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NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA

AGENT SERVICES
DIVISION

BEFORE THE COMMISSIONER
OF INSURANCE

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE MATTER OF
THE LICENSURE OF
RODRIGO AVILA

FINAL AGENCY DECISION
AND ORDER

DOCKET NUMBER: 1298

This matter was heard by the undersigned, who was designated by the Commissioner of Insurance pursuant to N.C. General Statute §§ 58-2-50 and 58-2-55. The hearing was held pursuant to N.C. General Statute §§ 58-2-70, 58-71-80, 150B-38, 150B-40, and other applicable statutes and rules, on April 3, 2007, pursuant to a Notice of Administrative Hearing that was duly issued and served on February 8, 2007 and pursuant to a Continuation Order issued by the undersigned on March 12, 2007. Mr. Avila attended the hearing and was represented by counsel, Perry Mastromichalis, Esq. The Agent Services Division of the North Carolina Department of Insurance was represented by LaShawn L. Strange, Esq., Assistant Attorney General. At the close of the hearing, the undersigned ordered counsel for the parties to submit proposed orders. Ms. Strange complied, but Mr. Mastromichalis failed to comply and failed to respond to repeated attempts to contact him.

ALLEGATIONS

At the hearing, the following allegations by the Agent Services Division of the North Carolina Department of Insurance were considered:

1. On November 9, 2000, the North Carolina Department of Insurance issued both surety and professional bondsman licenses to Mr. Avila.

2. On or about June 10, 2003, Mr. Avila wrote a \$150,000 bond for Defendant Miguel Angel Sanchez. Sanchez later failed to appear for his hearing, and a bond forfeiture notice was issued on August 13, 2003.

3. On or about April 2, 2005, Mr. Avila traveled to Fulton County, Georgia and apprehended Sanchez. At the time he was apprehended, Sanchez was driving a 2000 Ford Expedition. The vehicle is titled and registered in the name of Yerenia Sanchez-Cardenas. Mr. Avila took both Sanchez and the vehicle titled to Ms. Sanchez-Cardenas to Harnett County. Mr. Avila surrendered Sanchez to Harnett County authorities on April 3, 2005.

4. A criminal warrant was issued against Mr. Avila in Fulton County for the theft and conversion of the vehicle of Sanchez-Cardenas on or about August 3, 2005. To date, Mr. Avila has not returned the vehicle to Sanchez-Cardenas.

5. In November 2005, Carlyle Poindexter, Poindexter and Associates, Inc., Safety National Casualty Corporation, Williams National Surety Corporation and Gary Williams ("Plaintiffs") filed a complaint in Lee County District Court. The complaint alleged that Mr. Avila in his capacity as a bail bondsman failed to perform as contracted under the producer agreement between Plaintiffs and Mr. Avila.

6. On May 1, 2006, a default judgment was issued in favor of the Plaintiffs against Mr. Avila (Rodrigo Mr. Avila d/b/a Mr. Avila & Associates) by the Lee County District Court. In the judgment, the Court ordered that Mr. Avila pay the Plaintiffs an amount in excess of \$370,000, plus costs and interest. As of the date of the hearing, Mr. Avila had not paid this outstanding judgment.

7. On August 2, 2005, Poindexter Surety Services was granted a judgment against Mr. Avila in the amount of \$5,000 plus costs for Mr. Avila's failure to pay the bail bond forfeiture of defendant Anay Rodriguez-Suavez. Pursuant to the producer agreement entered into by the parties, Mr. Avila was liable to Poindexter Surety Services for any bail bond forfeitures that occurred under the power of attorney issued by Poindexter Surety Services to Mr. Avila. Mr. Avila sought to appeal this judgment.

8. On February 14, 2006, an Order was issued by the Lee County District Court in favor of Poindexter Surety Services. The Order provided that Mr. Avila owed Poindexter Surety Services \$2,328.75 for expenses incurred by Poindexter Surety Services in defending Mr. Avila's unperfected appeal of the August 2, 2005 judgment issued against him.

9. As of the date of the hearing, Mr. Avila had not satisfied or attempted to settle any of the judgments that were issued against him by the Lee County District Court on account of his conduct of business under his bondsman licenses.

AVERMENTS

At the hearing, the following averments by the Agent Services Division of the North Carolina Department of Insurance were considered:

1. Mr. Avila's conduct subjects him to N.C. General Statute § 58-71-80(4), which provides that the Commissioner may deny, suspend, revoke, or refuse to renew any license for "misappropriation, conversion or unlawful withholding of moneys belonging to the insurers or others and received in the conduct of business under the license."

