

NORTH CAROLINA DEPARTMENT OF INSURANCE  
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA	)	BEFORE THE
COUNTY OF WAKE	)	COMMISSIONER OF INSURANCE
	)	
	)	
IN THE MATTER OF:	)	ORDER AND
	)	FINAL AGENCY DECISION
THE LICENSURE OF	)	
KENDRA BROWN	)	
	)	
Petitioner.	)	Docket Number: 1944
	)	

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This matter was heard on Wednesday, July 24, 2019, 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 the Albemarle Building, located at 325 North Salisbury Street, Raleigh, Wake County, North Carolina. Assistant Attorney General Rebecca E. Lem represented the North Carolina Department of Insurance, Bail Bond Regulatory Division (hereinafter "Respondent"). Petitioner Kendra Brown (hereinafter, "Petitioner") was present and represented herself.

At the hearing, Keisha Burch, a Complaint Analyst with the Bail Bond Regulatory Division ("BBRD") of the Department, was called to testify by the Respondent. Petitioner was also called to testify by BBRD, and she also testified on her own behalf.

The Respondent offered into evidence Respondent's Exhibits 1 – 6, which were admitted into evidence. Petitioner 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 and N.C. Gen. Stat. §58-2-69(d). On May 20, 2019, Respondent filed a Motion to Continue the hearing from its original date of May 30, 2019, which was granted. The hearing was thereafter rescheduled to July 24, 2019. On July 10, 2019, Petitioner submitted a request by email to continue the hearing to a later date, and this request was denied.

2. Petitioner applied to the Department for a surety bondsman license on or about June 13, 2018 with an electronically signed application, after completing 12 hours of NC Bail Academy pre-licensing education.

3. On the surety bondsman license application (hereinafter, "license application"), Petitioner answered "no" to the application question which asked, "Have you ever been convicted, or are you currently charged with, committing a crime, whether or not adjudication was withhold?". The question asks for relevant documentation to be attached if the answer is "yes".

4. The routine background check conducted as part of the bail bonds license application process revealed that Petitioner has two prior criminal convictions in Pitt County, NC.

5. Certified records from Pitt County indicate that the Petitioner's first prior criminal conviction is for the misdemeanor of Consumption of Malt Beverage or Unfortified Wine Off Premises in Pitt Co. file no. 05 CR 009421, with an offense date of June 18, 2005 and a conviction date of January 18, 2013.

6. Certified records from Pitt County indicate that the Petitioner's second prior criminal conviction is for the misdemeanor of Possession of a Schedule VI Controlled Substance in Pitt Co. file no. 2018 CR 700131, with an offense date of January 5, 2018 and a conviction date of March 27, 2018. The records include a document entitled, "Defendant's Plea of Guilty or No Contest", in which Petitioner entered a guilty plea and signed the document.

7. On the license application, Petitioner answered "no" to the application question which asked "Do you individually and/or jointly have any civil judgments, decrees or liens outstanding against you for any reason, including failing to pay State or Federal income tax, as of the date of this application?" The question asks for relevant documentation to be attached if the answer is "yes".

8. Certified records from Pitt County indicate that, as of March 7, 2019, Petitioner owed an outstanding civil judgment of \$4,263.84 to the State of North Carolina in Pitt County File No. 09 CR 060590. The original judgment was entered on July 26, 2010, was for \$2,500.00 money award and \$40.00 in costs and fees.

### **Testimony of Keisha Burch**

9. Keisha Burch testified on behalf of BBRD. Ms. Burch has been a Complaint Analyst with the Bail Bonds Regulatory Division approximately 2 years since the creation of BBRD. Prior to this, Ms. Burch held several positions within the North Carolina Department of Insurance, including a Licensing Specialist,



Communication Specialist and a Bail Bond Administrator with the Agent Services Division. Ms. Twyla Covington, another Complaint Analyst, was previously assigned to the matter regarding Petitioner's license denial, however she was unable to testify due to a death in her family. Ms. Burch has reviewed the file in this matter and has stated she is comfortable testifying in this matter on behalf of BBRD. Ms. Burch's normal job duties include overseeing BBRD cases relating to surety bail bonds license application denials.

