

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

STATE OF NORTH CAROLINA

**BEFORE THE COMMISSIONER
OF INSURANCE**

COUNTY OF WAKE

**FINAL AGENCY DECISION
AND ORDER**

**IN THE MATTER OF
THE LICENSURE OF
ANTHONEY C. PERRY
NPN # 8393805**

Docket Number: 1427

This matter was heard on 22 September 2010 before the undersigned Hearing Officer, who was appointed by the Commissioner of Insurance pursuant to N.C. General Statute § 58-2-55.

Petitioner, the North Carolina Department of Insurance ("Department"), was represented by Daniel S. Johnson of the Attorney General's Office. Respondent Anthony C. Perry ("Respondent") was represented by Perry Mastromichalis of the Wake County Bar. At the close of the hearing, the undersigned asked both counsels to submit proposed orders. Counsel for the Department has done so. Counsel for Respondent has not done so. The undersigned has been patient, but is not going to wait any longer to hear from Counsel for Respondent.

Any finding of fact contained in this Final Agency Decision and Order that also constitutes a conclusion of law is hereby adopted as a conclusion of law. Likewise, any conclusion of law contained in this Decision and Order that constitutes a finding of fact is hereby adopted as a finding of fact.

After careful consideration of the evidence presented, and based upon the record as a whole, the undersigned Hearing Officer renders the following:

FINDINGS OF FACT:

1. Respondent currently holds licenses as a surety bondsman and as a runner, issued by the Department pursuant to Article 71 of Chapter 58 of the General Statutes.
2. From December of 1996 through 30 June 1997 Respondent held a surety bondsman license. (See Finding of Fact # 2 in the 29 January 1999 Order admitted into evidence in this proceeding).

3. On 29 January 1999, after a hearing, Respondent was denied a surety bondsman license by an Order ("1999 Order") entered by Department Hearing Officer Peter A. Kolbe.
4. The 1999 Order was based on (1) Respondent's conviction of a crime involving moral turpitude; (2) Respondent's failure to return collateral upon termination of liability on a bond; (3) Respondent's misappropriation of money received in the conduct of business under his previous surety bondsman license; and (4) Respondent's incompetency, financial irresponsibility, and untrustworthiness in the conduct of his affairs under his previous surety bondsman license.
5. The 1999 Order has not been reversed or voided by judicial review or otherwise, and the 1999 Order remains in effect.
6. Before January of 2001, Respondent applied for a runner license. In January of 2001, Respondent entered into a Voluntary Settlement Agreement with the Department under which he promised to pay a Warren County small claims court judgment against him.
7. The 2001 Voluntary Settlement Agreement between Respondent and the Department did not in any way address the 1999 license denial order.
8. The 2001 Voluntary Settlement Agreement contained the following language: "This agreement does not in any way affect the Department's disciplinary power in any other cases or complaints involving the Licensee."
9. Respondent's current license as a surety bondsman was initially issued on 13 March 2001.
10. Respondent's current license as a runner was initially issued on 12 August 2004.
11. Respondent and Poindexter & Associates, Inc., a bail bonding business, entered into a written contract dated March 11, 2008 ("Contract") under which Respondent agreed to pay Poindexter & Associates, Inc. the sum of \$22,000.00 arising out of Respondent's conduct of his affairs under his previous surety bondsman license. Except for \$5,300.00 noted to be due by reason of a converted money order, the payments under the Contract were to repay unpaid premium owed by Respondent.
12. Under the Contract, Respondent ratified and revived his indebtedness for unpaid bond premium.

13. Under the Contract, Respondent promised to repay the sum of \$22,200.00 as follows: (i) An initial down payment of \$10,000.00; and (ii) additional payments to be made by remitting an amount equal to one percent of the face value of any bonds written by Respondent until the indebtedness was paid in full.

14. Respondent promptly made the initial down payment of \$10,000.00 on the Contract indebtedness, but has not since made further payments toward his indebtedness under the Contract.

15. By his failure to pay the full amount due under the Contract, Respondent owes unpaid bond premium to this date.

Based on the foregoing findings of fact, the undersigned Hearing Officer makes the following:

CONCLUSIONS OF LAW

1. Pursuant to N.C. General Statute §58-71-50(b)(7), the 1999 Order disqualifies Respondent from engaging in the bail bond business.
2. The terms of the 2001 Voluntary Settlement Agreement did not set aside or otherwise diminish the effect of the 1999 Order.
3. Respondent was not eligible for either of his current licenses when they were issued in 2001 and 2004 because of the 1999 Order disqualifying Respondent from engaging in the bail bond business.
4. Pursuant to N.C. General Statute §58-71-80(a)(15), Respondent's current licenses are subject to revocation because pursuant to N.C. General Statute §58-71-50(b)(7), issuance of those licenses could have been refused at the time of Respondent applied for the license. The Department is not estopped from revoking Respondent's licenses.
5. Respondent's surety bondsman and runner licenses should be revoked pursuant to N.C. General Statute §58-71-50(b)(7) and N.C. General Statute §58-71-80(a)(15). This ground for revocation is sufficient in and of itself to justify the revocation of Respondent's licenses.
6. Under N.C. General Statute § 58-71-80(a)(8), Respondent has demonstrated incompetence, financial irresponsibility, and untrustworthiness in the conduct of business under his license by

his failure to fully pay his admitted indebtedness for bond premium due under his 11 March 2008 contract with Poindexter & Associates, Inc.

7. Respondent's surety bondsman and runner licenses should be revoked pursuant to N.C. General Statute §58-71-80(a)(8) for incompetence, financial irresponsibility, and untrustworthiness.

8. Pursuant to N.C. General Statute §58-71-82, both licenses of Respondent should be revoked.


ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ordered that all licenses issued by the Department of Insurance to Respondent Anthony C. Perry are revoked.

NOTICE OF APPEAL RIGHTS

This Final Agency Decision and Order may be appealed to Superior Court within 30 days after receipt of the same as provided in Chapter 150B of the North Carolina General Statutes.

This 11th day of March 2011.


William K. Hale
Special Counsel and Hearing Officer
N.C. Department of Insurance
1201 Mail Service Center
Raleigh, NC 27699-1201

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day I have served the attached *FINAL AGENCY DECISION AND ORDER* by first class mail, postage prepaid, and via Interooffice State Courier addressed as follows to:

Perry Mastromichalis
6612 Six Forks Road
Suite 103
Raleigh, NC 27615

Daniel S. Johnson
Special Deputy Attorney General
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602

This the 11th day of March, 2011



Mary Falkner
Paralegal
NC Department of Insurance
1201 Mail Service Center
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