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AGENT SERVICES  
DIVISION

NORTH CAROLINA DEPARTMENT OF INSURANCE  
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA

BEFORE THE COMMISSIONER  
OF INSURANCE

COUNTY OF WAKE

IN THE MATTER OF  
THE LICENSURE OF  
HERBERT GARDNER

FINAL AGENCY DECISION  
AND ORDER

Docket Number: 1303

This matter was heard by the undersigned, who was designated by the Commissioner of Insurance pursuant to N.C. General Statute §§ 58-2-50 and 58-2-55. The hearing was held pursuant to N.C. General Statute §§ 58-2-70, 58-71-80, 150B-38, 150B-40, and other applicable statutes and rules, on January 18, 2007, pursuant to a Notice of Administrative Hearing (Notice) that was duly issued and served on December 21, 2006.

ALLEGATIONS:

At the hearing, the following allegations by the Agent Services Division of the North Carolina Department of Insurance ("ASD") were considered:

1. In April 1995, the North Carolina Department of Insurance ("Department") issued a bail bondsman license to Mr. Gardner.
2. Mr. Gardner provided bail bond services to Darryl Mr. Anderson ("Mr. Anderson"). Mr. Anderson is currently incarcerated in the Pitt County Detention Center.
3. On June 25, 2006, Mr. Anderson filed a complaint with the ASD. In his complaint, Mr. Anderson sought assistance from the ASD, alleging that he obtained a judgment against Mr. Gardner. The judgment was in the amount of \$1,543.15, plus costs and was issued on March 16, 2005.
4. Mr. Anderson later informed ASD of a second judgment obtained by Mr. Anderson against Mr. Gardner. On May 18, 2006, the Pitt County District Court issued a judgment against

Mr. Gardner, in favor of Mr. Anderson, in the amount of \$225 plus interest. In that judgment, the Court made specific findings of fact that Mr. Anderson and Mr. Gardner had a professional relationship due to Mr. Gardner's professional capacity as a bail bondsman. In its order, the Court found that Mr. Gardner owed Mr. Anderson \$225 for a bail bond that was not obtained.

5. As of the date of the Notice, Mr. Gardner had not satisfied either judgment issued against him.

#### **AVERMENTS:**

At the hearing, the following averments by the ASD were considered:

1. That Mr. Gardner's conduct subjected him to N.C. General Statute § 58-71-80(4), which provides that the Commissioner may deny, suspend, revoke, or refuse to renew any license for "misappropriation, conversion or unlawful withholding of moneys belonging to the insurers or others and received in the conduct of business under the license."

2. That Mr. Gardner's conduct subjected him to N.C. General Statute § 58-71-80(a)(8), which provides that the Commissioner may deny, suspend, revoke or refuse to renew any license "when in the judgment of the Commissioner, the licensee has in the conduct of the licensee's affairs under the license, demonstrated incompetency [sic], financial irresponsibility, or untrustworthiness; or that the licensee is no longer in good faith carrying on the bail bond business...."

3. That Mr. Gardner's conduct subjected him to N.C. General Statute § 58-71-80(a)(7), which provides that the Commissioner may deny, suspend, revoke or refuse to renew any license for "failure to comply with or violation of the provisions of this Article or of an order, rule or regulation of the Commissioner.

#### **FINDINGS OF FACT:**

1. Mr. Gardner testified under oath that health problems and hospitalization prevented him from answering or defending the small claims actions brought against him by Mr. Anderson; and that Mr. Gardner's medical expenses also prevented him from retaining counsel to defend these claims. Both judgments were default judgments. In one of the actions Mr. Anderson lost in



small claims court and appealed to the district court, where he eventually prevailed.

2. In another action, on May 2, 2005 Mr. Anderson filed a complaint to recover possession of personal property from Mr. Gardner, which on June 1, 2005 was dismissed with prejudice by the court as frivolous.

3. In a letter dated October 13, 2005, Mr. Gardner offered to make payments to Mr. Anderson to satisfy the first judgment.

4. Mr. Gardner has been in the bail bond business for many years and, until Mr. Anderson's complaints, has never had a complaint made against him to the ASD. Mr. Gardner does not have any criminal convictions.

5. As of the date of the hearing, Mr. Gardner had satisfied both judgments. Mr. Gerald Mitchell of the ASD testified that absent the outstanding judgments, there is no complaint against Mr. Gardner.

6. Shortly after the hearing the undersigned ruled that he would dismiss the allegations and averments against Mr. Gardner and conveyed that decision to the ASD, which in turn notified Mr. Gardner. The undersigned also told ASD that he would reduce his decision to writing for the record.

7. There was no preponderance of evidence that Mr. Gardner violated N.C. General Statute § 58-71-80(4) or N.C. General Statute § 58-71-80(8).

#### **CONCLUSIONS OF LAW:**

1. This matter is properly before the Commissioner of Insurance, and he has jurisdiction over the parties and the subject matter pursuant to Chapter 58 of the North Carolina General Statutes.

2. Notice in this matter was timely and properly served.

3. Mr. Gardner has demonstrated that his licensure in the bail bond business would not be injurious to the public.

4. There are no outstanding judgments against Mr. Gardner; and Mr. Gardner has demonstrated financial responsibility by satisfying the judgments that were outstanding.

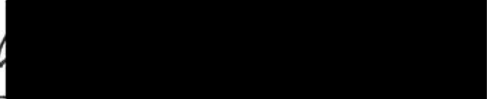
5. Mr. Gardner did not violate N.C. General Statute § 58-71-80(4) or N.C. General Statute § 58-71-80(8).

**ORDER:**

1. The allegations and averments in the December 21, 2006 Notice of Hearing are dismissed.

2. A copy of this Final Agency Decision and Order shall be placed in Mr. Gardner's file in the ASD.

This 30th day of April, 2007.

  
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