

1. The Notice of Administrative Hearing and Amended Notice of Administrative Hearing were 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).

2. Petitioner applied to the Department for a surety bondsman license on or about July 30, 2018 with an electronically signed surety bondsman license application ("license application"), after completing 12 hours of N.C. Bail Academy pre-licensing education.

3. Petitioner answered "yes" to Question 3 on the license application, which asked "[h]ave you ever been convicted, or are you currently charged with, committing a crime, whether or not adjudication was withheld?" The question asks for relevant documentation to be attached if the answer is yes.

4. Petitioner uploaded documentation with her license application disclosing a 2005 conviction for simple misdemeanor assault, explaining that this conviction stemmed from an altercation with her then-boyfriend.

5. The routine background check conducted as part of the bail bonds license application process revealed that Petitioner had nineteen (19) additional criminal convictions in Guilford County for the misdemeanor of Misrepresentation to Obtain ESC Benefits (consecutively numbered file numbers 92 CR 007269 - 92 CR 007287) ("1992 Convictions").

6. The convictions, all of which include a disposition date of September 8, 1992, involved offenses committed from November 13, 1990 through February 12, 1992. All nineteen (19) convictions indicate a guilty plea. At the hearing, Petitioner introduced evidence that the \$430.00 of restitution owed as a result of these 1992 convictions had been repaid.

7. Petitioner answered "no" to Question 7 on the license application, which asked "[d]o 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 Guilford County indicate that, as of February 13, 2019, Petitioner owed an outstanding civil judgment of \$38,602.83 to the Highpoint Housing Authority in Guilford County File No. 05 CVD 000313 ("2005 Judgment").

9. On September 7, 2018, BBRD notified Petitioner that the routine background check had uncovered the 1992 Convictions and the 2005 Judgment and asked for her provide a detailed written statement about what had occurred, to which Petitioner responded.



10. On or about October 16, 2018, BBRD held an informal conference with Petitioner in order to discuss Petitioner's license application and her failure to report certain items. At the meeting, BBRD informed Petitioner that it was considering denying her license application in accordance with N.C. Gen. Stat. § 58-71-80(a)(3) and (a)(6).

11. On November 26, 2018, BBRD sent a letter to Petitioner upholding its license denial. Petitioner thereafter timely requested an administrative hearing to review the denial.

12. A Notice of Hearing was initially issued in this matter on March 12, 2019, setting the hearing for April 2, 2019.

13. However, following issuance of the Notice of Hearing, BBRD obtained previously requested certified court records from Guilford County. These records revealed an additional ten (10) convictions in Guilford County for the misdemeanor of Misrepresentation to Obtain ESC Benefits (consecutively numbered file numbers 97 CR 011702 - 97 CR 011711) ("1997 Convictions"). For some reason, these ten (10) convictions had not appeared on the criminal background check that was done as part of the license application.

14. The 1997 Convictions, all of which include a disposition date of August 12, 1997, involved offenses committed from October 29, 1995 through November 26, 1996. All ten (10) convictions indicate a guilty plea. Court documents indicate a restitution amount of \$1,435.00 owed related to these misdemeanor convictions, however it is unclear from the documentation whether this amount was repaid.

15. In addition, following issuance of the Notice of Hearing, BBRD also obtained certified records from Randolph County indicating that Petitioner allegedly had an outstanding lien of \$242.25 against her residential property (12 M 358) ("2012 Lien"). According to the evidence presented at the hearing, the 2012 Lien involved Petitioner's alleged failure to pay certain assessments required by the Colonial Village Homeowners Association, Inc. The legal description for the property against which the lien was claimed was "Lot 48, Phase 7, Plat Book: 124, at Page 74."

16. The evidence presented at the hearing also showed that in addition to the 2012 Lien, there appeared to be another lien on the same property. The second lien, in the amount of \$875.15, was also against Petitioner's residential property (16 M 219) ("2016 Lien"). And, similar to the 2012 Lien, the 2016 Lien involved Petitioner's alleged failure to pay certain assessments required by the Colonial Village Homeowners Association, Inc. ("Lien Holder"). The legal description for the property against which the lien was claimed was "Being all of Lot 48, . . . Phase 7, as

per plat thereof recorded in Plat Book 124, Page 74 . . . .” However, the evidence presented at the hearing indicates that the 2016 Lien was released by the Lien Holder on January 26, 2018.

17. A Motion to Continue and Motion to Amend the Notice of Hearing was filed by BBRD seeking to address Petitioner’s failure to address the 1997 Convictions and the 2012 Lien. These motions were granted, and an Amended Notice of Hearing was filed and served on Petitioner and the hearing was rescheduled to May 16, 2019.

