

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 INS 04230

<p>N.C. Department of Insurance, Agent Services Division, Petitioner,</p> <p>v.</p> <p>Harold T. Little, Respondent.</p>	<p style="text-align: center;">PROPOSAL FOR DECISION</p>
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This matter coming on to be heard and being heard August 18, 2016 in the Office of Administrative Hearings, and it appearing to the undersigned that the Petitioner is represented by Assistant Attorney General Robert D. Croom, and the Respondent is represented by Timothy A. Gunther of the Wake County Bar.

Prior to a hearing on the merits, Petitioner's oral motion to amend the Request for Administrative Hearing pursuant to N.C.G.S. § 1A-1, Rule 15(a) was granted without objection. Prior to a hearing on the merits, the parties agreed to the following stipulations: With regard to the allegations set forth in the Pleading (Request for Administrative Hearing), Paragraph 1, Paragraphs 3 through 12, and Paragraphs 27 through 39, the Parties have agreed that the facts contained therein are accurate, but do not agree to any legal conclusions that those facts may lead to.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, documents received and admitted into evidence, and the entire record in this proceeding, the undersigned has weighed all the evidence, or lack thereof, and has assessed the credibility of the witnesses by taking into account the appropriate facts for judging credibility, including but not limited to the demeanor of the witness; any interests, biases, and/or prejudices that any witness may have; the opportunity of the witness to see, hear, know, and remember the facts or occurrences about which the witness has testified; whether the testimony of the witness is reasonable; and whether the testimony is consistent with all other believable evidence in the case. From the sworn testimony and admitted evidence, or the lack thereof, the undersigned makes the following findings of fact by a preponderance of the evidence:

1. Harold T. Little ("Respondent") is a citizen and resident of Alexander County, North Carolina.
2. N.C. Department of Insurance, Agent Services Division ("Petitioner" or "Department") is a state agency responsible for licensing and regulating the bail bonding industry in North Carolina.
3. Respondent holds an active surety bail bondsman license and an active professional bail bondsman license issued by the Petitioner. (Ex. P1)

Violation of N.C.G.S. § 58-71-95(5) (Excess Premium)

4. At all times relevant to the allegations herein, Respondent was President of Little's Bail Bonding, Incorporated.

5. At all times relevant to the allegations herein, Nancy Kerley held a surety bail bondsman license and a bail bond runner license issued by the Department and was an employee of Little's Bail Bonding, Incorporated.

6. At all times relevant to the allegations herein, Rick E. Smith held a bail bond runner license issued by the Department and was an employee of Little's Bail Bonding, Incorporated. (Ex. P9)

7. At all times relevant to the allegations herein, Ricky D. Smith held a surety bail bondsman license and a bail bond runner license issued by the Department and was an employee of Little's Bail Bonding, Incorporated. (Ex. P9)

8. At all times relevant to the allegations herein, Nancy Kerley, Rick E. Smith and Ricky D. Smith all were employees of Little's Bail Bonding, Incorporated. (Ex. P9)

9. On December 3, 2011, Respondent, Nancy Kerley, Rick E. Smith and Ricky D. Smith posted the following bonds for Douglas Curlee to secure his release from custody:

- In Alexander County file number 08 CRS 050364, Respondent, through his runner Nancy Kerley, executed a surety appearance bond for Douglas Curlee in the amount of \$17,500.00 using Respondent's professional licensee (seal 1219483) and charged Curlee a premium of \$920.00. (Ex. P4)

- In Alexander County file number 08 CRS 050364, Respondent executed a surety appearance bond for Douglass Curlee in the amount of \$2,500.00 as an accommodation bondsman. (Ex. P4)

- In Alexander County file number 08 CRS 050364, Respondent, through his runner Nancy Kerley, executed a surety appearance bond for Douglas Curlee in the amount of \$20,000.00 using Respondent's professional licensee (seal 1219484) and charged Curlee a premium of \$920.00. (Ex. P4)

