

**NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA**

STATE OF NORTH CAROLINA)	
COUNTY OF WAKE)	BEFORE THE COMMISSIONER OF
)	INSURANCE
)	Docket Numbers: D-1522, D-1526
IN THE MATTER OF THE LICENSURE)	
OF JOSEPH H. BOSTON)	
(NPN 8392433))	
)	
IN THE MATTER OF THE LICENSURE)	ORDER AND FINAL AGENCY DECISION
OF MAZEL S. BOSTON)	FOR JOSEPH H. BOSTON AND MAZEL S.
(NPN 8392487))	BOSTON
)	
IN THE MATTER OF THE LICENSURE)	
OF TONY A. BOSTON)	
(NPN 8393758))	
)	

THIS CAUSE was heard on December 1 and 2, 2010, by the undersigned hearing officer, designated by the Commissioner of Insurance pursuant to N.C. Gen. Stat. §58-2-55, pursuant to notices of hearing that were duly issued and served.

The two matters, In the Matter of the Licensure of Joseph H. Boston, docket number 1522, and In the Matter of the Licensure of Mazel S. Boston, docket number 1526, were previously consolidated for hearing, along with In the Matter of the Licensure of Tony A. Boston, docket number 1527, by order of the undersigned hearing officer on November 23, 2010.

In the Matter of the Licensure of Tony A. Boston, docket number 1527, was settled by a separate order in this matter titled "Consent Order and Final Agency Decision for Tony A. Boston" entered on January 10, 2011.

The North Carolina Department of Insurance (hereinafter "Department") was present, represented by the Agent Services Division. The Department was represented by Assistant Attorney General Robert D. Croom.

Respondents Joseph H. Boston and Mazel S. Boston were present, represented by Calvin King of the Craven County Bar.

The Department offered into evidence Administrative Exhibits A1, through A8 and said documents were admitted into evidence.

At the hearing the parties stipulated to the following:

- a. That Joseph H. Boston admits to filing numerous motions to set aside forfeitures which stated reasons for setting aside the forfeitures which were not true at the time the motions were filed, in violation of N.C. Gen. Stat. §15A-544.5.
- b. That Joseph H. Boston admits to filing numerous motions to set aside forfeitures without including with the motions the required supporting evidence as required by the version of N.C. Gen. Stat. § 15A-544(b) then in effect.
- c. That Mazel S. Boston admits to filing numerous motions to set aside forfeitures which stated reasons for setting aside the forfeitures which were not true at the time the motions were filed, in violation of N.C. Gen. Stat. §15A-544.5.
- d. That Mazel S. Boston admits to filing numerous motions to set aside forfeitures without including with the motions the required supporting evidence as required by the version of N.C. Gen. Stat. § 15A-544(b) then in effect.
- e. Respondents Joseph H. Boston and Mazel S. Boston stipulate that Petitioner's exhibits 1 through 43, 47 through 71 and 73 through 114, including all subparts to those exhibits, may be admitted into evidence for full consideration by the hearing officer.
- f. Respondents Joseph H. Boston and Mazel S. Boston stipulate that Petitioner's exhibits 115 and 116 may be admitted into evidence for full consideration by the hearing officer.

At the hearing, Kimberly Edwards was called to testify on behalf of the Department. Respondents did not call any witnesses to testify on their behalf.

The Department's Hearing Exhibits 1 through 43, 47 through 71 and 73 through 116, including all subparts to those exhibits, were admitted into evidence.

Respondents Joseph H. Boston and Mazel S. Boston did not offer any exhibits into evidence.

After careful consideration of the evidence and arguments presented, and based on the record as a whole, the undersigned Hearing Officer hereby makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. The Notice of Administrative Hearing for Joseph H. Boston was properly served on October 19, 2010.

