

NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA)	BEFORE THE COMMISSIONER OF
COUNTY OF WAKE)	INSURANCE
)	
IN THE MATTER OF MICHAEL J.)	ORDER AND FINAL AGENCY
WHITE)	DECISION
(NPN # 10005980))	Docket Number 1595
)	
_____)	

THIS CAUSE was heard on Wednesday, May 2, 2012, by the undersigned hearing officer, designated by the Commissioner of Insurance pursuant to North Carolina General Statute § 58-2-55, pursuant to a notice of hearing that was duly issued and served.

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, Michael J. White (hereinafter "Respondent"), was present and represented by Tiffany D. Russell.

At the hearing, Steve Bryant, an Insurance Complaint Analyst with Agent Services Division, and Ernestine McKenney, the bail bond administrator for Agent Services Division, were called to testify for Agent Services Division. Respondent testified on his behalf.

The Department offered into evidence Exhibits 1 through 10 and said documents were admitted into evidence.

The Respondent offered into evidence Respondent's Exhibits 1 through 16, 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 Amended Notice of Administrative Hearing was properly served on Respondent on April 13, 2012 and received by Respondent on April 14, 2012.
2. Respondent has been licensed by the Department as a surety bail bondsman since June 4, 1998 and as a professional bail bondsman since March 3, 2009. Respondent held these licenses at all times relevant to the allegations herein.

CIVIL JUDGMENT AGAINST RESPONDENT

3. On March 9, 2005, Respondent entered into a producer agreement with Carlyle Poindexter and Poindexter & Associates, Inc.
4. Carlyle Poindexter is a licensed bail bondsman and a managing general agent and acts as an intermediary between insurance companies and bail bondsmen who work for him.
5. Pursuant to the terms of the producer agreement, Respondent was a producer for Carlyle Poindexter & Poindexter & Associates, Inc. and was appointed by an insurance company to write bail bonds through Carlyle Poindexter and Poindexter & Associates, Inc.
6. Carlyle Poindexter and Poindexter & Associates, Inc. sued Respondent for breaching the producer agreement in Wake County District Court in Carlyle T. Poindexter and Poindexter & Associates, Inc. v. Michael Jerome White d/b/a/ Carolina Bail Bonds, and Carolina Bail Bonding and Associates, Inc., 08 CVD 0004227.
7. On July 13, 2010, a judgment was entered against Respondent in Wake County District Court in Carlyle T. Poindexter and Poindexter & Associates, Inc. v. Michael Jerome White d/b/a/ Carolina Bail Bonds, and Carolina Bail Bonding and Associates, Inc., 08 CVD 0004227 (hereinafter "the judgment").
8. The judgment was entered following a bench trial at which Respondent was represented by counsel.
9. The judgment states that the parties agreed that the issues submitted to the Court were the proper issues to be so submitted.
10. The judgment is in the total amount of \$44,494.22. The total amount of the judgment includes the sum of \$12,222.49, interest in the amount of \$2,396.70, attorney's fees in the amount of \$29,737.03, and costs in the amount of \$138.

11. The judgment is for money owed to Carlyle Poindexter and Poindexter & Associates, Inc. pursuant to contractual obligations of the Respondent related to dealings under his license as a surety bail bondsman.

12. As of the date of the hearing, approximately \$16,852 has been collected on the judgment, and the judgment has not been paid in full.

13. Despite knowing that the judgment is still in force and that he still owes money on it as of the date of the hearing, Respondent had not voluntarily paid any money towards the judgment.

14. As of the date of the hearing, the judgment has not been satisfied.

FAILURE TO TIMELY FILE MONTHLY REPORTS

15. As recently as August 2010, the Department had made clear to Respondent the requirements for filing monthly reports.

16. Respondent knew that the monthly reports were due on the 15th of each month.

17. Respondent stated that only one of the monthly reports was late because if the 15th of a month fell on a Saturday or Sunday he believed that he had until the following Monday to file his monthly report.

18. On May 16, 2011 at 3:49 p.m., Respondent sent his monthly report regarding all bail bonds written by him as a professional bail bondsman on which he was liable for the month of April, 2011 to Agent Services Division's Ernestine McKenney.

19. Pursuant to N.C.G.S. § 8C-1, Rule 201, the Hearing Officer takes judicial notice of the fact that May 16, 2011 was a Monday.

20. On September 16, 2011 at 4:05 p.m., Respondent sent his monthly report regarding all bail bonds written by him as a professional bail bondsman on which he was liable for the month of August, 2011 to Agent Services Division's Ernestine McKenney.

21. Pursuant to N.C.G.S. § 8C-1, Rule 201, the Hearing Officer takes judicial notice of the fact that September 16, 2011 was a Friday.

22. On October 18, 2011 at 12:00 a.m., Respondent sent an email to Agent Services Division's Ernestine McKinney in which he stated he was presently trying to send Ms. McKenney his monthly report regarding all bail bonds written by him as a professional bail bondsman on which he was liable for the month of September, 2011 and that he was going to

have to hand deliver it if he couldn't get his computer problems fixed that night.

