

**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 KENNETH M. McCLARY  
LICENSE NO. 0018250768**

**VOLUNTARY SETTLEMENT  
AGREEMENT**

**NOW COME**, Kenneth M. McClary (hereinafter "Mr. McClary") and the North Carolina Department of Insurance (hereinafter "Department"), and hereby voluntarily and knowingly enter into the following Voluntary Settlement Agreement (hereinafter "this Agreement").

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

**WHEREAS**, Mr. McClary holds an active license as a surety bail bondsman issued by the Department; and

**WHEREAS**, Mr. McClary was contacted on December 7, 2019 by Antony Tran to bond out his brother, Luat Van Tran, who was being held in New Hanover County, NC jail (18CR 70785 and 19CR 050616), on two (2) bonds totaling \$51,000 for a premium of \$5,000.00 paid by a down payment of \$2,000.00 and ten (10) monthly installments of \$300.00 to be paid on the first day of each month; and

**WHEREAS**, Mr. Antony Tran and Mr. McClary met the next day at the jail and Mr. Tran paid the \$2,000.00 but was later told that his brother could not be released for 48 hours because of a U.S. Immigration and Customs Enforcement (ICE) hold; Mr. McClary informed Mr. Anton Tran that he was going to have to surrender his brother on the bond but could not return the down payment because he had already submitted the paperwork; and

**WHEREAS**, According to Mr. McClary, he informed Mr. Tran that if he had known Luat was not an American citizen he would not have written the bond, and further stated that before he posted the bond, he inquired whether there was an ICE hold on his brother but was told that there was none; and

**WHEREAS**, an inquiry was made to the jail and was told that Luat was under an ICE detainer since January 21, 2019 (many months before the bond was written), and that such information was placed on the computer and that the paper file was placed in a bright green folder which couldn't be mistaken; and the supervisor at the jail indicated that Mr. McClary was made aware of the hold; and

**WHEREAS, N.C. Gen. Stat. §162-62. Legal status of prisoners provides:**

(a) When any person charged with a felony or an impaired driving offense is confined for any period in a county jail, local confinement facility, district confinement facility, or satellite

jail/work release unit, the administrator or other person in charge of the facility shall attempt to determine if the prisoner is a legal resident of the United States by an inquiry of the prisoner, or by examination of any relevant documents, or both.

(b) If the administrator or other person in charge of the facility is unable to determine if that prisoner is a legal resident or citizen of the United States or its territories, the administrator or other person in charge of the facility holding the prisoner, where possible, shall make a query of Immigration and Customs Enforcement of the United States Department of Homeland Security. If the prisoner has not been lawfully admitted to the United States, the United States Department of Homeland Security will have been notified of the prisoner's status and confinement at the facility by its receipt of the query from the facility.

(c) Nothing in this section shall be construed to deny bond to a prisoner or to prevent a prisoner from being released from confinement when that prisoner is otherwise eligible for release.

**WHEREAS**, none of the conditions set forth in N.C. Gen. Stat. § 58-71-20 existed for surrender of Mr. Tran for not returning the premium paid on the bond; Mr. McClary was in violation thereof and should not have written a bond for Mr. Luat Van Tran because he should have known that Mr. Tran was on an ICE hold and could not be released ; and

**WHEREAS**, the Memorandum of Agreement used by Mr. McClary bundled both bonds but was not signed by the principal and was therefore not valid; the notation "Non-Refundable" was found on the premium receipt with no explanation; and

**WHEREAS**, the Affidavit section of the Appearance Bond for Pretrial Release (ABPR) form for 19CR050616 falsely indicated that Mr. McClary had not received any premium when in fact he had received a premium of \$2,000.00; and indicated a \$50,000.00 value for collateral security in the form of an indemnity agreement for which information was not completed; and

**WHEREAS**, the Affidavit section of the Appearance Bond for Pretrial Release (ABPR) form for 18CR707088 falsely indicated that no premium was promised or received; and

