

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 INS 07291

<p>NC Department of Insurance Petitioner,</p> <p>v.</p> <p>Andre Day Respondent.</p>	<p>PROPOSED DECISION</p>
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This cause coming on to be heard and being heard January 4, 2016 in the Office of Administrative Hearings, and it appearing to the undersigned that the Petitioner is represented by Special Deputy Attorney General David W. Boone and Assistant Attorney General Anne Goco Kirby, and the Respondent is represented by attorney Mark L. Bibbs. Based upon the evidence presented, the undersigned makes the following findings of fact by a preponderance of the evidence:

1. The Petitioner has the authority and responsibility to enforce North Carolina's insurance laws, and to regulate and license bail bondsmen and runners.
2. Respondent holds an active surety bondsman's license which was first issued by the North Carolina Department of Insurance on August 25, 2000.
3. Respondent holds an active professional bondsman's license which was first issued by the North Carolina Department of Insurance on July 1, 1999.
4. At all relevant times herein, Respondent was licensed by Petitioner and acting under that license.
5. On November 4, 2014, Respondent pled guilty in Greene County, North Carolina, Superior Court to one count of Misdemeanor Obstruction of Justice and one count of Misdemeanor Uttering of a False Document. (Resp. Ex. 4, pp. 45-54)
6. Evidence showed that Respondent posted a \$500.00 Appearance Bond for Sabrina Nicole Ezell on August 14, 2010, in Greene County case number 09 CR 701970. (Resp. Ex. 6, p. 27)
7. Ezell failed to appear for her September 3, 2010 court date, and an Order for Arrest was issued. (Resp. Ex. 6, p. 33)

8. Ezell was served with the Order for Arrest on May 17, 2012. (Resp. Ex. 6, p. 34)
9. On September 3, 2010, a Bond Forfeiture Notice was issued and served by mail on Respondent and Ezell. Said notice stated that a motion to set aside the forfeiture must be filed by January 31, 2011, or the forfeiture will become a final judgment. (Resp. Ex. 6, p. 37)
10. Respondent filed a Motion to Set Aside Forfeiture in the Ezell case on January 31, 2011, alleging that he had surrendered Ezell to the Halifax County Jail on January 28, 2011. (Resp. Ex. 6, pp. 39-41)
11. Respondent had not surrendered Ezell to the Halifax County Jail.
12. Respondent knew at the time he made this allegation in the Motion to Set Aside Forfeiture that said allegation was false.
13. Respondent testified at this hearing that when he filed the Motion to Set Aside he had "a lead" that Defendant Ezell was coming back into town in the next couple of days. (T., p. 70)
14. The District Attorney and/or the school board attorney may object to a motion to set aside in writing, and the Clerk is required to enter an order setting aside the forfeiture if neither have done so within 20 days of service of the motion.
15. Neither the District Attorney nor the school board attorney filed a written objection to Respondent's Motion to Set Aside Forfeiture in the Ezell matter.
16. On February 24, 2011, the forfeiture was set aside in the Ezell matter, relieving the Petitioner of his monetary obligation.
17. On May 24, 2011, a Warrant for Arrest was issued and served on Respondent for Felony Attempting to Obtain Property by False Pretense and Felony Obstructing Justice for his actions in filing the Motion to Set Aside Forfeiture in the Ezell matter. (Resp. Ex. 4, p. 1)
18. Respondent was indicted by the Greene County Grand Jury for the same charges on December 16, 2013. (Resp. Ex. 4, p. 30)
19. Pursuant to a plea arrangement, Respondent pled guilty and was convicted of Common Law Uttering and Obstruction of Justice on November 4, 2014. (Resp. Ex. 4, p. 45-48)
20. Upon his conviction, Respondent was placed on supervised probation and ordered to pay a fine and the court costs. Upon payment of the monetary conditions of probation, Respondent was transferred to unsupervised probation. (Resp. Ex. 4, p. 51-56)
21. Bail bondsmen fall under purview of the Petitioner's Agent Services Division.

22. Ms. Angela Hatchell serves in the Petitioner's Agent Services Division, and she investigated this matter for the Petitioner.

23. Agent Services was aware of the charges against Respondent as early as May, 2011, but did not pursue action against the Respondent until the criminal charges were resolved.

24. Respondent notified Petitioner of his conviction in November, 2014.

25. On December 1, 2014, Agent Services sent a letter to Respondent which requested that he attend an informal conference with the Department. (Resp. Ex. 7)

26. Petitioner's standard practice is to schedule and hold such a conference to discuss the convictions and the circumstances surrounding the same.

27. Mr. Eric Lautzenheiser, a Complaint Analyst for the Petitioner, attended the conference with Respondent on December 22, 2014.

28. Ms. Hatchell then determined that the matter should be referred for an administrative hearing to determine if Respondent's license should be suspended or revoked because the Respondent's actions concerned behavior that occurred in the course of his business as a bail bondsman, involved dishonesty, and demonstrated untrustworthiness.

29. Respondent claims that his completion and presentation of the Surrender of Defendant by Surety form for Ezell to the Halifax County Jail was an inadvertent mistake. Respondent further claims that he did not realize the mistake until he returned to his office to make copies. (T., p. 65)

30. Respondent utilized the purported surrender of Ezell as the underlying basis for his Motion to Set Aside.

31. Respondent is neither credible nor believable in his assertion that he mistakenly presented Ezell's surrender documentation to the Halifax County Jail.

