

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

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

**BEFORE THE COMMISSIONER
OF INSURANCE**

**IN THE MATTER OF
THE LICENSURE OF
WARBENI S. CURRY**

**ORDER and FINAL
AGENCY DECISION
DOCKET NO. 1712**

This matter was heard on May 28, 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 #3099 of the Dobbs Building, located at 430 North Salisbury Street, Raleigh, Wake County, North Carolina. At the hearing, Assistant Attorney General LaShawn S. Piquant represented the North Carolina Department of Insurance, Agent Services Division (hereinafter, "Agent Services"). Attorney James R. Allen of Durham represented licensee Warbeni S. Curry (hereinafter, "Respondent") at the proceeding.

The Notice of Hearing in the matter was duly and properly issued. The issue to be determined at the hearing was whether Respondent's surety bail bondsman license should be suspended or revoked pursuant to N.C. Gen. Stat. § 58-71-80. Agent Services has the burden of proof in demonstrating that sufficient evidence exists to support the revocation or suspension of Respondent's surety bail bond license. Agent Services presented seven (7) exhibits and called one witness. Specifically, the following documentary evidence was presented by Agent Services and was admitted into evidence:

1. Notice of Hearing
2. Affidavit of Service
3. Scheduling Order
4. Licensing Summary
5. Complaint Letter from Attorney Timothy Gunther
6. Default Judgment issued against Respondent
7. Certified Court File for Wake County District Court Docket Number 11 CVD 8615

Gerald Roventini, a Complaint Analyst with Agent Services, testified.

Respondent did not present additional documentary evidence. Respondent testified.

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

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

Findings of Fact

1. The Notice of Administrative Hearing in this matter was duly and properly served on Respondent pursuant to Rule 4 of the North Carolina Rules of Civil Procedure and N.C. Gen. Stat. § 58-2-69(d) on February 11, 2014.
2. The Department has the authority and responsibility for regulating and licensing bail bondsman, including surety bail bondsman.
3. Respondent has been licensed by the Department as a surety bail bondsman since September 24, 2004. Respondent has held his surety bail bondsman license at all times relevant to the allegations herein.
4. On September 26, 2008, Respondent entered into a producer agreement with Carlyle Poindexter D/B/A Poindexter Surety Services (hereinafter, "Poindexter").
5. Pursuant to the terms of the producer agreement, Respondent worked as an independent contractor in the capacity of a surety bail bondsman. Respondent's contractual duties included, but were not limited to, soliciting and writing bail bonds, and indemnifying Poindexter from any liability and costs for the execution of said bonds.
6. Under the agreement, Respondent would be liable for any forfeitures resulting from bonds he issued.
7. Poindexter sued Respondent in Wake County District Court alleging that Respondent breached their agreement and was responsible for sixteen (16) separate bond forfeitures. The complaint was filed on May 27, 2011, captioned Carlyle T. Poindexter D/B/A Poindexter Surety Services vs. Warbeni Curry, 11 CVD 8615.
8. On November 18, 2011, a Default Judgment was entered against Respondent in Wake County District Court in the matter captioned Carlyle T. Poindexter D/B/A Poindexter Surety Services vs. Warbeni Curry, 11 CVD 8615 (hereinafter, "judgment").
9. The judgment provides that Respondent agreed to work in the capacity of a surety bail bondsman for Poindexter and he failed to indemnify Poindexter for costs associated with the forfeiture of the bonds written by Respondent. The complaint underlying the default

judgment indicates that Respondent was liable for costs paid by Poindexter to satisfy the sixteen (16) bond forfeitures.

10. The judgment against Respondent totaled \$36,525.66, with interest to be paid, and attorney's fees ordered in the amount of \$3,000. The judgment was signed by the Honorable James Fullwood, District Court Judge, on November 18, 2011.
11. In a letter dated, July 26, 2013, Attorney Timothy Gunther, who represented Poindexter in the action against Respondent, submitted a written complaint to the Department advising the Department of Respondent's outstanding judgment related to his surety bail bond license. In his complaint, Attorney Gunther included a copy of the judgment.
12. On or about August 6, 2013, Agent Services contacted Respondent about the judgment.
13. At the hearing, Respondent testified that he was aware of the outstanding judgment even before Department contacted him on August 6, 2013. Respondent testified that he became aware of the judgment in the early part of 2013.
14. At the hearing, Respondent testified that he has not satisfied the judgment nor has he set up a payment plan.
15. As of the date of the hearing in this matter, May 28, 2014, Respondent has not satisfied the Default Judgment entered by the Honorable James Fullwood, District Court Judge Presiding, on November 18, 2011 in Carlyle T. Poindexter D/B/A Poindexter Surety Services vs. Warbeni Curry, 11 CVD 8615 (Wake County District Court).

Conclusions of Law

1. This matter is properly before the Commissioner who has jurisdiction over the parties and the subject matter pursuant to N.C. Gen. Stat. §§ 58-71-80, 150B-38, 150B-40, as well as 11 N.C.A.C. 10401 et seq. and other applicable statutes and regulations.
2. Respondent was properly served with the Notice of Administrative Hearing.
3. The evidence presented at the hearing provided sufficient and substantial evidence of the allegations set out in the Notice of Administrative Hearing.
4. Pursuant to N.C. Gen. Stat. § 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 licensee, demonstrated incompetency, financial irresponsibility, or untrustworthiness.
5. The licensee has in the conduct of licensee's affairs under his license, demonstrated financial irresponsibility by failing to pay the judgment entered against him in the matter

of Carlyle T. Poindexter D/B/A Poindexter Surety Services vs. Warbeni Curry, 11 CVD 8615, in violation of N.C. Gen. Stat. § 58-71-80(a)(8).

6. These violations of N.C. Gen. Stat. § 58-71-80(a)(8) provide sufficient grounds to support the revocation of Respondent's surety bail bondsman license.
7. The hearing officer finds that Respondent's surety bail bondsman license should be revoked pursuant to N.C. Gen. Stat. § 58-71-80(a)(8).

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer enters the following:

Order

It is hereby ordered that the surety bail bondsman license of Respondent Warbeni S. Curry is revoked.

This the 2nd day of July, 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 a copy of the attached Scheduling Order 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:


Attorney James R. Allen
Law Offices of James R. Allen, PLLC
P.O. Box 21363
Durham, NC 27703 and

Warbeni S. Curry
1002 Arnette Avenue
Durham, NC 27707.

I HEREBY CERTIFY that on this day I have served the attached Scheduling Order via State Courier Service addressed as follows:

Ms. LaShawn Piquant
Assistant Attorney General
North Carolina Department of Justice
Insurance Section
Raleigh, NC

This the 2nd day of July, 2014.



Mary Faulkner
Paralegal
General Counsel's Office
North Carolina Department of Insurance
430 North Salisbury Street
Raleigh, NC 27603