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NORTH CAROLINA DEPARTMENT OF INSURANCE  
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE COMMISSIONER  
OF INSURANCE  
Docket Number: D-1716

IN THE MATTER OF  
THE LICENSURE OF  
RUSHEEM WYNN

MAR 24 2014  
ORDER AND  
FINAL AGENCY DECISION

This matter was heard on Wednesday, February 26, 2014, by the undersigned Hearing Officer, as designated by the Commissioner of Insurance pursuant to N.C. Gen. Stat. § 58-2-55. The administrative hearing was held in Room #2115 of the Dobbs Building, located at 430 North Salisbury Street, Raleigh, Wake County, North Carolina. Assistant Attorney General Rebecca E. Lem represented the North Carolina Department of Insurance, Agent Services Division (hereinafter "Petitioner"). Respondent Rusheem Wynn (hereinafter, "Respondent") was present and represented himself.

At the hearing, Jerry Roventini, a Complaint Analyst with the Agent Services Division of the North Carolina Department of Insurance, was called to testify for the Petitioner. Respondent Rusheem Wynn testified on his own behalf.

The Petitioner offered into evidence Exhibits 1 - 11, which were admitted. The Respondent offered no documents 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 Notice of Administrative Hearing was properly served on Petitioner pursuant to Rule 4 of the North Carolina Rules of Civil Procedure.
2. The Respondent is a surety bail bondsman with the Department who has been licensed since 2008. Respondent's residential and business addresses are in Raleigh, NC.
3. Certified criminal records admitted into evidence showed the following:

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a. That on or about January 21, 2011, Arthur M. Matthews was arrested for several misdemeanor charges. On or about March 30, 2011, Mr. Matthews was placed on 24 months probation.

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- b. On or about September 16, 2011, Mr. Matthews was charged with a probation violation in Wake County and imprisoned. The judge authorized a bond of \$5,000.00 in case 11 CR 201647.
  - c. On or about September 16, 2011, the Respondent wrote an appearance bond on Mr. Matthews for the probation violation in 11 CR 201647.
  - d. On the "Appearance Bond for Pretrial Release", AOC form AOC-CR-201, which was written by the Respondent on or about September 16, 2011, "Allegheny Casualty" is listed as the insurance company and "Rusheem Wynn" is listed as the bail agent. The portion of the form entitled "Affidavit" is not completed. The "Appearance Bond for Pretrial Release" notes under "Conditions" in part that, "this Bond is effective and binding upon the judgment in the district court from which no appeal is taken or until entry of judgment in the superior court. If the defendant appears as ordered and otherwise performs the foregoing conditions of the bond, than the bond is void...."
  - e. The probation violation hearing in 11 CR 201647 was held on September 21, 2011. In the September 21, 2011 hearing on the probation violation, the judge released Mr. Matthews back into the custody of the Parole Officer for the remainder of the 24 month probationary period. No appeal was taken from this ruling.
  - f. Mr. Matthews' probationary period completed on or about March 30, 2013.
4. The Respondent wrote a document on September 16, 2011 entitled "Indemnitors Liability Agreement and Bail Receipt" and provided this document to Mr. Matthews as a collateral receipt for the appearance bond in 11 CR 201647. This document states that Mr. Matthews paid \$5,750.00 total collateralization for that bond. The Respondent testified that the premium for the bond was \$750, plus the collateral was for the full amount of the bond, \$5,000.00. This payment was taken from Mr. Matthews by credit card payment.
  5. The "Indemnitors Liability Agreement and Bail Receipt" was not pre-numbered by a printer.
  6. Mr. Roventini testified that he had reviewed the Department's records, and the "Indemnitors Liability Agreement and Bail Receipt" form utilized by the Respondent had never been reviewed or approved by the Department.
  7. The Respondent testified that he kept a portion of the \$750.00 bond premium as a "runners fee", and gave the remainder of the \$5,750.00 received from Mr. Matthews to another bail bondsman, Louis Gillespie, who had referred Mr. Matthews to the Respondent. The Respondent thus failed to deposit the collateral given to him by Mr. Matthews in a non-interest bearing trust account.