2. The Notice of Administrative Hearing for Mazel S. Boston was properly served on October 19, 2010.
3. Respondent Joseph H. Boston is currently licensed by the Department as a professional bail bondsman and a surety bondsman.
4. Respondent Mazel S. Boston is currently licensed by the Department as a professional bail bondsman and a surety bondsman.
5. Joseph H. Boston admits to filing numerous motions to set aside forfeitures which stated reasons for setting aside the forfeitures which were not true at the time the motions were filed, in violation of N.C. Gen. Stat. §15A-544.5.
6. Joseph H. Boston admits to filing numerous motions to set aside forfeitures without including with the motions the required supporting evidence as required by the version of N.C. Gen. Stat. § 15A-544(b) then in effect.
7. Mazel S. Boston admits to filing numerous motions to set aside forfeitures which stated reasons for setting aside the forfeitures which were not true at the time the motions were filed, in violation of N.C. Gen. Stat. §15A-544.5.
8. Mazel S. Boston admits to filing numerous motions to set aside forfeitures without including with the motions the required supporting evidence as required by the version of N.C. Gen. Stat. § 15A-544(b) then in effect.
9. Petitioner's exhibits 1 through 43 and 47 through 64 contain 61 motions to set aside forfeiture filed by Respondent Joseph H. Boston which state reasons for setting aside the forfeitures which were not true at the time the motions were filed.
10. Petitioner's exhibits 65 through 71 and 73 through 114 contain 47 motions to set aside forfeitures filed by Respondent Mazel S. Boston which state reasons for setting aside the forfeitures which were not true at the time the motions were filed.
11. There was insufficient evidence in Petitioner's exhibits 87 a and b to support a finding that Respondent Mazel S. Boston filed a motion to set aside forfeiture in State v. Frances Foster Bonney, Beaufort County file number 06 CR 53232 which stated reasons for setting aside the forfeiture which were not true at the time the motion was filed.
12. There was insufficient evidence in Petitioner's exhibits 91 a and b to support a finding that Respondent Mazel S. Boston filed a motion to set aside forfeiture in State v. Steven Leron Bonner, Jr., Beaufort County file number 06 CR 53892 which stated reasons for setting aside the forfeiture which were not true at the time the motion was filed.

13. During the year of 2007, Respondents Joseph H. Boston and Mazel S. Boston did not serve Kimberly Edwards, the attorney for the Beaufort County Board of Education, with any motion to set aside forfeiture that is the subject of this hearing.

14. Of the 61 motions to set aside forfeitures filed by Respondent Joseph H. Boston in Petitioner's Exhibits 1 through 43 and 47 through 64, fifty-eight (58) state that Respondent Joseph H. Boston served both the district Attorney and the county board of education personally and three do not indicate how service was made.

15. Of the 58 motions to set aside forfeitures filed by Respondent Joseph H. Boston that state service was made by personally delivering it, 9 certificates of service are dated with dates that correspond to either a Saturday or Sunday on the calendar.

16. Of the 49 motions to set aside forfeitures filed by Respondent Mazel S. Boston in Petitioner's Exhibits 65 through 71 and 73 through 114, forty-seven (47) state that Respondent Mazel S. Boston served both the district Attorney and the county board of education personally and three do not indicate how service was made.

17. Of the 47 motions to set aside forfeitures filed by Respondent Mazel S. Boston that state service was made by personally delivering it, 6 certificates of service are dated with dates that correspond to either a Saturday or Sunday on the calendar.

18. By filing numerous motions to set aside forfeitures which stated reasons for setting aside the forfeitures which were not true at the time the motions were filed, by not including with the motions the required supporting evidence and by not serving the motions on the attorney for the Beaufort County Board of Education, Respondent Joseph H. Boston was able to have numerous forfeitures improperly set aside.

19. By having numerous forfeitures improperly set aside, Respondent Joseph H. Boston avoided having to pay the full bond amount in numerous forfeitures.

20. By filing numerous motions to set aside forfeitures which stated reasons for setting aside the forfeitures which were not true at the time the motions were filed, and by not serving the motions on the attorney for the Beaufort County Board of Education, Respondent Mazel S. Boston was able to have numerous forfeitures improperly set aside.

21. By having numerous forfeitures improperly set aside, Respondent Mazel S. Boston avoided having to pay the full bond amount in numerous forfeitures.

Based on the forgoing Findings of Fact, the Hearing Officer makes the following:

Conclusions of Law

1. This matter is properly before the Commissioner. The Commissioner has jurisdiction over the parties and the subject matter pursuant to North Carolina General Statutes §58-71-80, 58-71-82, 58-71-85, 150B-38, 150B-40, 11 N.C.A.C. 1.0401 et seq. and other applicable statutes and regulations.
2. Respondent Joseph H. Boston was properly served with the Notice of Administrative Hearing in In the Matter of the Licensure of Joseph H. Boston, docket number 1522.
3. Respondent Mazel S. Boston was properly served with the Notice of Administrative Hearing in In the Matter of the Licensure of Mazel S. Boston, docket number 1526.
4. The matters were properly consolidated for hearing.
5. Pursuant to N.C. Gen. Stat. § 15A-544.5(a), there shall be no relief from a forfeiture except as specified in N.C. Gen. Stat. § 15A-544.5, which also sets for the procedure for setting aside a forfeiture.
6. Pursuant to the version of N.C. Gen. Stat. § 15A-544.5(b) that was in effect at all times relevant to the allegations contained herein, a forfeiture shall be set aside by the court for any one of the following reasons, and none other:
 - a. The defendant's failure to appear has been set aside by the court and any order for arrest issued for that failure to appear has been recalled, as evidenced by a copy of an official court record, including an electronic record.
 - b. All charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State's taking dismissal with leave, as evidenced by a copy of an official court record, including an electronic record.
 - c. The defendant has been surrendered by a surety on the bail bond as provided by N.C. Gen. Stat. § 15A-540, as evidenced by the sheriff's receipt provided for in that section.
 - d. The defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in question.
 - e. The defendant died before or within the period between the forfeiture and the final judgment as demonstrated by the presentation of a death certificate.
 - f. The defendant was incarcerated in a unit of the Department of Correction and is serving a sentence or in a unit of the Federal Bureau of Prisons located within the borders of the State at the time of the failure to appear.

