

RECEIVED ASD

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 SPENCER GIBBS

Docket Number: D-1330

THIS CAUSE was heard on April 4, 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 on Respondent, Spencer Gibbs (hereinafter "Respondent").

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 was present and represented by Leslie G. Fritscher of the Pitt County bar.

At the hearing, Respondent and Gerald Mitchell, a Complaint Analyst with the Department, were called to testify by the Department, and Carlyle Poindexter was called to testify by the Respondent.

The Department offered into evidence Exhibits 1, 2, 3, 4, 5 and 6, and said exhibits were admitted into evidence without objection.

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.
2. Respondent has been licensed by the Department as a surety bail bondsman since July 1, 2005. Respondent has not previously been the subject of regulatory action by the Department.
3. Respondent failed to timely file monthly reports as required by N.C. Gen. Stat. § 58-71-165 for the months of September, October, November and December 2005, as well as January, 2006. Respondent stipulated to this fact.

4. During the months in which Respondent failed to file monthly reports he had no outstanding liabilities on bonds and had not written any bonds during these months.
5. The Department sent Respondent written notices concerning the missing reports in November and December 2005 and January 2006. Respondent did not respond to these notices because of his mistaken belief that he was not required to file reports for months in which he had not outstanding bond liabilities.
6. Respondent spoke with Mr. Mitchell in the Agent Services Division of the Department in February 2006, Respondent immediately thereafter filed all outstanding reports.
7. Since February 2006 Respondent has been in full and timely compliance with the requirement to file monthly reports on bonds for which he has outstanding liabilities.
8. Carlyle Poindexter, Respondent's Managing General Agent, testified to his opinion of Respondent's good and moral character, his trustworthiness and abilities.

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, 2006, are each violations of N.C. Gen. Stat. § 58-71-165.
4. Pursuant to N.C. Gen. Stat. § 58-71-80(a)(7), the Respondent's license may be revoked or suspended for failing to comply with the provisions of Article 71 of Chapter 58 of the North Carolina General Statutes.
5. Pursuant to N.C. Gen. Stat. § 58-2-70(b), the Commissioner may, instead of revoking or suspending the license of the Respondent, order payment of a monetary penalty.
6. In the discretion of the undersigned, the facts and circumstances of this matter are insufficient to warrant revoking or suspending the license of Respondent, and insufficient to warrant a monetary penalty for the monthly report violations occurring in September and October 2005; however the evidence is sufficient to support and to warrant a monetary penalty

for the monthly report violations occurring in November and December 2005 as well as January 2006.


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

Order

It is therefore ordered that:

1. Respondent shall pay a civil monetary penalty in the amount of \$150.00 per month for the untimely filed monthly reports for the months of November and December, 2005 and January, 2006, for a total civil monetary penalty of \$450.00 to the North Carolina Department of Insurance pursuant to N.C. Gen. Stat. §58-2-70 by reason of his violations of N.C. Gen. Stat. §§58-71-80(a) (7) and 58-71-165, as set out above. 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 the public schools.
2. The above-referenced civil monetary penalty will be paid by cashier's check or official bank check made out to the "North Carolina Department of Insurance." The check shall be delivered to the Department within five (5) days of the entry of this Order.
3. Respondent shall comply with all provisions of Chapter 58 of the North Carolina that are applicable to him.
4. This administrative action when finalized will be a public record and is not confidential. Any and all licenses issued by the Department to the licensee shall reflect that Regulatory Action has been taken against the licensee following the entry of this Order. Either Respondent or the Department is free to disclose this Order to third parties since it is a matter of public record.

This the 25th day of June, 2007.


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