32. Even if Ezell's surrender documentation was mistakenly obtained, Respondent knowingly filed a Motion to Set Aside that was based upon fraudulent information, along with the surrender documentation that he knew was not correct.

Based upon the foregoing findings of fact, the undersigned concludes as a matter of law:

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter herein.

2. The parties were properly served with the Notice of Hearing in this matter.

3. Any finding of fact that also constitutes a conclusion of law is hereby adopted as a conclusion of law, and any conclusion of law that also constitutes a finding of fact is hereby adopted as a finding of fact.

4. Respondent was convicted of Obstruction of Justice and Common Law Uttering for actions which occurred in the course of his business as a bail bondsman.

5. Respondent knowingly prepared and obtained a false Surrender of Defendant by Surety form. Respondent used the Surrender of Defendant by Surety form, and the false information contained therein, as the underlying basis for a Motion to Set Aside Bond Forfeiture. Respondent knowingly prepared, filed, and served the Motion to Set Aside a Bond Forfeiture with the intent to deceive the State of North Carolina.

6. Respondent knowingly prepared, filed and served the Motion to Set Aside a Bond Forfeiture with the intent to deceive the Greene County School Board.

7. Respondent's represented to the State of North Carolina and the Greene County School Board that Ezell was in the custody of the Halifax county jail, that Respondent had surrendered Ezell, and that he was thus entitled to have forfeiture set aside under N.C.G.S. § 15A-544.5(b)(3).

8. The Respondent's false Motion to Set Aside and attached Surrender Form had the capacity to deceive, and did in fact deceive the State of North Carolina and the Greene County School Board.

9. N.C.G.S. § 58-71-82 provides that "[i]f an individual holds a professional bondsman's license or a runner's license and a surety bondsman's license simultaneously, they are considered one license for the purpose of disciplinary actions involving suspension, revocation, or nonrenewal under this Article..."

10. N.C.G.S. § 58-71-80(a) provides that the Commissioner has the authority to "deny, place on probation, suspend, revoke, or refuse to renew any license issued under this Article" for enumerated conduct. In the Notice of Administrative Hearing, the Department alleged that grounds exist to suspend or revoke Respondent's licenses under N.C.G.S. § 58-71-80(a)(2), (5), (6), and (8).

11. N.C.G.S. § 58-71-80(a)(2) authorizes the Commissioner to revoke, suspend or refuse to renew any license issued under Article 71 for "conviction of any misdemeanor committed in the course of dealings under the license issued by the Commissioner." Respondent's November 4, 2014 convictions for misdemeanor common law uttering and obstruction of justice are convictions for misdemeanors committed in the course of dealings under his licenses and warrant revocation of Respondent's licenses.

12. N.C.G.S. § 58-71-80(a)(5) authorizes the Commissioner to revoke, suspend or refuse to renew any license issued under Article 71 for "conducting fraudulent, coercive, or

dishonest practices in the conduct of business or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or any other jurisdiction.”

13. Respondent engaged in a fraudulent and dishonest practice in the conduct of his business and demonstrated incompetence and untrustworthiness in the conduct of business within the meaning of N.C.G.S. § 58-71-80(a)(5) when he knowingly prepared and obtained a fraudulent and false Surrender of Defendant by Surety form in the Sabrina Ezell case.

14. Respondent engaged in a fraudulent or dishonest practice in the conduct of business and demonstrated incompetence and untrustworthiness in the conduct of business within the meaning of N.C.G.S. § 58-71-80(a)(5) when he knowingly prepared, filed, and served a fraudulent and false Motion to Set Aside Forfeiture using the Surrender of Defendant by Surety form as the underlying basis for the same in the Sabrina Ezell case.

15. N.C.G.S. § 58-71-80(a)(6) authorizes the Commissioner to revoke, suspend or refuse to renew any license issued under Article 71 for “conviction of a crime involving dishonesty, breach of trust, or moral turpitude.”

16. Respondent’s conviction of Obstruction of Justice is a conviction of a crime involving dishonesty, breach of trust, and moral turpitude.

17. Similarly, Respondent’s conviction of Common Law Uttering is a conviction of a crime involving dishonesty, breach of trust, and moral turpitude.

18. N.C.G.S. § 58-71-80(a)(8) authorizes the Commissioner to revoke, suspend or refuse to renew any license issued under Article 71 if “in the judgment of the Commissioner, the licensee has in the conduct of the licensee’s affairs under the license, demonstrated incompetency, financial irresponsibility, or untrustworthiness”

19. Respondent has demonstrated incompetency and untrustworthiness in the conduct of his affairs under his licenses within the meaning of N.C.G.S. § 58-71-80(a)(8) when he knowingly prepared and obtained the Surrender of Defendant by Surety form in the Sabrina Ezell case.

20. Respondent has demonstrated incompetency and untrustworthiness in the conduct of his affairs under his licenses within the meaning of N.C.G.S. § 58-71-80(a)(8) when he knowingly prepared, filed, and served a fraudulent and false Motion to Set Aside Forfeiture using the Surrender of Defendant by Surety form as the underlying basis for the same in the Sabrina Ezell case.

RECOMMENDED DECISION

The North Carolina Department of Insurance will make the Final Decision in this matter. The undersigned recommends, based upon the foregoing findings of fact and conclusions of law, that the North Carolina Department of Insurance enter a Final Decision permanently revoking Respondent’s bondsman licenses.

This the 26th day of April, 2016.

Philip E Berger Jr.
Administrative Law Judge