- In Caldwell County file number 09 CR 004048, Respondent, through his subagent Ricky D. Smith, executed a surety appearance bond for Douglas Curlee in the amount of \$6,000.00 using an Accredited Surety and Casualty Company, Inc. power of attorney issued to Respondent (power BB02553857) and charged Curlee a premium of \$900.00. (Ex. P5)

- In Iredell County file number 11 CR 004070, Respondent, through his subagent Ricky D. Smith, executed a surety appearance bond for Douglas Curlee in the amount of

\$500.00 using an Accredited Surety and Casualty Company, Inc. power of attorney issued to Respondent (power BB02553856) and charged Curlee a premium of \$75.00. (Ex. P6)

- In Alexander County file numbers 11 CR 700761 and 11 CR 700762, Respondent executed a surety appearance bond for Douglas Curlee in the amount of \$500.00 as an accommodation bondsman. (Ex. P7)

10. The total amount of the above bonds was \$47,000.00.
11. The total amount of the bonds above, excluding the bonds where Respondent executed the bond as an accommodation bondsman, was \$44,000.00.
12. The total premium charged for the above bonds was \$7,050.00. (Ex. P8)
13. \$1,800 of the premium was paid on December 3, 2011, and the remaining \$5,210.00 was deferred pursuant to a memorandum of agreement signed by Douglas Curlee and Rick E. Smith. (Ex. P8)
14. For purposes more fully set forth below, \$7,050.00 is more than 15% of \$44,000.00.

Violations of N.C.G.S. § 58-71-165 (Inaccurate Monthly Reports)

15. The Petitioner found mistakes in the monthly reports submitted by Respondent from September, 2011 to August, 2014 with the exception of June, 2014 (Pet. Ex. 3.1 through 3.33)
16. These mistakes included leaving blank spaces where the amount charged was required, leaving dates off or printing numbers instead of figures, confusing names, duplicating the same seal on numerous bonds, putting incorrect amounts on the premiums, and other mistakes.
17. However, when initially reviewed by the Petitioner, the following monthly reports were determined to be “In compliance” as noted in the “File Status” portion of the reports:

- September, 2011
- October, 2011
- November, 2011
- December, 2011 (through an amended report)
- January, 2012
- March, 2012 (there was no February, 2012 report in Pet. Ex. 3.1-3.33)
- April, 2012 (through an amended report)
- May, 2012 (through an amended report)
- June, 2012 (through an amended report)
- July, 2012 (through an amended report)
- August, 2012 (through an amended report)
- September, 2012
- December, 2012 (October and November, 2012 reports were noted as incomplete)
- January, 2013

- February, 2013 (through an amended report)
- March, 2013 (through an amended report)
- April, 2013 (through an amended report)
- May, 2013 (through an amended report)
- June, 2013 (through an amended report)
- August, 2013 (through an amended report) (July, 2013 report was incomplete)
- September, 2013 (through an amended report)
- October, 2013
- November, 2013 (through an amended report)
- December, 2013 (through an amended report)
- January, 2014 (through an amended report)
- March, 2014 (through an amended report) (there was no February, 2014 report in Pet. Ex. 3.1-3.33)
- April, 2014 (through an amended report)
- May, 2014 (through an amended report)
- July, 2014 (there was no June, 2014 report in Pet. Ex. 3.1-3.33)
- August, 2014

(Pet. Ex. 3.1 through 3.33)

18. The alleged mistakes were careless at best and were not done for monetary benefit, nor were they part of a design to conceal any transactions from the Petitioner.

19. Some of these mistakes were due to computer malfunctions and the relatively recent implementation of a computer reporting system. (T, 150-152)

20. From September, 2011 to September, 2013 the reports submitted by Respondent included numerous blank or empty spaces where the amount of the premium should have been. This is how Respondent showed an absence of payment.

