

RECEIVED OCT 09 2019

NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE COMMISSIONER
OF INSURANCE

IN THE MATTER OF THE LICENSURE OF
LAVONDA FOUST,
(NPN 17617777)

VOLUNTARY SETTLEMENT
AGREEMENT

NOW COME LaVonda Foust (“Bondsman”) and the North Carolina Department of Insurance (“Department”) and voluntarily and knowingly enter into the following Voluntary Settlement Agreement (“Agreement”):

WHEREAS, the Department has the authority and responsibility for enforcement of the insurance laws of this State and for regulating and licensing bail bondsmen; and

WHEREAS, Bondsman holds a surety bail bondsman’s license (“License”) issued by the Department; and

WHEREAS, on January 25, 2018, Bondsman wrote a \$3,000.00 surety bond (“Manning-Jones Bond”) for Sharis Manning-Jones in *State v. Manning-Jones*, 16 CR 058642 (Pitt Co.); and

WHEREAS, on January 26, 2018, Absolute Bail Bonds, on behalf of Bondsman, charged Charlita Mallard \$300.00 in premium for the Manning-Jones Bond; and

WHEREAS, in a second transaction on January 26, 2018, Absolute Bail Bonds, on behalf of Bondsman, charged Ms. Mallard an additional \$850.00 for the Manning-Jones Bond, which consisted of \$150.00 in additional premium and \$700.00 in collateral; and

WHEREAS, 11 NCAC 13 .0515 provides, in relevant part, that “[w]hen a fee is received by a bail bondsman a receipt shall be furnished to the defendant;” and

WHEREAS, Bondsman did not furnish receipts for the \$450.00 in premium that Ms. Mallard paid for the Manning-Jones Bond, in violation of 11 NCAC 13 .0515; and

WHEREAS, N.C. Gen. Stat. § 58-71-100 provides:

- (a) 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. When collateral security is received in the form of cash or check or other negotiable instrument, the licensee shall deposit the cash or instrument within two banking days after receipt, in an established, separate noninterest-bearing trust account in

any bank located in North Carolina. The trust account funds under this section shall not be commingled with other operating funds. [and]

WHEREAS, Bondsman did not furnish a receipt for the \$700.00 in collateral that Ms. Mallard paid for the Manning-Jones Bond, in violation of N.C. Gen. Stat. § 58-71-100(a); and

WHEREAS, Bondsman did not deposit the \$700.00 in collateral that Ms. Mallard paid for the Manning-Jones Bond in a separate noninterest-bearing trust account, but rather Bondsman allowed the collateral funds to be commingled with other operating funds of Absolute Bail Bonds, all in violation of N.C. Gen. Stat. § 58-71-100(a); and

WHEREAS, in relevant part, N.C. Gen. Stat. § 58-71-95(5) makes it unlawful for a bondsman to:

Accept 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; provided that the bondsman shall be permitted to accept collateral security or other indemnity from a principal or from anyone on behalf of a principal. Such collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond and shall be returned within 15 days after final termination of liability on the bond. Any bail bondsman who knowingly and willfully fails to return any collateral security, the value of which exceeds one thousand five hundred dollars (\$1,500), is guilty of a Class I felony. . . . [; and]

WHEREAS, 11 NCAC 13 .0512 states in relevant part:

- (a) The collateral security required by bail bondsmen shall be reasonable in relation to the amount of the bond in that any collateral security (including personal property, real property, indemnity agreement and guarantee) received by such licensee shall not, in the aggregate, exceed the amount of the bond.
- (b) Any collateral security shall be returned to the person who deposited it with the bail bondsman immediately after the obligation, the satisfaction of which was secured by the collateral, is discharged. [and]

WHEREAS, Bondsman's acceptance of a \$3,000.00 indemnity agreement plus \$700.00 in cash as collateral for the Manning-Jones Bond violated N.C. Gen. Stat. § 58-71-95(5) by being unreasonable in relation to the amount of the Bond and 11 NCAC 13 .0512 by exceeding the amount of the Bond; and

