

FINDINGS OF FACT

1. The Notice was properly served on Respondent and her Counsel of Record, Matthew Van Horn of Raleigh, pursuant to Rule 4 of the North Carolina Rules of Civil Procedure. Respondent was also served notice at the address of record with NCDOI pursuant to N.C. Gen. Stat. §58-2-69.

2. Respondent failed to appear at the hearing. N.C. Admin. Code 11 NCAC 1.0423(a)(1) provides that if a party fails to appear at the hearing, the Hearing officer may “[f]ind that the allegations...set out in the notice of hearing...may be taken as true or deemed to be proven without further evidence;”.

3. The NCDOI is a state agency responsible for the enforcement of the bail bonding laws of North Carolina and for the regulation and licensure of professional and surety bail bondsman in accordance with Chapter 58 of the North Carolina General Statutes.

4. Respondent was previously licensed as both a professional and surety bail bondsman with licenses issued by NCDOI. Respondent was initially licensed as a surety bail bondsman in 2002 and later became licensed as a professional bondsman in 2005. Prior to the hearing, Respondent’s licenses had lapsed on or about June 30, 2018 due to her failure to renew. (Exhibit 4)

5. Respondent’s professional bail bondsman license was also summarily suspended on July 1, 2018 pursuant to an order issued by the undersigned Hearing Officer as authorized by N.C. Gen. Stat. § 58-71-80(e). (Exhibit 2) The Notice in this matter was served concurrently with the issuance of the summary suspension. (Exhibit 3)

6. On February 27, 2018, Respondent, in her capacity as a professional bail bondsman, entered into twenty-seven (27) Consent Orders with the Wake County Board of Education and the Wake County District Attorney regarding several Motions to Strike Electronic Order Setting Aside Forfeiture and Motions for Sanctions filed on behalf of the Wake County Board of Education. (Exhibit 6) The parties agreed, and the Wake County District Court ordered, that the bond forfeitures would be paid from funds being held by the NCDOI.

7. Respondent consented to the following twenty-seven (27) consent orders being paid with funds held in trust by the Department:

Wake County File No.	Defendant's Name	Bond Amount	Additional Civil Judgment
09 CR 023972	Hector Garcia, Jr.	\$500.00	\$1,000.00
08 CR 010627	Tichina Oshea Green	\$1,000.00	\$2,000.00
07 CR 049092	Emanuel J. Defreese	\$1,000.00	\$2,000.00
07 CR 044557	Kevin Douglas	\$1,500.00	\$3,000.00
08 CR 020927	Marcus Allen Campbell	\$3,000.00	\$6,000.00
08 CR 073841	William Alexis Washington	\$1,000.00	\$2,000.00
08 CR 039372	Kevin Edral Douglas	\$1,500.00	\$3,000.00
08 CR 045370	Randy Salazar	\$1,000.00	\$2,000.00
09 CR 024851	Robert William Van Horn	\$500.00	\$1,000.00
09 CR 009433	Leonard L. Williams	\$3,000.00	\$6,000.00
09 CR 039001	Kimberly Joy Horan	\$2,000.00	\$4,000.00
09 CR 041092	Edward Acosta	\$3,000.00	\$6,000.00
06 CR 046978	Wesley James Williams, III	\$500.00	\$1,000.00
09 CR 042018	Allison Carry	\$500.00	\$1,000.00
10 CR 219446	Kyle Anthony Harris	\$1,000.00	\$2,000.00
10 CR 208035	Joseph Wayne Ambrose	\$2,000.00	\$4,000.00
09 CR 205220	Joseph Wayne Ambrose	\$1,000.00	\$2,000.00
10 CR 208037	Joseph Wayne Ambrose	\$3,000.00	\$6,000.00
11 CR 202196	Damien Edward Mitchell	\$500.00	\$1,000.00
10 CR 215005	Ervin Lashawn Sanders	\$500.00	\$1,000.00
10 CR 224723	Charles Franklin Hamilton	\$3,000.00	\$6,000.00
11 CR 223586	Eliot Hankerson	\$1,200.00	\$2,400.00
11 CR 724470	Rodney D. Pickett, II	\$1,000.00	\$2,000.00
12 CR 004727	Derek S. Bausch	\$500.00	\$1,000.00
12 CR 220136	Joshua David Freeman	\$1,000.00	\$2,000.00
11 CR 743299	Joshua David Freeman	\$1,000.00	\$2,000.00
12 CR 205038	Brian Daniel Schaaf	\$800.00	\$1,600.00