### **Testimony of Steve Bryant**

18. Steve Bryant testified on behalf of BBRD. Mr. Bryant is an employee of the Department with approximately 12 years of tenure. Mr. Bryant has been a Senior Complaint Analyst in BBRD for approximately two (2) years since the creation of that division. Prior to his current position, Mr. Bryant held positions in the North Carolina Department of Insurance as a complaint analyst and call center supervisor. Mr. Bryant, in his current position as a Senior Complaint Analyst, has responsibility for reviewing bail bonds license applications, attending meetings and hearings relating to bail bonds licensure, and assists other division staff with bail bond related matters. Mr. Bryant has been involved in the current matter regarding the Petitioner’s license application and denial, Mr. Bryant and has recently reviewed the file.

19. Mr. Bryant explained the Petitioner’s license was initially denied due to her failure to disclose the 1992 Convictions for misdemeanor Misrepresentation to Obtain ESC Benefits, and because these convictions were for crimes involving dishonesty or breach of trust. Additionally, Petitioner’s failure to accurately answer the application question concerning whether she had civil judgments or liens against her was an additional basis for the license denial. Mr. Bryant explained that Petitioner’s 2005 conviction for Simple Misdemeanor Assault was not a significant reason factor in BBRD’s decision to deny her license.

20. Mr. Bryant was present at the October 16, 2018 informal conference with Petitioner along with other BBRD staff, and he confirmed that it was the joint decision of the BBRD staff present to uphold its initial decision to deny Petitioner’s license.

21. Mr. Bryant testified concerning the general duties of surety bail bondsmen and explained that they are responsible for keeping other people’s collateral in the form of property and money. Mr. Bryant testified that surety bondsmen deal primarily in cash transactions. Mr. Bryant testified about the importance of financial responsibility by surety bondsmen. Mr. Bryant also explained



that the duties of a surety bail bondsman which include a significant amount of record-keeping and accurate documentation.

22. Mr. Bryant testified that because of the responsibility involved in keeping other people's property and money as collateral, BBRD has concerns where an applicant has been convicted of crimes involving dishonesty or a breach of trust. Mr. Bryant further explained that surety bail bondsmen have significant power over people's freedom, in addition to their money and property, which is further reason to restrict licensure of surety bail bondsmen to persons who are untrustworthy.

23. Mr. Bryant noted that BBRD generally is more concerned with crimes that are recent and acknowledged that Petitioner's 1992 Convictions and 1997 Convictions for Misrepresentation to Obtain ESC Benefits are old. However, Mr. Bryant expressed strong concern due to the large number of these convictions which occurred on two separate occasions five years apart, as well as Petitioner's subsequent conviction for Simple Misdemeanor Assault, the large civil judgment, and the past liens against her property. Mr. Bryant expressed concern that this history indicates a pattern of irresponsible behavior by Petitioner. Mr. Bryant explained that the 2005 misdemeanor assault conviction and the apparent 2012 Lien were not, in themselves, cause for denial of her license application.

24. Mr. Bryant stated that in light of Petitioner's failure to disclose her criminal convictions on her license application, and the large volume of criminal convictions involving crimes of dishonesty and financial irresponsibility, as well as Petitioner's failure to disclose the outstanding civil judgment in the amount of over \$38,000.00 currently owed to the City of Highpoint Housing Authority, it is BBRD's opinion that Petitioner should not be granted a surety bondsman license

#### **Testimony of Sarah Baker**

25. Ms. Sarah Baker testified on behalf of the Petitioner.

26. Ms. Baker has known Petitioner about twelve or thirteen years. Ms. Baker and Petitioner are friends who met through church and fellowship, and they spend time together socially as friends.

27. Ms. Baker stated that the only character trait she felt Petitioner needed to work on was being on time. Otherwise, Ms. Baker described Petitioner as being a person of her word and a hard worker.

28. Ms. Baker expressed the opinion that everyone can change, and that despite Petitioner's past history, Petitioner was currently a trustworthy person of good character.

### **Testimony of Petitioner**

29. Petitioner testified concerning her general life situation. Petitioner stated that she has overcome previous challenges in her life. She is employed, lives in a home she owns, and is a mother and grandmother.

30. Petitioner testified about her educational and work background. Petitioner has an associate's degree in criminal justice and has been working in the healthcare industry for over a decade. Currently she is processing insurance claims for a dental office.

31. Petitioner explained that she wants to be a surety bail bondsman to help better her own situation in life and to help other people. She stated that she's encountered bail bondsmen before in her life through situations involving her friends and family.

32. Petitioner explained that she did not intentionally fail to disclose any information on her license application, pointing out that she did disclose her 2005 misdemeanor simple assault convictions.

33. Petitioner explained the circumstances surrounding the criminal convictions for the misdemeanor Misrepresentation to Obtain ESC Benefits convictions. She explained that she had gotten overpayments of ESC benefits, although she was not employed when the overpayments occurred. She repaid the restitution owed in conjunction with the 1992 Convictions herself and introduced an exhibit, Petitioner's Exhibit 1, that showed that it had been repaid. Petitioner stated that her employer paid back the restitution owed from the 1997 Convictions, although this is not apparent from the certified court records. According to Petitioner, she did not report the 1992 Convictions and the 1997 Convictions because she thought that the convictions had been dismissed or disposed of when she paid the restitution owed in conjunction with these convictions and did not understand that she needed to report them.