23. Pursuant to N.C.G.S. § 8C-1, Rule 201, the Hearing Officer takes judicial notice of the fact that October 18, 2011 was a Tuesday.

24. Respondent failed to timely file written reports regarding all bail bonds written by the Respondent as a professional bail bondsman on which he was liable for the months of August and September, 2011.

BONDS IN EXCESS OF STATUTORY LIMITS

25. Respondent knew that he could not write a bond under his professional bail bondsman license for an amount greater than one-fourth of the amount of securities he had then on deposit with the Commissioner.

26. Respondent understood that it was his responsibility to know what his one-fourth limit was for writing bonds using his professional bail bondsman license.

27. As of October 1, 2010, Respondent's deposit of securities with the Commissioner totaled \$28,009.00.

28. Respondent's monthly report regarding all bail bonds written by him as a professional bail bondsman on which he was liable for the month of September, 2010 listed a bond for which the Respondent was liable written for Lee Doake in the amount of \$7,500.00 and two bonds for which the Respondent was liable written for Patrick Turner in the amounts of \$6,000.00 and \$1,500.00.

29. The bonds for which the Respondent was liable for Lee Doake and Patrick Turner were both more than one-fourth of the value of the securities then on deposit with the Commissioner, \$7,002.00.

30. As of November 1, 2010, Respondent's deposit of securities with the Commissioner totaled \$28,009.00.

31. Respondent's monthly report regarding all bail bonds written by him as a professional bail bondsman on which he was liable for the month of October, 2010 listed a bond for which the Respondent was liable written for Lee Doake in the amount of \$7,500.00 and two bonds for which the Respondent was liable written for Patrick Turner in the amounts of \$6,000.00 and \$1,500.00.

32. The bonds for which the Respondent was liable for Lee Doake and Patrick Turner were both more than one-fourth of the value of the securities then on deposit with the Commissioner, \$7,002.00.

33. As of March 1, 2012, Respondent's deposit of securities with the Commissioner totaled \$27,794.00.

34. Respondent's monthly report regarding all bail bonds written by him as a professional bail bondsman on which he was liable for the month of February, 2012 listed a bond for which the Respondent was liable written for Ben Broughton in the amount of \$10,000.00, a bond for which the Respondent was liable written for Brandon Hunt in the amount of \$10,000.00, a bond for which the Respondent was liable written for Daniel Jackson in the amount of \$7,000.00 and two bonds for which the Respondent was liable written for Trevelle Pone in the amounts of \$2,000.00 and \$8,000.00.

35. The bonds for which the Respondent was liable for Ben Broughton, Brandon Hunt, Daniel Jackson and Trevelle Pone were, for each individual, more than one-fourth of the value of the securities then on deposit with the Commissioner, \$6,948.50.

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 §58-71-80, 150B-38, 150B-40, 11 NCAC 1.0401 et seq. and other applicable statutes and regulations.

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

3. Pursuant to N.C.G.S. § 58-71-82, if an individual holds a professional bondsman's license and a surety bondsman's license simultaneously, they are considered one license for the purpose of disciplinary actions involving suspension, revocation or non renewal under Article 71 of the General Statutes.

CIVIL JUDGMENT AGAINST RESPONDENT

4. Pursuant to N.C.G.S. § 58-71-80(a)(8), the Commissioner may place on probation, suspend, revoke, or refuse to renew any license under this Article 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.

5. The licensee has in the conduct of the licensee's affairs under his licenses, demonstrated financial irresponsibility by failing to pay the judgment entered against him in the

matter of Carlyle T. Poindexter and Poindexter & Associates, Inc. v. Michael Jerome White d/b/a/ Carolina Bail Bonds, and Carolina Bail Bonding and Associates, Inc., 08 CVD 0004227, in violation of N.C.G.S. § 58-71-80(a)(8).

6. This violation of N.C.G.S. § 58-71-80(a)(8) is, by itself, sufficient to support the revocation of Respondent's surety and professional bail bondsman licenses.

7. Respondent's surety and professional bail bondsman licenses should be revoked for this violation.

FAILURE TO TIMELY FILE MONTHLY REPORTS

8. N.C.G.S. § 58-71-165 requires that each professional bail bondsman shall file with the Commissioner a written report in form prescribed by the Commissioner regarding all bail bonds on which the bondsman is liable as of the first day of each month showing (i) each individual bonded, (ii) the date the bond was given, (iii) the principal sum of the bond, (iv) the state or local official to whom given, and (v) the fee charged for the bonding service in each instance.

9. N.C.G.S. § 58-71-165 further requires that the written report shall be filed with the Commissioner on or before the fifteenth day of each month.

10. Pursuant to N.C.G.S. § 58-71-80(a)(7), the Commissioner may place on probation, suspend, revoke, or refuse to renew any license for failure to comply with or violation of the provisions of Article 71 or any order, rule or regulation of the Commissioner.

11. Respondent violated N.C.G.S. §§ 58-71-165 and 58-71-80(a)(7) by failing to file his monthly report regarding all bail bonds written by him as a professional bail bondsman on which he was liable for the month of August, 2011 with the Commissioner on or before September 15, 2011.