2. Mr. Avila's conduct subjects him to N.C. General Statute § 58-71-80(5), which provides that the Commissioner may deny, suspend, revoke, or refuse to renew any

license for “fraudulent or dishonest practices in the conduct of business under the [bail bondsman] license.”

3. Mr. Avila’s conduct subjects him to N.C. General Statute § 58-71-80(7), which provides that the Commissioner may deny, suspend, revoke, or refuse to renew any license for “failure to comply with or violation of the provisions of this Article or of an order, rule or regulation of the Commissioner.”

4. Mr. Avila’s conduct subjects him to N.C. General Statute § 58-71-80(8), which provides that the Commissioner may deny, suspend, revoke, or refuse to renew any license “when in the judgment of the Commissioner, the licensee has in the conduct of the licensee’s affairs under the license, demonstrated incompetency [sic], financial irresponsibility, or untrustworthiness; or that the licensee is no longer in good faith carrying on the bail bond business....”

FINDINGS OF FACT

1. There was no preponderance of evidence that Mr. Avila’s conduct subjected him to N.C. General Statute §§ 58-71-80(4), 58-71-80(5), or 58-71-80(7). The evidence presented by the Department and the Mr. Avila’s testimony under oath, when considered together, made it impossible for the undersigned to find that Mr. Avila misappropriated, converted, or unlawfully withheld moneys belonging to others and received in the conduct of business under his license, that Mr. Avila committed fraudulent or dishonest practices in the conduct of business under his license, or that Mr. Avila failed to comply with or violated the provisions of Article 71 or failed to comply with an order, rule, or regulation of the Commissioner. See Allegations 3 and 4 and Averments 1,2, and 3.

2. There was, however, a preponderance of evidence that Mr. Avila demonstrated incompetence and financial irresponsibility in the conduct of his affairs under his licenses. The evidence was replete with examples of poor accounting practices in Mr. Avila's bail bond business; substandard business practices in Mr. Avila's bail bond business; numerous failures by Mr. Avila to respond to complaints filed in the courts against Mr. Avila and to appeal judgments arising out of those complaints; and Mr. Avila's failure to perform as contracted under the producer agreement between Mr. Avila and Carlyle Poindexter, Poindexter and Associates, Inc., Safety National Casualty Corporation, Williams National Surety Corporation, and Gary Williams.

CONCLUSIONS OF LAW

1. This matter is properly before the Commissioner of Insurance, and he has jurisdiction over the parties and the subject matter pursuant to Chapter 58 of the North Carolina General Statutes.

2. Notice in this matter was timely and properly served.

3. There are outstanding judgments against Mr. Avila; and Mr. Avila has demonstrated financial irresponsibility by failing to satisfy these judgments or agree to a payment plan with the judgment creditors.

4. Mr. Avila's conduct does not subject him to N.C. General Statute §§ 58-71-80(4), 58-71-80(5), or 58-71-80(7).

5. Mr. Avila's conduct does subject him to N.C. General Statute § 58-71-80(8).

ORDER

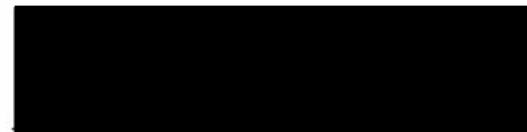
1. Mr. Avila's surety bondsman and professional bail bondsman licenses are revoked effective September 28, 2007. This revocation is stayed if Mr. Avila provides the Department, before 5:00 p.m. on September 27, 2007, one of the following:

A. Verified written evidence that Mr. Avila and his judgment creditors have agreed to a payment plan whereby Mr. Avila will attempt to satisfy the judgments against him.

B. Verified written evidence that Mr. Avila has filed a motion for relief from the judgments under Rule 60(b) of the Rules of Civil Procedure.

2. A copy of this Final Agency Decision and Order shall be placed in Mr. Avila's file in the Agent Services Division and sent to the appropriate Clerks of Court.

This 6th day of September, 2007.



William K. Hale
Hearing Officer
N. C. Department of Insurance
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Raleigh, N.C. 27699-1201
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State Bar Number: 6182


CERTIFICATE OF SERVICE – DOCKET NUMBER 1298

I hereby certify that on this day I have served a copy of the attached **Final Agency Decision and Order** by mailing a copy of the same via certified U.S. mail, return receipt requested, in a postage prepaid envelope addressed as follows:

**Mr. Rodrigo Avila
P.O. Box 5440
Sanford, NC 27330**

**Perry Mastromichalis, Esq.
100 Six Forks Road
Suite 306
Raleigh, NC 27609**

This the 6th day of September, 2007.



LaShawn L. Strange
Assistant Attorney General
North Carolina Department of Justice
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