21. Respondent wrote several bonds for Jerry Binfield, who is his nephew. Respondent did not charge Jerry Binfield any premium and repeatedly left the space to report the premium blank. (T, 147-148)

22. On or about August 15, 2013 the Petitioner sent Respondent a letter outlining incorrect monthly reports, and specifically informed him of the missing bond fees. (Pet. Ex. 17)

23. This was the only letter sent to Respondent by the Petitioner regarding the problems with the monthly reports.

24. After receipt of the letter, Respondent started using zeros instead of empty spaces for bond fees.

Violations of N.C.G.S. §§ 58-71-145 and 58-71-175 (Quarter Limit Violations)

25. Respondent, as a professional bail bondsman, is required to maintain a deposit of securities with the Commissioner of a fair market value of at least one-eighth the amount of all bonds written in the State on which he is liable as of the first day of the month. *See* N.C.G.S. § 58-71-145
26. Pursuant to N.C.G.S. § 58-71-175, “[n]o professional bondsman shall become liable on any bond or multiple of bonds for any one individual that totals more than one-fourth of the value of the securities deposited with the Commissioner at that time, until final termination of liability on such bond or multiple of bonds.”
27. From September 2011 through and including March 4, 2012, Respondent’s securities on deposit with the Petitioner was \$150,326.44. (Ex. P2)
28. On or about December 8, 2011, Respondent became liable for a \$500.00 bond for Jennifer Cole in Alexander County, 11CR 000083, professional seal number 1219496. (Ex. P20)
29. On or about February 6, 2012, Respondent became liable for a \$37,500.00 bond for Jennifer Cole in Alexander County, 12CR 050170, professional seal number 1231980. An additional \$12,500.00 was posted for this same bond by Nancy Kerley using a power of attorney from Accredited Surety and Casualty Company, Inc. (Ex. P21)
30. The \$500.00 bond combined with the \$37,500.00 bond, both written by Respondent as a professional bondsman, were more than one fourth of the amount of the securities on deposit at the time the latter bond was posted.
31. The Petitioner notified Respondent of this deficiency via a letter posted with the United States Postal Service. (T, 160)
32. On March 5, 2012 Respondent deposited an additional \$11,000.00 into his securities account, which adequately addressed the quarter limit issue and brought his account into compliance. (Ex. P2)
33. From March 5, 2012 through and including May 16, 2012, Respondent’s securities on deposit with the Petitioner was \$161,326.44. (Ex. P2)
34. On or about April 4, 2012, Respondent became liable for a \$40,000.00 bond for Anthony Hill in Iredell County, 12CR 050654, professional seal number 1231099. An additional \$30,000.00 was posted for this same bond by Nancy Kerley using a power of attorney from Accredited Surety and Casualty Company, Inc. (Ex. P22)
35. On or about April 26, 2012, Respondent became liable for a \$800.00 bond for Anthony Hill in Iredell County, 12CR 052285 and 12CR 052345, Professional seal number 1251043. (Ex. P23)
36. The \$800.00 bond, combined with the \$40,000.00 bond, both written by Respondent as a professional bail bondsman, were more than one fourth of the amount of the securities on deposit at the time the latter bond was posted.

37. The Petitioner notified Respondent of this deficiency via a letter posted with the United States Postal Service. (T, 160)
38. On May 16, 2012 Respondent deposited an additional \$2,000.00 into his securities account which adequately addressed the quarter limit issue and brought his account into compliance. (Ex. P2)
39. Each deficiency was promptly corrected by Respondent upon notice from the Petitioner.
40. Since becoming aware of these allegations and charges, Respondent has voluntarily ceased writing bonds as a professional bail bondsman and currently has three (3) outstanding bonds written in this manner.
41. This matter is the only time in Respondent's seventeen-year history as a licensed professional bail bondsman that he has had to appear or defend his conduct or practice against allegations or charges from the Petitioner.
42. There is no evidence of fraud, coercion, dishonesty, or untrustworthiness in any report or transaction conducted by Respondent.
43. There is no evidence that Respondent has not demonstrated good faith in his conduct herein.

