

NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA

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STATE OF NORTH CAROLINA
COUNTY OF WAKE

Agent Services
Division
BEFORE THE COMMISSIONER
OF INSURANCE
Docket Number: D-1334

IN THE MATTER OF THE LICENSURE
OF MICHAEL GARDNER

ORDER AND FINAL AGENCY
DECISION

THIS CAUSE was heard on Wednesday, February 14, 2007, by the undersigned hearing officer, designated by the Commissioner of Insurance pursuant to N.C. Gen. Stat. §58-2-55. Pursuant to a notice of hearing that was duly issued and served, this matter initially noticed for November 30, 2006, was previously continued at the request of the Respondent, Michael Gardner (hereinafter "Respondent"). The current hearing date was agreed upon by both parties.

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.

Respondent failed to appear after being duly served with the notice of hearing and the Order granting his motion to continue.

At the hearing, Gerald Mitchell, a Complaint Analyst with the Department was called to testify.

The Department offered into evidence Exhibits 1, 2, 3, 4, 4A, 4B, 5 and 6, and said documents were admitted 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 was properly served on Respondent on October 30, 2006.
2. Respondent has been licensed by the Department as a surety bail bondsman since November 13, 2003.

3. Respondent failed to timely file monthly reports for the months of September, October, November and December 2005, as well as January, February, April, May, June, July, and August, 2006.

4. Further, Respondent failed to timely file monthly reports for the months of September, November and December 2006.

5. There is substantial evidence that supports the foregoing findings. Additionally, due to Respondent's failure to appear at the administrative hearing, the undersigned Hearing Officer finds, pursuant to 11 N.C.A.C. 1.0423(a)(1), that the allegations set out in the notice of hearing are taken as true and are deemed to be proved without the need of further evidence. The allegations set out in the Notice of Hearing are incorporated by reference as if set forth herein.

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 §58-33-46, 150B-38, 150B-40, 11 N.C.A.C. 1.0401 et seq. and other applicable statutes and regulations.

2. Respondent was properly served with the Notice of Administrative Hearing.

3. Respondent's failure to timely file monthly reports for the months of September, October, November and December 2005, as well as January, February, April, May, June, July, and August, 2006, are each violations of N.C. Gen. Stat. § 58-71-165.

4. Further, Respondent's failure to timely file monthly reports for the months of September, November and December 2006, are each violations of N.C. Gen. Stat. § 58-71-165.

5. Respondent's failure to file monthly reports for the above-mentioned months demonstrates incompetency on the part of the Respondent in the conduct of the licensee's affairs under the license.

6. Pursuant to N.C. Gen. Stat. § 58-71-80(a)(7), the Respondent's license may be revoked for failing to comply with the provisions of Article 71 of Chapter 58 of the North Carolina General Statutes.

7. Pursuant to N.C. Gen. Stat. § 58-71-80(a)(8), the Respondent's license may be revoked if the licensee has in the conduct of his affairs under the license demonstrated incompetence.

8. The evidence presented at the hearing, in the form of testimony and the exhibits introduced, is sufficient to support a revocation of the Respondent's license.


9. Additionally, the allegations contained in the Notice of Hearing, when taken as true pursuant to 11 N.C.A.C. 1.0423(a)(1), are also sufficient to support a revocation of the Respondent's license.

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

Order

It is hereby ordered that the surety bail bondsman license issued to Respondent Michael Gardner be revoked.

This the 23rd day of February, 2007.


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.