34. Petitioner explained the circumstances surrounding the outstanding civil judgment owed in Guilford Co. File No. 05 CVD 313 of approximately \$38,602.83 to the City of Highpoint Housing Authority. Petitioner explained that she had been previously employed with a painting company and had been paid by them via personal check. At the time, Petitioner was living in subsidized housing, and this



income was not reported to the City of Highpoint Housing Authority as it should have. Consequently, Petitioner underpaid her rent by approximately \$18,207.00. Petitioner explained that because it had been so long since she incurred this civil judgment, and because it did not appear on her credit report, she had forgotten about it when she completed her license application. Petitioner explained that she had subsequently contacted the City of Highpoint Housing Authority and was told that she can make payments on the monies owed, and that Petitioner planned to inquire about getting the interest waived.

35. Petitioner testified that she had turned her life around and changed since the time she had the criminal convictions in 1992, 1997, and 2005, and since she incurred the civil judgment in 2005. Petitioner explained that she had been gainfully employed for many years now in the healthcare industry and wants to become a surety bail bondsman to better her life and help others, and that she is an honest and trustworthy person.

### 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 making a material misstatement, misrepresentation or fraud in obtaining the license.

3. Although Petitioner did disclose that she had a previous criminal conviction on her license application and provided documentation regarding the 2005 Simple Misdemeanor Assault conviction, she failed to disclose the following:

- a. the 1992 Convictions and the 1997 Convictions for Misrepresentation to Obtain ESC Benefits.
- b. the 2005 Judgment of approximately \$38,602.83 owed to the City of Highpoint Housing Authority.
- c. the 2012 Lien in Randolph County in the amount of \$242.25 against her residential property.

4. According to Petitioner, she did not report the 1992 Convictions and the 1997 Convictions because she thought that the convictions had been dismissed or disposed of when she paid the restitution owed in conjunction with these convictions.

5. According to Petitioner, she failed to report the 2005 Judgment because she simply forgot about it due to its age and the fact that it did not appear on her credit report.

6. With regard to the 2012 Lien, the Hearing Officer notes that given the fact that both the 2012 Lien and the 2016 Lien were taken out against the same property by the same lien holder, it is more likely than not that the 2012 Lien was also released by the Lien Holder. Further, at the hearing, BBRD indicated that the 2012 Lien was a "non-issue." Therefore, the Hearing Officer does not find that Petitioner's failure to report the 2012 Lien is a sufficient basis for denial of Petitioner's application for a surety bondsman license. In fact, it appears that Petitioner may have not been required to report the 2012 Lien at all.

7. While it appears that Petitioner should have reported the 1992 Convictions, 1997 Convictions and 2005 Judgment on her license application, the Hearing Officer finds that Petitioner's testimony was credible, and does not find the failure to report rises to the level of a "material misstatement, misrepresentation or fraud in obtaining" a license, and therefore is not a sufficient basis for denial of Petitioner's application for a surety bondsman license.

8. Pursuant to N.C. Gen. Stat. § 58-71-80(a)(6), the Commissioner may deny issuance of a surety bondsman license for conviction of a crime involving dishonesty, breach of trust, or moral turpitude.

9. With regard to the 1992 Convictions and the 1997 Convictions, an inordinate amount of time has elapsed since those offenses and convictions. The 1992 Convictions involved offenses that occurred from 1990 to 1992, and the charges were disposed of in 1992 – twenty-seven (27) years ago. The 1997 Convictions involved offenses that occurred from 1995 to 1996, and the charges were disposed of in 1997 – twenty-two (22) years ago.

10. Given the sheer age of the convictions, the Hearing Officer does not find that these are a sufficient basis for denial of Petitioner's application for a surety bondsman license.

11. Further, given the age of Petitioner's 2005 conviction for Simple Misdemeanor Assault on her license application, and the nature of the conviction, which involved an altercation between Petitioner and her boyfriend, the Hearing



Officer does not find that this is a sufficient basis for denial of Petitioner's application for a surety bondsman license.

### ORDER


Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Bail Bond Regulatory Divisions' denial of Petitioner's application for a surety bondsman license be REVERSED, and that such license SHALL BE ISSUED to her.

### 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 the 11 NCAC 01 .0413 and N.C. Gen. Stat. § 1A-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, N.C. 27699-1201.

This the 7<sup>th</sup> day of June, 2019.

  
A. John Hoomani, Hearing Officer

**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, and via State Courier, addressed as follows:

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*Pro Se* Petitioner

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This the 7th day of June, 2019.

  
Mary Faulkner  
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