Based on the forgoing 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. Pursuant to N.C.G.S. § 58-71-5, the Commissioner of Insurance has full power and authority to administer the provisions of Chapter 58, Article 71 of the General Statutes, which regulate bail bondsmen and runners in North Carolina.
3. The parties were properly served with the Request for Administrative Hearing in this matter.
4. Any findings of fact that also contain a conclusion of law is hereby adopted as a conclusion of law, and any conclusion of law that also contains a finding of fact is hereby adopted as a finding of fact.
5. 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 [Chapter 58, Article 71 of the General Statutes].”

6. Pursuant to N.C.G.S. § 58-71-80(a), “[t]he Commissioner may . . . place on probation, suspend, revoke, or refuse to renew any license issued under [Chapter 58, Article 71 of the General Statutes], in accordance with the provisions of Article 3A of Chapter 150B of the General Statutes”

7. Pursuant to N.C.G.S. § 58-71-80(a)(5), the Commissioner may place on probation, suspend, revoke or refuse to renew any license issued under Chapter 58, Article 71 of the General Statutes for “[f]raudulent, coercive, or dishonest practices in the conduct of business or demonstrating incompetence, untrustworthiness, or financial irresponsibility . . . in this State or any other jurisdiction.”

8. Pursuant to N.C.G.S. § 58-71-80(a)(7), the Commissioner may place on probation, suspend, revoke or refuse to renew any license issued under Chapter 58, Article 71 of the General Statutes for failing to comply with or violating the provisions of Chapter 58, Article 71 of the General Statutes or of any order, rule, or regulation of the Commissioner.

9. Pursuant to N.C.G.S. § 58-71-80(a)(8), the Commissioner may place on probation, suspend, revoke or refuse to renew any license issued under Chapter 58, Article 71 of the General Statutes “[w]hen 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; or that the licensee is no longer in good faith carrying on the bail bond business”

10. Pursuant to N.C.G.S. § 58-71-80(a)(10), the Commissioner may deny, place on probation, suspend, revoke, or refuse to renew any license under this Article “[f]or charging or receiving, as premium or compensation for the making of any deposit or bail bond, any sum in excess of that permitted by [Chapter 58, Article 71 of the North Carolina General Statutes].”

Violation of N.C.G.S. § 58-71-95(5) (Excess Premium)

11. Pursuant to N.C.G.S. § 58-71-1(1), an accommodation bondsman is a “person who shall not charge a fee or receive any consideration for action as a surety”

12. Pursuant to N.C.G.S. § 58-71-95(5), no bail bondsman or runner shall “[a]ccept anything of value from a principal or from anyone on behalf of a principal except the premium, which shall not exceed fifteen percent (15%) of the face amount of the bond.”

13. Respondent charged a premium in excess of fifteen percent (15%) for the bonds that he did not execute as an accommodation bondsman for Douglas Curlee in violation of N.C.G.S. §§ 58-71-95(5), 58-71-80(a)(7) and (a)(10).

14. Respondent demonstrated financial irresponsibility in the conduct of business in this State when he charged in excess of fifteen percent (15%) for the bonds that he did not execute as an accommodation bondsman for Douglas Curlee, in violation of N.C.G.S. § 58-71-80(a)(5).

15. When Respondent charged in excess of fifteen percent (15%) for the bonds that he did not execute as an accommodation bondsman for Douglas Curlee he demonstrated financial irresponsibility in the conduct of the affairs under his license, in violation of N.C.G.S. § 58-71-80(a)(8).

Violations of N.C.G.S. § 58-71-165 (Inaccurate Monthly Reports)

16. Pursuant to N.C.G.S. § 58-71-165(a):

Each professional bail bondsman shall file with the Commissioner a written report in a form prescribed by the Commissioner regarding all bail bonds on which the bondsman is liable as of the first day of each month showing (i) each individual bonded, (ii) the date the bond was given, (iii) the principal sum of the bond, (iv) the State or local official to whom given, and (v) the fee charged for the bonding service in each instance.

17. As set forth above, Petitioner determined that Respondent's monthly reports were in compliance when they were submitted or subsequently amended.