7. Pursuant to N.C. Gen. Stat. § 15A-544.5(d)(2), a motion to set aside a forfeiture is filed in the office of the clerk of superior court of the county in which the forfeiture was entered, and a copy must be served under N.C. Gen. Stat. § 1A-1, Rule 5, on the district attorney for that county and the county board of education.

8. Pursuant to N.C. Gen. Stat. § 1A-1, Rule 5(b):

With respect to all pleadings subsequent to the original complaint and other papers required or permitted to be served, service with due return may be made in the manner provided for service and return of process in Rule 4 and may be made upon either the party or, unless service upon the party personally is ordered by the court, upon the party's attorney of record. With respect to such other pleadings and papers, service upon the attorney or upon a party may also be made by delivering a copy to the party or by mailing it to the party at the party's last known address or, if no address is known, by filing it with the clerk of court. Delivery of a copy within this rule means handing it to the attorney or to the party, leaving it at the attorney's office with a partner or employee, or by sending it to the attorney's office by a confirmed telefacsimile transmittal for receipt by 5:00 P.M. Eastern Time on a regular business day, as evidenced by a telefacsimile receipt confirmation. If receipt of delivery by telefacsimile is after 5:00 P.M., service will be deemed to have been completed on the next business day. Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

A certificate of service shall accompany every pleading and every paper required to be served on any party or nonparty to the litigation, except with respect to pleadings and papers whose service is governed by Rule 4. The certificate shall show the date and method of service or the date of acceptance of service and shall show the name and service address of each person upon whom the paper has been served. If one or more persons are served by facsimile transmission, the certificate shall also show the telefacsimile number of each person so served. Each certificate of service shall be signed in accordance with and subject to Rule 11 of these rules.

9. Pursuant to N.C. Gen. Stat. § 1A-1, Rule 11, the signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

10. Pursuant to N.C. Gen. Stat. § 58-71-80(a)(5), the Commissioner may deny, suspend, revoke, or refuse to renew any license under this Article for fraudulent or dishonest practices in the conduct of business under the license.

11. Respondent Joseph H. Boston's filing of numerous motions to set aside forfeitures which stated reasons for setting aside the forfeitures which were not true at the time the motions were filed, in violation of N.C. Gen. Stat. §15A-544.5, is a fraudulent and dishonest practice in the conduct of business under his license, in violation of N.C. Gen. Stat. § 58-71-80(a)(5).

12. This violation of N.C. Gen. Stat. § 58-71-80(a)(5) by itself is sufficient to support a revocation of Respondent Joseph H. Boston's licenses.

13. Respondent Joseph H. Boston's filing of numerous motions to set aside forfeitures without including with the motions the required supporting evidence, as required by the version of N.C. Gen. Stat. § 15A-544(b) then in effect, is a fraudulent and dishonest practice in the conduct of business under his license, in violation of N.C. Gen. Stat. § 58-71-80(a)(5).

14. This violation of N.C. Gen. Stat. § 58-71-80(a)(5) by itself is sufficient to support a revocation of Respondent Joseph H. Boston's licenses.

15. Respondent Joseph H. Boston's failure to serve the attorney for the Beaufort County Board of Education with copies of motions to set aside forfeitures during 2007, as required by N.C. Gen. Stat. § 15A-544.5(d)(2), is a fraudulent and dishonest practice in the conduct of business under his license, in violation of N.C. Gen. Stat. § 58-71-80(a)(5).

16. This violation of N.C. Gen. Stat. § 58-71-80(a)(5) by itself is sufficient to support a revocation of Respondent Joseph H. Boston's licenses.

17. Respondent Mazel S. Boston's filing of numerous motions to set aside forfeitures which stated reasons for setting aside the forfeitures which were not true at the time the motions were filed, in violation of N.C. Gen. Stat. §15A-544.5, is a fraudulent and dishonest practice in the conduct of business under his license, in violation of N.C. Gen. Stat. § 58-71-80(a)(5).

18. This violation of N.C. Gen. Stat. § 58-71-80(a)(5) by itself is sufficient to support a revocation of Respondent Mazel S. Boston's licenses.

19. Respondent Mazel S. Boston's filing of numerous motions to set aside forfeitures without including with the motions the required supporting evidence, as required by the version of N.C. Gen. Stat. § 15A-544(b) then in effect, is a fraudulent and dishonest practice in the conduct of business under his license, in violation of N.C. Gen. Stat. § 58-71-80(a)(5).