10. Ms. Burch reviewed BBRD's previous correspondence with Petitioner. BBRD sent Petitioner a letter notifying her of her license denial on August 1, 2018. This letter offered Petitioner an opportunity to request a review of the license denial within thirty (30) days. Petitioner did not thereafter request a denial review. Ms. Burch testified that normally, BBRD would not issue a "denial stands" letter if an applicant does not timely request a denial review after notification of the initial denial of a license application, and the applicant would thereafter not have the opportunity for a hearing regarding the denial. However, due to an internal error at BBRD, on January 22, 2019, BBRD sent a letter to Petitioner confirming its denial of her application and also offering Petitioner an opportunity to request a hearing within thirty (30) days, which Petitioner did.

11. Ms. Burch explained that the Petitioner's license application was denied for two primary bases: First, Petitioner failed to accurately answer the application questions regarding her prior criminal convictions and civil judgment. Second, Petitioner has a conviction under Article 5, Chapter 90 of the North Carolina General Statutes where the conviction occurred within the previous twenty-four (24) months of the date of Petitioner's surety bail bonds license application, preventing her licensure under N.C. Gen. Stat. § 58-71-80(b2).

12. Ms. Burch explained that Petitioner's conviction for the misdemeanor of Consumption of Malt Beverage or Unfortified Wine Off Premises in Pitt Co. file no. 05 CR 009421 was not substantively a basis for denial due to its age and the fact that it is not a crime of moral turpitude, however, Petitioner's failure to accurately answer the license application question and disclose this conviction is grounds for denial of Petitioner's license pursuant to N.C. Gen. Stat. § 58-71-80(a)(3). However, Ms. Burch was more concerned with Petitioner's failure to disclose the most recent criminal conviction.

13. Ms. Burch testified that Petitioner's 2009 civil judgment was not of significant concern substantively to BBRD, however she should have disclosed this civil judgment on her license application in order to have accurately answered screening question number 7.

14. Ms. Burch testified that the primary reason for the denial of Petitioner's bail bonds license application was her March 2018 conviction for Possession of a Schedule VI Substance, because this prevents Petitioner from being licensed pursuant to N.C.G.S. § 58-33-46(b2), as the conviction is within twenty-four (24) months of Petitioner's license application date of June 13, 2018. Additionally, this is a conviction that Petitioner should have disclosed on her surety bail bonds license application.

15. Ms. Burch stated that license applicants are personally responsible for the information submitted on their license application and attest to the accuracy and truth of the information they provide when the application is submitted.

### **Testimony of Petitioner**

16. Petitioner testified concerning her educational and work background. Petitioner obtained an associate degree in criminal justice in 2016 from Pitt County Community College. She has most recently been working at Sheetz, although she is not currently employed. Petitioner is now in training to become a commercial truck driver.

17. Petitioner explained that she wants to be a surety bail bondsman to help other people, not just to get out of jail but also to stay out of jail. She noted that based on her previous life experiences she understands what they are experiencing. Petitioner also stated that she's learned about the bail bonds industry during the course of obtaining her associates degree in criminal justice.

18. Petitioner explained that she had assistance in filling out her bail bonds license application from licensed bail bondsman Marcus Moore and his assistant, and that all three of them sat together and completed her license application. Petitioner stated that Mr. Moore pulled up Petitioner's criminal history online and told her that he did not see anything that she had to disclose on the bail bonds license application.

19. Petitioner explained that she did not know about the 2009 civil judgment until this hearing. Although the 2009 civil judgment was referenced in prior documentation provided to Petitioner from the Department, Petitioner thought this related to her 2005 criminal conviction for Consumption of Malt Beverage or Unfortified Wine Off Premises. Petitioner stated that she now understood that the 2009 civil judgment related to a hit and run incident, where her cousin borrowed her car and engaged in a hit and run, but where Petitioner "took the charge" for her cousin as her cousin was sixteen (16) years old. Petitioner stated she did not know she ever had a civil judgment entered in connection with that matter and she did not intentionally fail to disclose this civil judgment on her license application.



20. Petitioner explained that she recalled the circumstances surrounding her conviction for Consumption of Malt Beverage or Unfortified Wine Off Premises in 2005. She stated that she received this conviction pursuant to an incident where she and her friends had alcoholic beverages outside a convenience store, and she was underage. Petitioner stated that when the police arrived, she had a cup in her hand but was not drinking it. Petitioner stated that she did not understand that this was a conviction that should have been disclosed on her license application.

21. Petitioner explained the circumstances surrounding her 2018 conviction for Possession of a Schedule VI Substance. Petitioner stated that she had been driving her friend's car, with another passenger in the vehicle, and was pulled over. She stated that her friend had marijuana in the vehicle and she was charged. When asked about the police citation stating that Petitioner was the sole occupant of the vehicle, Petitioner stated that this was not accurate and that there was another occupant. She stated that the car, which was a Kia, was not her car and she's never owned a Kia.