8. Mr. Gillespie died sometime after the Respondent wrote the aforementioned appearance bond for Mr. Matthews and before Mr. Matthews was released from probation.
9. On or about May 6, 2013, the Agent Services Division ("ASD") of the North Carolina Department of Insurance received a complaint from Mr. Matthews stating that Respondent failed to return his collateral within seventy-two (72) hours after final termination of liability on the bond. The complainant, Mr. Matthews, believed that the Respondent's liability on the bond had not ended until March 29, 2013, when Mr. Matthews was released from probation. The Respondent indicated that he also believed that his liability on Mr. Matthews' bond did not end until Mr. Matthews was released from probation.
10. The Respondent's liability on Mr. Mathew's bond had in fact ended on the date in which judgment was entered in the District Court in 11 CR 201647, as Respondent failed to appeal this ruling.
11. The Respondent testified that between the date that he wrote the bond on Mr. Matthews and the time that Mr. Matthews went off probation, the Respondent remained in contact with Mr. Matthews, including driving Mr. Matthews to some of the appointments required for Mr. Matthews to comply with the terms of his probation. The Respondent expressed a good faith, but mistaken belief that his liability on Mr. Matthews' bond did not end until Mr. Matthews' probationary period was over.
12. The Respondent testified that, upon learning that Mr. Matthews was off probation on or about March 30, 2013, he attempted to recover the \$5,000.00 collateral from Mr. Gillespie's associates, as Mr. Gillespie was deceased. The Respondent testified that he was unable to recover the \$5,000.00 that had been given to Mr. Gillespie, which caused a delay in returning the collateral to Mr. Matthews such that the collateral was not returned within 72 hours of Mr. Matthews' request. The \$5,000.00 collateral was returned to Mr. Matthews by the Respondent on or about May 16, 2013, and the Respondent indicated that he used his personal monies for this purpose.

#### 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. §§ 58-71-80, 150B-38 and 150-40, as well as 11 N.C.A.C. 10401 *et seq.* and other applicable statutes and regulations.
2. The Respondent's liability on Mr. Mathew's bond had in fact ended on the date in which judgment was entered in the District Court in 11 CR 201647, which was September 21, 2011, as Respondent failed to appeal this ruling.


3. The Respondent's failure to return the collateral on Mr. Mathew's bond within seventy-two (72) hours after final termination of liability on a bond is in violation of N.C. Gen. Stat. §§ 58-71-95, 58-71-80(a)(4), 58-71-80(a)(7), and 58-71-80(a)(8).
4. Respondent's failure to place Mr. Mathew's collateral in a non-interest bearing trust account in a bank located in North Carolina is a violation of N.C. Gen. Stat. § 58-71-100(a).
5. The Respondent's failure to properly list and describe all collateral on the AOC-CR-201 form by leaving the "Affidavit" section of that form blank is a violation of 11 NCAC 13.0512(h).
6. The "Indemnitors Liability Agreement and Bail Receipt" form utilized by the Respondent for Mr. Mathew's bond was not submitted to the Department for approval, in violation of 11 NCAC 13.0512(j).
7. The "Indemnitors Liability Agreement and Bail Receipt" form utilized by the Respondent as a receipt for Mr. Mathew's bond is not pre-numbered by a printer and thus is in not in compliance with the requirements of 11 NCAC 13.0515.
8. Based on the unique facts of this case including but not limited to the Respondent's confusion about when the liability on the bond terminated, the Respondent's repayment of the collateral out of his own funds, the contact between the Respondent and Mr. Matthews, and the lack of prior disciplinary actions against the Respondent, the undersigned in his discretion concludes that civil penalties should be imposed pursuant to N.C.G.S. § 58-2-70 in lieu of suspension or revocation.
9. Having considered the factors set out in N.C.G.S. § 58-2-70(d), the undersigned concludes that the Respondent should be assessed a civil penalty of \$600 for the failure to return collateral within 72 hours after final termination of liability on the bond, a civil penalty of \$200 for the Respondent's failure to place Mr. Matthews' collateral in a non-interest bearing account, a civil penalty of \$100 for failing to properly list and describe all collateral on the AOC-CR-201 form by leaving the "Affidavit" section of that form blank, and a civil penalty of \$100 for utilizing an "Indemnitors Liability Agreement and Bail Receipt" form that had not been not been submitted to the Department for approval and for utilizing an "Indemnitors Liability Agreement and Bail Receipt" form as a receipt for Mr. Mathew's bond which was not pre-numbered by a printer. The total civil monetary penalties imposed on the Respondent should be \$1,000.

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

Order

By no later than April 30, 2014, Respondent shall pay civil penalties totaling One Thousand Dollars (\$1,000.00). The form of payment shall be certified check, cashier's check or money order. The check or money order for the penalty payment shall be payable to the "North Carolina Department of Insurance." The civil penalties shall be subject to disbursement in accordance with the provisions of Article IX, Section 7 of the North Carolina Constitution for the benefit of public schools.

This the 19<sup>th</sup> day of March, 2014.

  
Stewart L. 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 the foregoing **ORDER AND FINAL AGENCY DECISION** on Respondent by certified mail, addressed as follows:

Rusheem Wynn  
4912 Alenja Lane  
Raleigh, NC 27616

This the 20<sup>th</sup> day of March, 2014.

  
Rebecca E. Lem  
Assistant Attorney General  
N. C. Department of Justice  
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Raleigh, NC 27699-9001  
(919) 716-6610