12. Respondent violated N.C.G.S. §§ 58-71-165 and 58-71-80(a)(7) by failing to file his monthly report regarding all bail bonds written by him as a professional bail bondsman on which he was liable for the month of September, 2011 with the Commissioner on or before October 15, 2011.

BONDS IN EXCESS OF STATUTORY LIMITS

13. N.C.G.S. § 58-71-145 requires each professional bondsman acting as a surety on bail bonds in this State to 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).

14. Pursuant to N.C.G.S. § 58-71-175, no 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 bonds.

15. Pursuant to N.C.G.S. § 58-71-80(a)(7), the Commissioner may place on probation, suspend, revoke, or refuse to renew any license for failure to comply with or violation of the provisions of Article 71 or any order, rule or regulation of the Commissioner.

16. Pursuant to N.C.G.S. § 58-71-80(a)(8), the Commissioner may place on probation, suspend, revoke, or refuse to renew any license under this Article 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.

17. The bonds for which the Respondent was liable for Lee Doake and Patrick Turner listed on Respondent's monthly report regarding all bail bonds written by him as a professional bail bondsman on which he was liable for the month of September, 2010 were both more than one-fourth of the value of the Respondent's securities then on deposit with the Commissioner, in violation of N.C.G.S. § 58-71-175 and N.C.G.S. § 58-71-80(a)(7).

18. Respondent has in the conduct of the licensee's affairs under the license, demonstrated financial irresponsibility by being liable for bonds for Lee Doake and Patrick Turner, as listed on Respondent's monthly report for September 2010, that were more than one-fourth of the value of the Respondent's securities then on deposit with the Commissioner, in violation of N.C.G.S. § 58-71-80(a)(8).

19. The bonds for which the Respondent was liable for Lee Doake and Patrick Turner listed on Respondent's monthly report regarding all bail bonds written by him as a professional bail bondsman on which he was liable for the month of October, 2010 were both more than one-fourth of the value of the Respondent's securities then on deposit with the Commissioner, in violation of N.C.G.S. § 58-71-175 and N.C.G.S. § 58-71-80(a)(7).

20. Respondent has in the conduct of the licensee's affairs under the license, demonstrated financial irresponsibility by being liable for bonds for Lee Doake and Patrick Turner, as listed on Respondent's monthly report for October, 2010, that were more than one-fourth of the value of the Respondent's securities then on deposit with the Commissioner, in violation of N.C.G.S. § 58-71-80(a)(8).

21. The bonds for which the Respondent was liable for Ben Broughton, Brandon Hunt, Daniel Jackson and Trevelle Pone listed on Respondent's monthly report regarding all bail bonds written by him as a professional bail bondsman on which he was liable for the month of February, 2012 were, for each individual, more than one-fourth of the value of the Respondent's securities then on deposit with the Commissioner, in violation of N.C.G.S. § 58-71-175 and N.C.G.S. § 58-71-80(a)(7).

22. Respondent has in the conduct of the licensee's affairs under the license, demonstrated financial irresponsibility by being liable for bonds for Ben Broughton, Brandon Hunt, Daniel Jackson and Trevelle Pone, as listed on Respondent's monthly report for February 2012, that were more than one-fourth of the value of the Respondent's securities then on deposit with the Commissioner, in violation of N.C.G.S. § 58-71-80(a)(8).

23. These violations of N.C. Gen. Stat. § 58-71-80(a)(7) are, by themselves, sufficient to support the revocation of Respondent's professional and surety bail bondsman licenses.

24. These violations of N.C. Gen. Stat. § 58-71-80(a)(8) are, by themselves, sufficient to support the revocation of Respondent's professional and surety bail bondsman licenses.

25. Respondent's surety and professional bail bondsman licenses should be revoked .


26. The hearing officer finds that Respondent's surety bail bondsman license and professional bail bondsman license should be revoked.

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

Order

It is hereby ordered that the professional bail bondsman license and the surety bail bondsman license of Respondent Michael J. White are revoked.

This the 2nd day of July, 2012.


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.

CERTIFICATE OF SERVICE

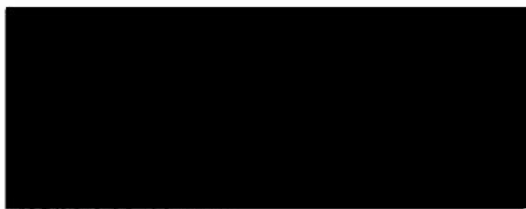
I HEREBY CERTIFY that I have this day served a copy of the foregoing ORDER AND FINAL AGENCY DECISION by mailing a copy of the same via certified U.S. mail, return receipt requested, in a first class postage prepaid envelope addressed as follows:

Michael J. White
913 Reflection Court
Raleigh, NC 27610

Michael J. White
P.O. Box 26341-6341
Raleigh NC 27611

Tiffany D. Russell
123 West Main Street, Suite 316
Durham, NC 27701
Attorney for the Respondent

This the 3rd day of July, 2012.



Robert D. Croom
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602-0629
(919) 716-6610