22. Petitioner acknowledged that she signed the document, "Defendant's Plea of Guilty or No Contest in District Court" but stated that she did not understand what she was signing or that she had been convicted of Simple Possession of a Schedule VI Substance. Petitioner stated that she never went before a judge in this matter and dealt solely with the District Attorney. Petitioner stated that she waived the right to legal counsel because she thought it was a matter she could handle herself. Petitioner stated that she did not disclose this conviction on her license application because she did not know she had a conviction, and because bail bondsman Marcus Moore told her that she did not have criminal convictions that needed to be disclosed.

23. Petitioner stated that if she had known she had the March 2018 conviction for Simple Possession of a Schedule VI Substance she would never have gone through the bail bonds license application process, because she understood that this conviction would prevent her from obtaining her surety bail bonds license.

### **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. Pursuant to N.C. Gen. Stat. § 58-71-80(a)(3), the Commissioner may deny issuance of a surety bondsman license for material misstatement, misrepresentation or fraud in obtaining the license. Petitioner's failure to disclose her 2005 and 2018 Pitt County criminal convictions in response to screening question number 3, and her failure to disclose her 2009 civil judgment in response to screening

question number 7, are material misstatements or misrepresentations on her license application. Petitioner clearly recalled her 2005 criminal conviction which related to underage consumption of alcohol, and therefore she should have answered "yes" to the question, "Have you ever been convicted, or are you currently charged with, committing a crime, whether or not adjudication was withheld?". Petitioner is responsible for carefully reading the questions on the license application and answering them thoroughly and accurately, and there is nothing in the language of that question that would indicate that Petitioner did not have to disclose her 2005 conviction. Further, Petitioner signed a Pitt County court document on March 27, 2018 pleading guilty to the misdemeanor charge of Possession of a Schedule VI Substance. This document clearly notes that it is a plea of "guilty", and Petitioner should have therefore known she had this conviction and reported it on her license application in response to the question concerning previous criminal convictions. Petitioner also should have reported her 2009 civil judgment on her license application in order to submit accurate information, however Petitioner was unaware of this civil judgment when she completed her application, and her failure to report the civil judgment is not alone a basis for denying her surety bail bonds application.

3. Petitioner's March 27, 2018 criminal conviction for Simple Possession of Schedule VI Substance occurred within the previous twenty-four (24) months of her June 13, 2018 surety bail bonds license application. Petitioner's March 2018 criminal conviction for Simple Possession of Schedule VI Substance is a misdemeanor under Article 5 of Chapter 90 of the North Carolina General Statutes. N.C. Gen. Stat. § 58-71-80(b2) states that "the Commissioner shall deny any license under this Article if the applicant has been convicted of a misdemeanor drug violation under Article 5 of Chapter 90 of the General Statutes within the previous 24 months of the date of the application for the license." Therefore, Petitioner cannot be granted a surety bail bonds license.

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

### Order

It is ordered that the Bail Bond Regulatory Division's denial of Petitioner's application for a surety bail bond license be UPHELD, and that no license shall be issued to her.



This the 9<sup>th</sup> day of August 2019.

  
Meghan Cook  
Hearing Officer  
N.C. Department of Insurance  
1201 Mail Service Center  
Raleigh, NC 27699-1201

### 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 11. NCAC 01.0413 and N.C. Gen. Stat. § 1 A-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, including explicitly stating what exceptions are taken to the decision or procedure and what relief the petitioner seeks, and requires service of the Petition by personal service or by certified mail upon all who were parties of record to the administrative proceedings. 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 at the address provided to the Commissioner pursuant to N.C. Gen. Stat. § 58-2-69(b); and via State Courier to Attorney for Respondent, addressed as follows:

Kendra Brown  
3324 Moseley Drive, Apt. B  
Greenville, NC 27858  
(*Petitioner*)

**Certified Mail Tracking Number: 70191120000089733865**

Rebecca E. Lem  
Assistant Attorney General  
N.C. Department of Justice  
Insurance Section  
9001 Mail Service Center  
Raleigh, NC 27699-9001  
(*Attorney for Respondent*)

This the 9<sup>th</sup> day of August 2019.

  
Mary Faulkner  
Paralegal  
N.C. Department of Insurance  
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Raleigh, NC 27699-1201