8. In all twenty-seven (27) consent orders, Respondent consented to the payment of these outstanding bond forfeiture orders “through the funds held or retained by the North Carolina Department of Insurance.”

9. The total bond amount referenced in the consent orders, is approximately \$36,500.00, which exceeds the amount of funds being held as security by the NCDOI pursuant to N.C. Gen. Stat. §§ 58-71-145 and 58-71-175, excluding the additional penalties and court costs.

10. On April 12, 2018, Respondent's securities on deposit with the Commissioner were approximately \$30,078.21. (Exhibit 6B)

11. N.C. Gen. Stat. § 58-71-145 provides that "[e]ach professional bondsman acting as a surety on bail bonds in this State shall maintain a deposit of securities with and satisfactory to the Commissioner of a fair market value of at least one-eighth the amount of all bonds or undertakings written in this State on which he is absolutely or conditionally liable as of the first day of the current month. The amount of this deposit must be reconciled with the bondsman's liabilities as of the first day of the month on or before the fifteenth day of said month and the value of said deposit shall in no event be less than fifteen thousand dollars (\$15,000)."

12. On April 20, 2018, the BBRD requested in writing that U.S. Bank liquidate Respondent's security deposit account and issue payment on the consent orders referenced in Paragraph 7 herein. The payment of these consent orders depleted Respondent's security deposit to a balance of \$27.97. (Exhibit 6C) Pursuant to N.C. Gen. Stat. § 58-71-145, Respondent's security deposit must be maintained at a minimum of \$15,000.

13. As a professional bail bondsman, Respondent was required to file a monthly report with the Commissioner pursuant to N.C. Gen. Stat. § 58-71-165(a) which requires that "[e]ach professional bail bondsman shall file with the Commissioner a written report . . . regarding all bail bonds on which the bondsman is liable as of the first day of each month . . ." N.C. Gen. Stat. § 58-71-165(c) requires that the reports ". . . shall be filed on or before the fifteenth day of each month."

14. Respondent's monthly report submitted for April 2018 indicated that she had outstanding bond liabilities of \$29,500 with at least one bond liability in the amount of \$7,000.00. (Exhibit 6D) Pursuant to N.C. Gen. Stat. § 58-71-175, Respondent is required to maintain a security deposit of at least \$28,000, as N.C. Gen. Stat. §58-71-175 provides that "[n]o professional bondsman shall become liable on any bond or multiple of bonds for any one individual that totals more than one-fourth of the value of the securities deposited with the Commissioner at that time, until final termination of liability on such bond or multiple of bonds." A deposit of \$28,000 would be required for compliance with the statute, assuming a bond liability of \$7,000.

15. Pursuant to N.C. Gen. Stat. § 58-71-160(a), on about April 27, 2018, the BBRD sent Respondent a Notice of Deficiency advising that a deposit of \$28,000 was required to replenish her security deposit within five days after receipt of the letter. (Exhibit 6E)

16. As of August 14, 2018, Respondent had \$28.08 on deposit with the Commissioner. (Exhibit 7) Respondent has failed to submit additional funds into her security deposit account as required by N.C. Gen. Stat. § 58-71-160(a) which provides in part that “[n]o professional bondsman shall sign, endorse, execute, or become surety on any additional bail bonds or pledge or deposit any cash, check, or other security of any nature in lieu of a bail bond in any county in North Carolina until the professional bondsman has made such additional deposit of securities as required by the notice of deficiency.”