**WHEREAS**, Mr. McClary agrees and will in the future only use approved bail bonds forms obtained from the surety and forward copies to the Department to confirm that such action has been taken; and

**WHEREAS**, NC Gen. Stat. § 58-71-80(a)(8) provides that Commissioner may deny, suspend, revoke, or refuse to renew any license under Article 71 of Chapter 58 of the North Carolina General Statutes 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; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 58-71-80(a) (7), the Commissioner may deny, suspend, revoke, or refuse to renew any license under Article 71 of Chapter 58 of the North Carolina General Statutes for failure to comply with or violation of the provisions of Article 71 of Chapter 58 of the North Carolina General Statutes or of any order, rule or regulation of the Commissioner; and

**WHEREAS**, Mr. McClary admits to the violations set out herein; and

**WHEREAS**, in lieu of an administrative hearing on the matters stated herein, Mr. McClary has agreed to settle, compromise, and resolve the matters referenced in this Agreement, and the Department has agreed not to pursue additional penalties, sanctions, remedies, or restitution based on these matters against Mr. McClary; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 58-2-70(g), the Commissioner of Insurance 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 or certificate or as to any civil penalty or restitution; and

**NOW, THEREFORE**, in consideration of the promises and agreements set out herein, the Department and Mr. McClary hereby agree to the following:

1. Immediately upon his signing of this document, Mr. McClary shall pay a **civil penalty of \$5,000.00** to the Department. The form of payment shall be in a 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." Mr. McClary shall send the civil penalty by certified mail, return receipt requested, to the Department simultaneously with the return of this Agreement, signed by Mr. McClary. The civil penalty and the signed Agreement must be received by the Department no later than **May 13, 2020**. 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. Mr. McClary has agreed to return the \$2,000.00 premium paid by Mr. Antony Tran for the bond written on Mr. Luat Van Tran within 72 hours of February 13, 2020, the date of the conference held regarding the statutory violations alleged in the Department's February 07, 2020 communication to Mr. McClary; and
3. As a condition of continuing to be licensed as a surety bail bondsman, Mr. McClary will be required to comply with the provisions of N.C. Gen. Statute § 58-71-71(a) and retake and complete at least 12 hours of education as provided by an approved provider in subjects pertinent to the duties and responsibilities of a bail bondsman including all laws and regulations related to being a bail bondsman, to be completed by **May 13, 2020**, which is ninety (90) days from the date of the conference (February 13, 2020) held with the Department, and submit documented verification of such completion to the Department. This does not relieve Mr. McClary of the obligations for continuing education set forth in N.C. Gen. Statute § 58-71-71(b).
4. Mr. McClary enters into this Agreement freely and voluntarily and with knowledge of his right to have an administrative hearing on this matter. Mr. McClary understands that he may consult with an attorney prior to entering into this Agreement.
5. This Agreement does not in any way affect the Department's disciplinary power in any future follow-up examinations of Mr. McClary, or in any other cases or complaints involving Mr. McClary.

6. The parties to this Agreement agree that this Agreement shall have the full force and effect of an Order of the Commissioner. Mr. McClary understands that N. C. Gen. Stat. § 58-71-80(a)(7) provides that a surety bondsman's license may be revoked for violating an Order of the Commissioner.
7. This Voluntary Settlement Agreement, 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 execution of this Agreement. The Department is free to disclose the contents of this Agreement to third parties upon request or pursuant to any law or policy providing for such disclosure. The Department routinely provides copies of voluntary settlement agreements to all companies that have appointed the licensee.
8. This Settlement Agreement shall become effective when signed by Mr. McClary and the Department.

**N. C. Department of Insurance**



**By: Kenneth M. McClary**  
**License No. 0018250768**



**By: Marty Sumner**  
**Senior Deputy Commissioner**

Date: 05/13/2020

Date: 5/27/2020