

**NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA
DOCKET NOS. 1831 and 1832**

STATE OF NORTH CAROLINA)	BEFORE THE COMMISSIONER
COUNTY OF WAKE)	OF INSURANCE
)	
)	
IN THE MATTER OF)	ORDER AND FINAL
GREGORY S. PRICE AND)	AGENCY DECISION
LARRY D. BENTON, JR.)	Docket Nos. 1831 and 1832

THIS CAUSE was heard on March 8 and 9, 2017 before Administrative Law Judge Selina Malherbe at the Office of Administrative Courts in Charlotte, North Carolina, pursuant to North Carolina General Statute §150B-40(e). On July 25, 2017, Judge Malherbe tendered a Proposal for Decision to the Department of Insurance (“Department”). On August 30, 2017 both parties were notified that they had an opportunity to file exceptions and alternative proposed findings of fact to the Proposal for Decision and to present oral and written arguments to the Department. The deadline for filing exceptions, alternative proposed findings of fact and requesting a hearing was September 25, 2017. The Department has not received exceptions, alternative proposed findings of fact, written arguments or a request for a hearing on the Proposal for Decision. As a result, the undersigned herein adopts the Proposal for Decision and issues this Order and Final Agency Decision.

APPEARANCES

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PREHEARING MOTIONS

At the call of this contested case for hearing, both Parties made oral motions. Respondents made a Motion to Sequester witnesses, which was granted without objection from Petitioner. Petitioner made a Motion *In Limine*, which was denied after Judge Malherbe heard argument from both Parties.

ISSUES

1. Whether Respondents, individually or jointly, complied with N.C. Gen. Stat. §§58-71-95(5), 58-71-100(a), 58-71-140(d), 58-71-167 and 58-71-168; and, if not, whether their conduct constitutes grounds to place on probation; suspend; or revoke their bail bondsman licenses ("Licenses") under N.C. Gen. Stat. §58-71-80(a)(7) for failing to comply with N.C. Gen. Stat. Ch. 58 Art. 71 ("Article 71")?
2. Whether Respondents, individually or jointly, aided and abetted in any violation of Article 71; and, if so, whether their conduct constitutes grounds to place on probation; suspend; or revoke their Licenses under N.C. Gen. Stat. §58-71-80(a)(14) for knowingly aiding and abetting others to evade or violate the provisions of Article 71?
3. Whether Respondents, individually or jointly, complied with 11 NCAC 13.0512(e), 13.0513 and 13.0515; and, if not, whether their conduct constitutes grounds to place on probation; suspend; or revoke their Licenses under N.C. Gen. Stat. §58-71-80(a)(7) for failing to comply with a rule or regulation of the Commissioner of Insurance ("Commissioner")?
4. Whether Respondents, individually or jointly, failed to comply with N.C. Gen. Stat. §§58-71-95(5); and, if so, whether their conduct constitutes grounds to place on probation; suspend; or revoke Respondents' Licenses under N.C. Gen. Stat. 58-71-80(a)(4) for misappropriating, converting, or unlawfully withholding any such collateral security or other indemnity?
5. Whether Respondents' conduct, individually or jointly, constitutes grounds to place on probation; suspend; or revoke their Licenses under N.C. Gen. Stat. §58-71-80(a)(5) for fraudulent, coercive, or dishonest practices?
6. Whether Respondents' conduct, individually or jointly, constitutes grounds to place on probation; suspend; or revoke Respondents' Licenses under N.C. Gen. Stat. §58-71-80(a)(8) for incompetence, untrustworthiness, or financial irresponsibility?
7. Whether, in addition to or instead of probation, suspension, or revocation, monetary penalties should be imposed on either or both Respondents pursuant to N.C. Gen. Stat. §58-2-70?

WITNESSES

For Petitioner: Natalie Baghalzadeh
Ronna Bell
Larry D. Benton, Jr.
Angela Hatchell
Keri Kennedy
Gregory S. Price
Matthew Todd Rubins

For Respondents: Larry D. Benton, Jr.
Gregory S. Price

EXHIBITS

For Petitioner: Exhibits (hereinafter "Exh.") 1-5, 7, 7A, 10-15, 22-25, 27 and 30

For Respondents: Exhibits 6-9, 21

FINDINGS OF FACT

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, Judge Malherbe made the following findings of fact. In making the findings of fact, the Judge Malherbe weighed all the evidence and assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interest, bias, or prejudice the witness may have had; the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified; whether the testimony of the witness was reasonable; and whether the testimony was consistent with all other believable evidence in the case. Wherefore, the undersigned herein adopts Judge Malherbe's Findings of Fact and Conclusions of Law as set forth in the Proposal for Decision.