20. This violation of N.C. Gen. Stat. § 58-71-80(a)(5) by itself is sufficient to support a revocation of Respondent Mazel S. Boston's licenses.

21. Respondent Mazel S. Boston's failure to serve the attorney for the Beaufort County Board of Education with copies of motions to set aside forfeitures during 2007, as required by N.C. Gen. Stat. § 15A-544.5(d)(2), is a fraudulent and dishonest practice in the conduct of business under his license, in violation of N.C. Gen. Stat. § 58-71-80(a)(5).

22. This violation of N.C. Gen. Stat. § 58-71-80(a)(5) by itself is sufficient to support a revocation of Respondent Mazel S. Boston's licenses.

23. Pursuant to N.C. Gen. Stat. § 58-71-80(a)(8), the Commissioner may deny, suspend, revoke, or refuse to renew any license under this Article 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, or that the licensee is no longer in good faith carrying on the bail bond business, or that the licensee is guilty of rebating, or offering to rebate, or offering to divide the premiums received for the bond.

24. Respondent Joseph H. Boston's filing of numerous motions to set aside forfeitures which stated reasons for setting aside the forfeitures which were not true at the time the motions were filed, in violation of N.C. Gen. Stat. § 15A-544.5, demonstrates incompetency and untrustworthiness in violation of N.C. Gen. Stat. § 58-71-80(a)(8).

25. This violation of N.C. Gen. Stat. § 58-71-80(a)(8) by itself is sufficient to support a revocation of Respondent Joseph H. Boston's licenses.

26. Respondent Joseph H. Boston's filing of numerous motions to set aside forfeitures without including with the motions the required supporting evidence, as required by the version of N.C. Gen. Stat. § 15A-544(b) then in effect, demonstrates incompetency and untrustworthiness in violation of N.C. Gen. Stat. § 58-71-80(a)(8).

27. This violation of N.C. Gen. Stat. § 58-71-80(a)(8) by itself is sufficient to support a revocation of Respondent Joseph H. Boston's licenses.

28. Respondent Joseph H. Boston's failure to serve the attorney for the Beaufort County Board of Education with copies of motions to set aside forfeitures during 2007, as required by N.C. Gen. Stat. § 15A-544.5(d)(2), demonstrates incompetency and untrustworthiness in violation of N.C. Gen. Stat. § 58-71-80(a)(8).

29. This violation of N.C. Gen. Stat. § 58-71-80(a)(8) by itself is sufficient to support a revocation of Respondent Joseph H. Boston's licenses.

30. Respondent Mazel S. Boston's filing of numerous motions to set aside forfeitures which stated reasons for setting aside the forfeitures which were not true at the time the motions were

filed, in violation of N.C. Gen. Stat. §15A-544.5, demonstrates incompetency and untrustworthiness, in violation of N.C. Gen. Stat. § 58-71-80(a)(8).

31. This violation of N.C. Gen. Stat. § 58-71-80(a)(8) by itself is sufficient to support a revocation of Respondent Mazel S. Boston's licenses.

32. Respondent Mazel S. Boston's filing of numerous motions to set aside forfeitures without including with the motions the required supporting evidence, as required by the version of N.C. Gen. Stat. § 15A-544(b) then in effect, demonstrates incompetency and untrustworthiness in violation of N.C. Gen. Stat. § 58-71-80(a)(8).

33. This violation of N.C. Gen. Stat. § 58-71-80(a)(8) by itself is sufficient to support a revocation of Respondent Mazel S. Boston's licenses.

34. Respondent Mazel S. Boston's failure to serve the attorney for the Beaufort County Board of Education with copies of motions to set aside forfeitures during 2007, as required by N.C. Gen. Stat. § 15A-544.5(d)(2), demonstrates incompetency and untrustworthiness in violation of N.C. Gen. Stat. § 58-71-80(a)(8).

35. This violation of N.C. Gen. Stat. § 58-71-80(a)(8) by itself is sufficient to support a revocation of Respondent Mazel S. Boston's licenses.

Based on the foregoing Finding of Facts and Conclusions of Law, the Hearing Officer enters the following:

Order

It is hereby ordered, pursuant to N.C. Gen. Stat. §§ 58-71-80(a)(5) and 58-71-80(a)(8), that the professional bail bondsman and surety bail bondsman licenses of Respondent Joseph H. Boston and the professional bail bondsman and surety bail bondsman licenses of Respondent Mazel S. Boston are permanently revoked.

This the 24th day of February, 2011.



Stewart Johnson, Hearing Officer
N.C. Department of Insurance

APPEAL RIGHTS: This Order may be appealed to Superior Court within 30 days of receipt, as set forth in the General Statutes of North Carolina.