WHEREAS, on January 31, 2018, the charges against Mr. Manning-Jones underlying the Manning-Jones Bond were dismissed, but Bondsman did not return the cash collateral collected from Ms. Mallard until on or about March 5, 2018; and

WHEREAS, Bondsman's failure to return the cash collateral to Ms. Manning within 15 days of termination of the liability on Manning-Jones Bond violated N.C. Gen. Stat. § 58-71-

95(5), and Bondsman's failure to return the cash collateral immediately after the Bond was discharged violated 11 NCAC 13 .0512; and

WHEREAS, N.C. Gen. Stat. § 58-71-140(d) provides:

- (d) Professional bondsmen, surety bondsmen, and runners shall file with the clerk of court having jurisdiction over the principal an affidavit on a form furnished by the Administrative Office of the Courts. The affidavit shall include, but not be limited to:
- (1) If applicable, a statement that the bondsman has not, nor has anyone for the bondsman's use, been promised or received any collateral, security, or premium for executing this appearance bond.
 - (2) If promised a premium, the amount of the premium promised and the due date.
 - (3) If the bondsman has received a premium, the amount of premium received.
 - (4) If given collateral security, the name of the person from whom it is received and the nature and amount of the collateral security listed in detail. [and]

WHEREAS, the Affidavit of Surety for the Manning-Jones Bond states that the premium was \$300.00 and that an indemnity agreement worth \$3,000.00 had been secured as collateral for the Bond: and

WHEREAS, the Affidavit of Surety for the Manning-Jones Bond did not accurately list the full \$450 in premium charged for the Bond or the \$700.00 cash collateral collected for the Bond, in violation of N.C. Gen. Stat. § 58-71-140(d); and

WHEREAS, N.C. Gen. Stat. § 58-71-168 provides, in relevant part, that "all records related to executing bail bonds," including receipts, "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;" and

WHEREAS, Bondsman violated N.C. Gen. Stat. § 58-71-168 by failing to create and maintain the premium receipt for Ms. Mallard's \$450.00 premium payment and the collateral receipt for Ms. Mallard's \$700.00 collateral payment; and

WHEREAS, N.C. Gen. Stat. § 58-71-80(a)(7) authorizes the North Carolina Commissioner of Insurance ("Commissioner") to place on probation, suspend or revoke Bondsman's License for "[f]ailure to comply with or violation of the provisions of this Article or of any order, subpoena, rule or regulation of the Commissioner or person with similar regulatory authority in another jurisdiction;" and

WHEREAS, N.C. Gen. Stat. § 58-71-80(a)(14)(b) authorizes the Commissioner to place on probation, suspend or revoke Bondsman's License for a "[v]iolation of (i) any law governing

bail bonding or insurance in this State or any other jurisdiction or (ii) any rule of the Financial Industry Regulatory Authority (FINRA);” and

WHEREAS, Bondsman’s violations described above of N.C. Gen. Stat. §§ 58-71-95, 58-71-100, 58-71-140 and 58-71-168 and 11 NCAC 13 .0515 violate N.C. Gen. Stat. §§ 58-71-80(a)(7) and 58-71-80(a)(14)(b); and

WHEREAS, pursuant to N.C. Gen. Stat. § 58-2-70(g), the Commissioner and the Department have the express authority to negotiate a mutually acceptable agreement with any person as to the status of the person’s license issued by the Department, or as to any civil penalty or restitution;

WHEREAS, the Parties mutually wish to resolve this matter by consent before the Department initiates an administrative hearing concerning this matter; and

WHEREAS, the Parties have reached a mutually agreeable resolution of this matter as set out in this Agreement.