Undisputed Facts

The Parties stipulated to undisputed facts in the Order on Final Pre-Trial Conference, to wit:

- (a) Respondents have North Carolina surety bail bondsmen licenses.

- (b) "Big Daddys [sic] Bail Bonds, LLC" is a registered North Carolina limited liability company that does business under the name "Big Daddy's Bail Bonds" (together, "Big Daddy's"). Respondent Gregory S. Price owns Big Daddy's.
- (c) On September 10, 2015, Farshein Baghalzadeh was arrested in Matthews, North Carolina, by agents of the Union County Sheriffs Department, pursuant to warrants issued in *State v. Baghalzadeh*, 15-CR-054110 and 15-CR-054111 (Union Co. District court) ("State Charges").
- (d) On September 10, 2015, Price wrote a surety appearance bail bond of \$300,000.00 ("Bond") for Mr. Baghalzadeh in the State Charges. Palmetto Ins. Co. ("Palmetto") was the surety.
- (e) On September 30, 2015, the District Attorney for Union County dismissed the State Charges against Mr. Baghalzadeh, thereby terminating any liability on the bond under N.C. Gen. Stat. §15A-534(h)(3).

Additional Findings of Fact

1. Mr. Benton works independently from Mr. Price, but Respondents occasionally refer business to one another, and work together to locate defendants who have violated the terms of their bonds.
2. Palmetto appointed Mr. Price and Mr. Benton to write bonds. In a written agreement with Palmetto, Mr. Price agreed to be the main agent for Palmetto, with Mr. Benton serving as a sub-agent for whom Mr. Price was responsible.
3. Matthew Todd Rubins is a friend of Mr. Baghalzadeh. On September 10, 2015, Mr. Rubins spoke to Mr. Price and Mr. Benton about bonding out Mr. Baghalzadeh from jail.
4. Both Respondents traveled to the Union County jail early in the morning of September 10, 2015, where Mr. Price wrote the Bond. Palmetto was the surety on the Bond.
5. Mr. Price and Mr. Benton negotiated the terms of the bond with Mr. Rubins. (Exh. 2).
6. The Parties agreed that the premium for the Bond was \$15,000.00.
7. Mr. Price executed an Affidavit of Surety for the Bond, which was filed with the District Court. The Affidavit states that the amount of premium promised for the Bond was \$10,000.00; that \$7,500.00 worth of this premium had been received; that the remaining premium of \$2,500.00 was due by September 20, 2015; and that the collateral security received for the Bond was a "promissory note" with a value of \$300,000.00. (Exh. 3).

8. Mr. Price had not received \$7,500.00 premium payment at the time he executed the Affidavit of Surety.

9. Mr. Price did not have a promissory note in the amount of \$300,000.00 at the time he executed the Affidavit of Surety.

10. Mr. Price received a promissory note signed by Mr. Baghalzadeh's father later in the day of September 10, 2015, sufficient for \$300,000.00 worth of collateral security for the Bond. The Promissory Note also included terms for collection of interest. (Exh. 8).

11. Mr. Price never created a Memorandum of Agreement (MOA) for the Bond.

12. On three occasions in September 2015, Mr. Rubins and Mr. Baghalzadeh met Mr. Benton and made cash premium payments totaling \$15,000.00.

13. Mr. Benton did not give a receipt for any of the three premium payments that he received for the Bond.

14. Mr. Benton and Mr. Price deny ever receiving any cash premium payments from Mr. Rubins and Mr. Baghalzadeh.

15. The denials of Mr. Benton and Mr. Price, that Mr. Benton did not receive three cash payments totaling \$15,000.00 as premium for the Bond, are not credible.

16. On September 13, 2015, Mr. Benton told Mr. Rubins and Mr. Baghalzadeh that additional collateral security was needed for the Bond. Mr. Benton then photographed numerous items of jewelry shown to him by Mr. Baghalzadeh, said he would text the photographs to Mr. Price, and then left.

17. Later that evening, Mr. Rubins and Mr. Baghalzadeh met Mr. Price in the parking lot of a restaurant and gave Mr. Price a box of jewelry to use as additional collateral.

18. Mr. Price did not provide a receipt for the jewelry, which included two Rolex watches in addition to the following items:

- (a). a "Breitling super ocean watch" with a 9.5 carat diamond;
- (b). a yellow gold necklace;
- (c). a "Mother Mary" charm with diamonds;
- (d). an 18k white gold necklace;
- (e). an 18k white gold bracelet; and
- (f). a black diamond skull pendent.

