-160 (2011).

2. Even if this Court had jurisdiction, it would not issue the requested writ of mandamus because the licensure denial alleged in the Complaint is not ministerial in nature.

To obtain a writ of mandamus requiring the performance of an act, the applicant must show 1) a duty of respondent to perform the act, 2) the ministerial nature of the act, 3) the applicant's specific legal right for which discharge of the duty is necessary, and 4) a lack of any other legal remedy. *Willimon v. City of Greenville*, 243 S. C. 82, 132 S. E. 2d 169 (1963). Reinstatement of Ms. Perez's license in this instance is discretionary rather than ministerial. A duty is ministerial "when it is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts. *Wilson v. Preston*, 378 S. C. 348, 354, 662 S. E. 2d 580, 583 (2008). It is ministerial if it is defined by law with such precision as to leave nothing to the exercise of discretion. *Id.*

Under S.C. Code §40-1-130 (2011), the Board of Nursing (Board) may deny an authorization to practice to an applicant who has committed an act that would be grounds for disciplinary action. The Board required Ms. Perez to appear before it for a reinstatement hearing because of Ms. Perez's failure to disclose a criminal matter to the Board both on her initial South Carolina application in 1996, as well as on her reinstatement application in May, 2014. Under S.C. Code §40-33-110(A)(19)(2011), obtaining or attempting to obtain a license to practice nursing through fraud, deceit or misrepresentation or any other dishonesty in any phase of the licensing process is grounds for discipline. Additionally, pursuant to S.C. Code §40-33-41(2011), the Board has the discretion to deny reinstatement based on evidence of unlawful acts, incompetence, unprofessional conduct, or other misconduct. See also *Trimmier v. South Carolina Dept. of Labor, Licensing and Regulation*, 405 S.C. 239, 245 746 S.E.2d 491, 494 (Ct. App. 2013), cert. denied, July 25, 2014 (finding the Board of Dentistry is permitted discretion in determining whether to reinstate a lapsed license).

3. Ms. Perez stated on the record that she is also seeking damages from Respondent because her LPN license has not been reinstated. Even if this Court has jurisdiction in this matter, the Complaint does not state viable grounds for monetary compensation from the Respondent. Inverse condemnation is the only cause of action pled in the Complaint that requests monetary relief. The elements of an action for inverse condemnation are: (1) affirmative conduct of a government entity; (2) the conduct effects a taking; and (3) the taking is for a public use. *S. C. State Highway Dep't v. Wilson*, 254 S. C. 360, 365, 175 S. E. 2d 391, 394 (1970). The inverse condemnation action is not viable because even if a compensable property interest in a lapsed occupational license exists which

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could be taken by denial of a reinstatement request, the requirement of taking that interest for public use is not alleged or met.

THEREFORE, IT IS ORDERED that Respondent's motion to dismiss the Complaint is GRANTED.

Date: 8-4-15

Anderson, South Carolina
Walker



R. Scott Sprouse
Presiding Circuit Judge

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Nancy C Perez VS Labor Licensing and Regulation South Carolina					
Case Number:	2014CP0401780	Court Agency:	Common Pleas	Filed Date:	08/19/2014
Case Type:	Common Pleas	Case Sub Type:	Adm Law/Other 899	File Type:	Jury
Status:	Ended	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials						
Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Perez, Nancy C	Remittitur From Court Of Appeals	Filing		09/17/2015-15:54		
Labor Licensing and Regulation South Carolina	Service/Certificate Of Service	Filing		08/17/2015-12:35		
Perez, Nancy C	Motion/Reconsider	Motion		08/17/2015-12:33		
Labor Licensing and Regulation South Carolina	Order of Dismissal	Order		08/10/2015-12:06		
Board Of Nursing	Order of Dismissal	Order		08/10/2015-12:06		
Coleman, Darra James	Roster/Notice of Motions Roster Publication Sent	Action		06/29/2015-09:55		
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