NOW THEREFORE, in exchange for, and in consideration of the promises and agreements set out herein, the Department and Bondsman hereby agree to the following:

1. Immediately upon signing this Agreement, Bondsman shall pay a civil penalty of **Three Thousand Dollars and No Cents (\$3,000.00)** to the Department. The form of payment shall be by certified check, cashier’s check or money order. The check or money order for the payment of this civil penalty shall be payable to the “North Carolina Department of Insurance.” Bondsman shall remit the civil penalty by certified mail, return receipt requested (attention: Keisha Burch, BBRD), to the Department along with the original of this Agreement bearing Bondsman’s signature. The civil penalty and the signed Agreement must be received by the Department no later than October 9, 2019. The civil penalty shall be subject to disbursement in accordance with the provisions of Article IX, Section 7 of the North Carolina Constitution for the benefit of public schools.
2. Bondsman shall comply with all of the provisions of Chapter 58 of the North Carolina General Statutes and of Title 11 of the North Carolina Administrative Code that are applicable to Bondsman, including, without limitation, by:
 - (a) Providing proof to the NCDOI at the same time Bondsman returns this signed Agreement and accompanying payment that Bondsman has established a separate, noninterest-bearing trust account in a bank located in North Carolina, pursuant to N.C. Gen. Stat. § 58-71-100(a);
 - (b) Obtaining the Commissioner’s approval to establish a shared trust account under N.C. Gen. Stat. § 58-71-100(b) and actually establishing such an account, prior to ever accepting, via cash, check, credit card or any other negotiable instrument, any collateral on behalf of another bondsman or

allowing another bondsman to accept any collateral on Bondsman's behalf;

- (c) Furnishing receipts under 11 NCAC 13 .0515 for any premium payments Bondsman or any person on Bondsman's behalf receives;
 - (d) Furnishing receipts under N.C. Gen. Stat. § 58-71-100(a) for any collateral Bondsman receives or which any other person receives on behalf of Bondsman; and
 - (e) Informing the Commissioner pursuant to N.C. Gen. Stat. §§ 58-71-41(a) and 58-71-41(b) when any licensees for whom Bondsman becomes the supervising bail bondsman are no longer employed by or contracted with Bondsman.
3. The Parties agree that this Agreement shall have the full force and effect of an Order of the Commissioner. Bondsman understands that N.C. Gen. Stat. § 58-71-80(a)(7) provides that Bondsman's License may be revoked for violating an Order of the Commissioner.
 4. Bondsman enters into this Agreement freely and voluntarily and with knowledge of Bondsman's right to have an administrative hearing regarding this matter. Bondsman understands that Bondsman may consult with an attorney prior to entering into this Agreement.
 5. This Agreement constitutes a complete settlement of all administrative penalties against Bondsman for the acts, policies or practices expressly addressed in this Agreement. Except as to the acts, policies or practices expressly addressed herein, this Agreement does not in any way affect the Department's disciplinary power in any future examination of Bondsman or in any other complaints involving Bondsman. In the event that Bondsman fails to comply with this Agreement or otherwise fails to comply with the laws and rules applicable to Bondsman, the Department may take any administrative or legal action it is authorized to take.
 6. This Agreement, when finalized, will be a public record and is not confidential. The Department is free to disclose the contents of this Agreement with third parties upon request or pursuant to any law or policy providing for such disclosure. Following the execution of this Agreement, any and all licenses issued by the Department to Bondsman shall reflect that Regulatory Action has been taken against Bondsman. The Department routinely provides copies of voluntary settlement agreements to all companies that have appointed the licensee.
 7. Bondsman understands and agrees that, if a state or federal regulator other than the Department has issued a permit or license to Bondsman, that regulator may

require Bondsman to report this administrative action to it. Bondsman understands and agrees that the Department cannot give Bondsman legal advice as to the specific reporting requirements of other state or federal regulators.

8. This Agreement shall become effective when signed by Bondsman and the Department.

[Redacted Signature]

LaVonda Foust

Date: 10/09/19

NORTH CAROLINA DEPARTMENT OF INSURANCE

By: [Redacted Signature]

Marty Sumner
Senior Deputy Commissioner

Date: 10/10/19