(Testimony and Exh. 2)

19. At the hearing, Mr. Benton and Mr. Price produced alleged receipts for premium payments and collateral received. (Exh. 9).

20. At the hearing, it was shown that in December 2015, Mr. Benton and Mr. Price refused to produce any documentation concerning the bond to Petitioner when requested by Petitioner. (Exh. 12)

21. The claims of Respondents that receipts were given are not credible.

22. On September 30, 2015, the District Attorney for Union County dismissed the State Charges against Mr. Baghalzadeh. (Exh. 7).

23. Keri Kennedy is a friend of Mr. Baghalzadeh. On October 19, 2015, she made two recordings of conversations with Mr. Price. (Exh. 2)

24. The First Recording is of part of the conversation Ms. Kennedy and Mr. Baghalzadeh had with Mr. Price at Mr. Baghalzadeh's house on October 19, 2015. (Exh. 2)

25. The Second Recording is a telephone conversation that took place shortly after Mr. Price had left Mr. Baghalzadeh's house on October 19, 2015. Mr. Rubins arrived at the house and then called Mr. Price and put him on speakerphone while Ms. Kennedy recorded the two men's conversation. When requested to return the jewelry that he had taken as collateral security for the Bond, Mr. Price threatened to deliver the jewelry to the U.S. Attorney rather than return it. Mr. Price also claimed that the jewelry was being held by Palmetto and that Palmetto required more premium payments for the Bond. (Exh. 2).

26. Mr. Price's claim that he received the jewelry as a premium payment, rather than as additional collateral security, is not credible.

27. Mr. Price's claim that he received the jewelry at Mr. Baghalzadeh's home on the day he wrote the Bond is not credible.

28. Palmetto never received any jewelry from Mr. Price or Mr. Benton.

29. Palmetto had received all the compensation it was due on the Bond from Mr. Price.

30. The following items of jewelry taken as collateral security for the Bond have not been returned by Mr. Price:

- (a) a "Breitling super ocean watch" with a 9.5 carat diamond;
- (b) a yellow gold necklace;
- (c) a "Mother Mary" charm with diamonds;

- (d). an 18k white gold necklace;
- (e). an 18k white gold bracelet; and
- (f). a black diamond skull pendent.

(Exh. 2 and see Exh. 10)

31. Some of the items of jewelry received by Mr. Price as collateral for the Bond have been melted down into scrap gold and sold in South Carolina.

32. Respondents Price and Benton are not credible.

33. Witnesses Ronna Bell, Angela Hatchell, Keri Kennedy, and Natalie Baghalzadeh are credible.

34. Petitioner has met its burden of proof by a preponderance of the evidence.

CONCLUSIONS OF LAW

1. The North Carolina Department of Insurance requested a hearing of this contested case pursuant to N.C. Gen. Stat. §150B-40(e), which requires the Undersigned to "make a proposal for decision, which shall contain proposed findings of fact and proposed conclusions of law."

2. N.C. Gen. Stat. §58-71-80(a) authorizes the Commissioner to revoke a bail bondsman's license for various grounds, including:

- (5) 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.
- (7) Failure to comply with or violation of the provisions of this Article [71] or of any order, subpoena, rule or regulation of the Commissioner or person with similar regulatory authority in another jurisdiction.
- (8) When 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. ...
- (14) For knowingly aiding or abetting others to evade or violate the provisions of this Article.

3. N.C. Gen. Stat. §58-71-140(d) requires bail bondsmen to file an affidavit with the court for every surety appearance bail bond executed. Subparagraphs (d)(2) through (d)(4) require, respectively, that this affidavit identify "the amount of the premium promised and the due date,"

the "amount of premium received," and, if the bondsman requires "collateral security, the name of the person from whom it is received, and the nature and amount of the collateral security listed in detail."

4. Any violation of N.C. Gen. Stat. §58-71-140(d) constitutes grounds to revoke a bail bondsman license under N.C. Gen. Stat. §58-71-80(a)(7) for failing to comply with Article 71.

5. Respondent Price violated N.C. Gen. Stat. §58-71-140(d)(2) through (4).

6. Respondent Benton knowingly aided and abetted Respondent Price in violating N.C. Gen. Stat. §58-71-140(d)(2) through (4).

7. 11 NCAC 13.0513 provides that:

Upon any modification or alteration of the collateral security, the bondsman shall execute a written amendment to the Affidavit of Surety setting forth the details of such modification or alteration. A copy of any such amendment shall be furnished to the principal and the person furnishing the collateral security or premium, and a copy shall be on file in the office of the bondsman.