17. Respondent’s failure to submit additional funds into her security deposit account prevents her from acting in the capacity of a professional bail bondsman pursuant to N.C. Gen. Stat. § 58-71-160(a).

18. The bonds referenced in the consent orders are much older bonds, addressing bond forfeiture liabilities from approximately 2007 to 2012. The consent orders do not address any current bonds where Respondent is acting as surety.

19. Respondent’s entire security on deposit with the NCDOI was court-ordered to be used to satisfy the bond forfeitures referenced herein. This presents a significant risk of unsatisfied bond forfeitures for the remaining bond liabilities written by Respondent.

20. Respondent’s last monthly report of May 2018, consistent with the information provided in her April 2018 monthly report, indicated outstanding liabilities of in the amount of \$29,500.00 with at least one bond liability in the amount of \$7,000.00. (Exhibit 8) Respondent did not file a monthly report for June 2018 or any month thereafter as required by N.C. Gen. Stat. § 58-71-165.

CONCLUSIONS OF LAW

1. This matter is properly before the Commissioner and the Commissioner has jurisdiction over the parties and the subject matter pursuant to N.C. Gen. Stat. §58-2-50, 58-2-55, 58-71-80, 58-71-82, 150B-38, 150B-40, 11 NCAC 1.0401 et seq., and other applicable statutes and regulations.

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

3. Neither Respondent or her Counsel of Record appeared at the hearing. N.C. Admin. Code 11 NCAC 1.0423(a)(1) provides that if a party fails to appear at the hearing, the Hearing officer may “[f]ind that the allegations...set out in the notice of hearing...may be taken as true or deemed to be proven without further evidence;”. As a result of Respondent’s failure to appear at the hearing, the allegations set forth in the Notice shall be taken as true.

4. N.C. Gen. Stat. §58-71-82 provides that “[i]f an individual holds a professional bail bondsman’s license or a runner’s license and a surety bondsman’s license simultaneously, they are considered one license for the purpose of disciplinary actions involving suspension, revocation, or nonrenewal under this Article.” Therefore, both Respondent’s professional and surety bail bondsman licenses are considered one license for disciplinary action in this matter.

5. N.C. Gen. Stat. §58-71-145 which mandates that “[e]ach professional bondsman acting as surety on bail bonds in this State shall maintain a deposit of securities with and satisfactory to the Commissioner . . . of at least one-eighth the amount of all bonds or undertakings written in this State . . . said deposit shall in no event be less than fifteen thousand dollars (\$15,000).” Respondent failed to maintain her deposit of securities at the level required by statute.

6. N.C. Gen. Stat. § 58-71-160(a) provides in part that “[n]o professional bondsman shall sign, endorse, execute, or become surety on any additional bail bonds or pledge or deposit any cash, check, or other security of any nature in lieu of a bail bond in any county in North Carolina until the professional bondsman has made such additional deposit of securities as required by the notice of deficiency.” Respondent failed to submit additional funds into her security deposit account with the Commissioner.

7. N.C. Gen. Stat. § 58-71-165(a) requires that “[e]ach professional bail bondsman shall file with the Commissioner a written report . . . regarding all bail bonds on which the bondsman is liable as of the first day of each month . . .” N.C. Gen. Stat. § 58-71-165(c) requires that the reports “. . . shall be filed on or before the fifteenth day of each month.” Respondent failed to file any monthly reports after her May 2018 report.

8. N.C. Gen. Stat. § 58-71-175 provides that “[n]o professional bail bondsman shall become liable on any bond . . . for any individual that totals more than one-fourth of the value of the securities deposited with the Commissioner at that time.” Respondent failed to maintain her deposit of securities at the level required by statute.

9. Respondent’s actions provide substantial grounds for administrative action pursuant to N.C. Gen. Stat. § 58-71-80(a)(5) which provides that the Commissioner may deny, place on probation, suspend, revoke, or refuse to renew any license issued under this Article for “[f]raudulent, coercive, or dishonest practices in the conduct of business or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or any other

jurisdiction.”