18. Respondent's conduct in amending any erroneous report demonstrates that he is, in fact, a responsible business man attempting to comply with Petitioner's requirements.

19. Further, any issues with the computer reporting system are not evidence of incompetence on the part of the Respondent. In addition, when Respondent was notified that his method of recording certain bonds was not appropriate, he changed his accounting procedure.

20. The actions of Respondent concerning his monthly reports do not rise to the level of fraud, coercive or dishonest practices. Respondent has not attempted to conceal any relevant facts or circumstances from the Petitioner.

21. The actions of Respondent concerning the monthly reports do not rise to incompetence, in that once Respondent was informed, by letter, of the mistakes he was making by the Petitioner, Respondent took affirmative steps to correct, reduce, or eliminate these mistakes.

Violations of N.C.G.S. §§ 58-71-145 and 58-71-175 (Quarter Limit Violations)

22. Pursuant to N.C.G.S. § 58-71-145:

Each professional bondsman acting as surety on bail bonds in this State shall maintain a deposit of securities with and satisfactory to the Commissioner of a fair market value of at least one-eighth the amount of all bonds or undertakings written in this State on which he is absolutely or conditionally liable as of the first day of the current month. The amount of this deposit must be reconciled with the bondsman's liabilities as of the first day of the month on or

before the fifteenth day of said month and the value of said deposit shall in no event be less than fifteen thousand dollars (\$15,000).

23. Pursuant to N.C.G.S. § 58-71-175: “No professional bondsman shall become liable on any bond or multiple of bonds for any one individual that totals more than one-fourth of the value of the securities deposited with the Commissioner at that time, until final termination of liability on such bond or multiple of bonds.”

24. There is no dispute that Respondent initiated bonds in excess of his quarter limit on two occasions in 2012. Respondent was financially irresponsible in these matters in that he knew or should have known the bonds were in excess of his quarter limit.

25. However, once advised of the deficiency, Respondent immediately corrected the matter by depositing sufficient funds into his account.

26. Respondent demonstrated financial irresponsibility in the conduct of business in this State when he became liable for Jennifer Cole’s bonds in Alexander County in violation of N.C.G.S. § 58-71-80(a)(5).

27. When Respondent became liable for Jennifer Cole’s bonds in Alexander County, he demonstrated financial irresponsibility in the conduct of his affairs under his license, in violation of N.C.G.S. § 58-71-80(a)(8).

28. Respondent demonstrated financial irresponsibility in the conduct of business in this State when he became liable for Anthony Hill’s bonds in Iredell County in violation of N.C.G.S. § 58-71-80(a)(5).

29. When Respondent became liable for Anthony Hill’s bonds in Iredell County, he demonstrated financial irresponsibility in the conduct of his affairs under his license, in violation of N.C.G.S. § 58-71-80(a)(8).

30. The actions of Respondent concerning the quarter limit violations do not rise to the level of fraud, coercive or dishonest practices, in that once the shortfalls were brought to his attention, Respondent took immediate action to correct the shortfalls.

31. N.C.G.S. § 58-2-70 states in relevant part that:

(c) If . . . the Commissioner finds a violation of this Chapter, the Commissioner may, . . . instead of suspending or revoking the license or certification, order the payment of a monetary penalty as provided in subsection (d) of this section . . .

(d) If the Commissioner orders the payment of a monetary penalty pursuant to subsection (c) of this section, the penalty shall not be less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00).

PROPOSAL FOR DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby recommends that Respondent pay a fine of \$500.00 within 30 days of the date of this proposed decision, and that he be placed on probationary status for a period of one year. During the term of probation, Respondent shall submit accurate monthly reports for his professional bail bondsman license and not commit any further violations or infractions so long as he holds his professional bail bondsman license.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed Findings of Fact and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e).

The agency that will make the final decision in this contested case is the North Carolina Department of Insurance.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to any attorney of record. N.C.G.S. § 150B-42(a).

This the 22nd day of November, 2016.

Philip E Berger Jr.
Administrative Law Judge