8. Respondent Price violated 11 NCAC 13.0513.

9. Respondent Benton knowingly aided and abetted Respondent Price in violating 11 NCAC 13.0513.

10. N.C. Gen. Stat. §58-71-167 mandates that "[i]n any case where the agreement between principal and surety calls for some portion of the bond premium payments to be deferred...a written memorandum of agreement between principal and surety shall be kept on file by the surety."

11. Respondent Price violated N.C. Gen. Stat. §58-71-167.

12. Respondent Benton knowingly aided and abetted Mr. Price in violating N.C. Gen. Stat. §58-17-167.

13. N.C. Gen. Stat. §58-71-168 mandates that: "All records related to executing bail bonds, including bail bond registers, monthly reports, receipts, collateral security agreements, and memoranda of agreements, shall be kept separate from records of any other business and must be maintained for not less than three years after the final entry has been made."

14. 11 NCAC 13.0515 requires a bail bondsman to provide a receipt to the defendant whenever a fee is received and to maintain a copy of all receipts issued.

15. Respondents Price and Benton, individually and jointly, violated N.C. Gen. Stat. §§58-71-168 and 11 NCAC 13.0515.

16. N.C. Gen. Stat. §58-71-100(a) provides: "When a bail bondsman accepts collateral he shall give a written receipt for the collateral. The receipt shall give in detail a full description of the collateral received. Collateral security shall be held and maintained in trust."

17. Respondents Price and Benton, individually and jointly, violated N.C. Gen. Stat. §58-71-100(a).

18. N.C. Gen. Stat. §58-71-95(5) requires that all collateral security or other indemnity required by a bondsman "shall be returned within 15 days after final termination of liability on the bond."

19. Respondents Price and Benton, jointly and individually, violated N.C. Gen. Stat. § 58-71-95(5).

20. 11 NCAC 13.0512(e) states: "No indemnity agreement or other security agreement taken as collateral for bonds shall include any provision for the payment of interest or other additional fees or charges.

21. Respondents Price and Benton, individually and jointly, violated 11 NCAC 13.0512(e).

22. The actions of Respondents Price and Benton, individually and jointly, were coercive, untrustworthy, and dishonest practices that constitute grounds to revoke Respondents' Licenses under N.C. Gen. Stat. §58-71-80(a)(5).

23. The actions of Respondents Price and Benton, individually and jointly, constituted incompetence, financial irresponsibility, and untrustworthiness, and are sufficient to revoke their Licenses under N.C. Gen. Stat. §58-71-80(a)(8).


24. For the reasons stated above, Respondents' Licenses should be revoked pursuant to N.C. Gen. Stat. §58-71-80(a).

Based on the foregoing Finding of Facts and Conclusions of Law, the following Order is entered:

ORDER

It is hereby ordered that Gregory S. Price's surety bail bondsmen license and that Larry D. Benton, Jr.'s surety bail bondsmen license are revoked.

This the 27th day of October, 2017.


Sherri L. Hubbard, Hearing Officer
N.C. Department of Insurance

NOTICE OF APPEAL RIGHTS

This is a Final Agency Decision issued under the authority of N.C. Gen. Stat. §150B, Article 3A.

Under the provisions of N.C. Gen. Stat. §150B-45, any party wishing to appeal a final decision of the North Carolina Department of Insurance must file a Petition for Judicial Review in the Superior Court of the County where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. The appealing party must file the petition within 30 days after being served with a written copy of the Order and Final Agency Decision. In conformity with the 11 NCAC 1.0413 and N.C.G.S. §1A-1, Rule 5, this Order and Final Agency Decision was served on the parties on the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Order and Final Agency Decision. N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. The mailing address to be used for service on the Department of Insurance is:

A. John Hoomani, General Counsel, 1201 Mail Service Center, Raleigh, NC 27699-1201.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing ORDER AND FINAL AGENCY DECISION by mailing a copy of the same via certified U.S. Mail, return receipt requested; via first-class U.S. Mail to the licensee at the addresses provided to the Commissioner pursuant to N.C. Gen. Stat. §58-2-69(b); and, via State Courier, addressed as follows:

Terence D. Friedman, Esq.
Assistant Attorney General
North Carolina Department of Justice – Insurance Section
Post Office Box 629
Raleigh, North Carolina 27602-0629

Certified Mail Receipt: 7002-2410-0003-0349-6764


F. Lane Williamson, Esq.
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301 East Park Avenue
Charlotte, North Carolina 28203

Certified Mail Receipt: 7002-2410-0003-0349-6771

This the 27th day of October, 2017.

DEPARTMENT OF INSURANCE

By:


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