10. Respondent’s actions provide substantial grounds for administrative action pursuant to N.C. Gen. Stat. § 58-71-80(a)(7) which provides that the Commissioner may deny, place on probation, suspend, revoke, or refuse to renew any license issued under this Article 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”

11. Respondent’s actions provide substantial grounds for administrative action pursuant to N.C. Gen. Stat. § 58-71-80(a)(8) which provides that the Commissioner may deny, place on probation, suspend, revoke, or refuse to renew any license issued under this Article “[w]hen 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”

12. Respondent’s actions provide substantial grounds for administrative action pursuant to N.C. Gen. Stat. § 58-71-80(a)(14b) which provides that the Commissioner may deny, place on probation, suspend, revoke, or refuse to renew any license issued under this Article for a “[v]iolation of (i) any law governing bail bonding or insurance in this State”

13. N.C. Gen. Stat. § 58-71-80(d) provides that the Commissioner “shall retain the authority to enforce the provisions of, and impose any penalty or remedy authorized by, this Chapter against any person who is under investigation for or charged with a violation of this Chapter even if the person’s license. . . has been surrendered or has lapsed.”

14. In addition to revoking or suspending Respondent’s licenses, the Commissioner may order monetary penalties pursuant to N.C. Gen. Stat. § 58-2-70 for each violation. If imposed, the monetary penalty for each violation may not be less than \$100.00 dollars and no more than \$1,000.00 dollars. Each day during which a violation occurs constitutes a separate violation.

Based upon the foregoing Finding of Fact and Conclusions of Law, the Hearing Officer enters the following:

ORDER

It is hereby **ORDERED** that the professional and surety bail bondsman licenses of Benita W. Scott be revoked. It is further **ORDERED** that Ms. Scott **pay a civil penalty in the amount of one thousand dollars (\$1,000.00), due immediately upon the entry of this order.** The payment of this civil penalty shall

be by certified funds, to include certified bank check, cashier's check, and money order made payable to the "North Carolina Department of Insurance." This 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.

This the 4th day of October, 2018.



Sherri Hubbard
Hearing Officer
N.C. Department of Insurance

APPEAL RIGHTS

This is a Final Agency Decision issued under the authority of N.C. Gen. Stat. § 150B, Article 3A.

Under the provisions of N.C. Gen. Stat. § 150B-45, any party wishing to appeal a final decision of the North Carolina Department of Insurance must file a Petition for Judicial Review in the Superior Court of the County where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. The appealing party must file the petition within 30 days after being served with a written copy of the Order and Final Agency Decision. In conformity with the 11 NCAC 1.0413 and N.C.G.S. § 1A-1, Rule 5, this Order and Final Agency Decision was served on the parties on the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Order and Final Agency Decision. N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. The mailing address to be used for service on the Department of Insurance is: **A. John Hoomani, General Counsel, 1201 Mail Service Center, Raleigh, NC 27699-1201.**

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that I have this day served the foregoing **ORDER AND FINAL AGENCY DECISION** by mailing a copy of the same via certified U.S. mail, return receipt requested; via first class U.S. mail to the licensee and Attorney for Respondent at the addresses provided to the Commissioner pursuant to N.C. Gen. Stat. § 58-2-69(b); and via State Courier to Attorney for Petitioner, addressed as follows:

Benita W. Scott
9052 Chelsea Drive
Raleigh, NC 27603
(Respondent)

Certified Mail Tracking Number: [REDACTED]

Matthew Van Horn
Van Horn Law Firm
410 N. Boylan Avenue
Raleigh, NC 27603
(Attorney for Respondent)

Certified Mail Tracking Number: [REDACTED]

LaShawn S. Piquant
Assistant Attorney General
N.C. Department of Justice
Insurance Section
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Raleigh, NC 27699-9001
(Attorney for Petitioner)

This the 4th day of October, 2018.

[REDACTED]

Mary Faulkner
Paralegal
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