

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

**STATE OF NORTH CAROLINA**

**COUNTY OF WAKE**

**IN THE MATTER OF  
THE LICENSURE OF  
DAVID MALACHI**

**BEFORE THE COMMISSIONER  
OF INSURANCE**

**Docket Number: D-1760**

**ORDER AND FINAL AGENCY  
DECISION**

This matter was heard on July 29, 2015 by the undersigned Hearing Officer, as designated by the Commissioner of Insurance, pursuant to North Carolina General Statutes §§ 58-2-55, 58-2-70, 58-71-80, 58-71-85, 150B-38, 150B-40 and 11 NCAC 1.0401 *et seq.* and other applicable statutes and regulations. Petitioner, the North Carolina Department of Insurance ["the Department"], was represented by Assistant Attorney General Anne Goco Kirby. Respondent did not appear at the hearing. The Department called Gilda Thompson to testify.

Any finding of fact contained in this decision that also constitutes a conclusion of law is hereby adopted as a conclusion of law. Likewise, any conclusion of law contained in this 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 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 General Assembly of North Carolina has delegated to the Commissioner of Insurance and the Department the authority and responsibility for the enforcement of Chapter 58 of the North Carolina General Statutes, including regulating and licensing bail bondsman under Article 71 of that Chapter.

2. The Department has the authority and responsibility for enforcing compliance with Article 71 of Chapter 58 and for regulating and licensing surety and professional bondsmen.

3. Respondent holds a Surety Bail Bondsman license issued by the Department on August 30, 2011.

4. On December 18, 2011, Respondent posted a \$3000.00 Appearance Bond for Shawn Gabriel Lindsey. Respondent charged and collected \$450.00 in premium to write the bond.

5. On April 26, 2012, an Order for Arrest was issued against Shawn Lindsey for failing to appear for an April 26, 2012 court date. On April 27, 2012, a Bond Forfeiture Notice was issued to Mr. Malachi and Shawn Lindsey for failing to appear for the April 26, 2012 court date. The Bond Forfeiture Notice expressly provided that the forfeiture will become a final judgment on September 24, 2012 unless the forfeiture is set aside on or before September 24, 2012 or a Motion to Set Aside Forfeiture is filed on or before September 24, 2012.

6. On September 24, 2012, Mr. Malachi filed and served a Motion to Set Aside Forfeiture alleging as grounds that Mr. Lindsey was incarcerated at the time of the alleged failure to appear. Just two days later, on September 26, 2012, Mr. Malachi visited the home of Shawn Lindsey's parents, James and Katie Lindsey, and demanded that they pay Mr. Malachi \$3,000.00 since Mr. Lindsey missed a court date. Mrs. Lindsey paid Mr. Malachi the \$3,000.00 by cashier's check and Mr. Malachi issued Mr. and Mrs. Lindsey a receipt dated September 26, 2012 for the \$3,000.00 payment.

7. On January 7, 2013, the court entered an Order partially granting Mr. Malachi's Motion to Set Aside Forfeiture. The Order required that Respondent remit \$1,500.00 instead of the full \$3,000.00 to the Clerk of Court on or before February 20, 2013. On February 10, 2013, Mr. Malachi paid the \$1,500.00 to the Clerk of Court. Mr. Malachi did not refund the remaining \$1,500.00 to Mrs. Lindsey.

8. In May 2014, Shawn and Katie Lindsey submitted a written complaint to the Agent Services Division regarding Mr. Malachi's failure to refund the \$1,500.00 to Mrs. Lindsey. In the complaint, Shawn Lindsey explained that he inadvertently discovered that Mr. Malachi had filed a Motion to Set Aside and that as a result of that motion Mr. Malachi was only ordered to pay \$1,500.00 for the forfeiture. The Lindsey's submitted a copy of supporting documentation with their complaint, including a copy of the receipt for the \$3,000.00 payment that Mr. Malachi issued to Shawn Lindsey's parents on September 26, 2012, a copy of the check for the \$3,000.00 payment, and a copy of the January 7, 2013 Order. The documentation did not include a written indemnity agreement.

9. Gilda Thompson, a Complaint Analyst with the Department's Agent Services Division, was assigned to investigate the Lindsey's complaint. Ms. Thompson initially spoke with Mrs. Lindsey by phone regarding the complaint in May of 2014. During that conversation, Mrs. Lindsey informed Ms. Thompson that she submitted all the documentation she had regarding this matter with the complaint. In response to Ms. Thompson's request, Mrs. Lindsey later provided the Department with a legible copy of the certified check showing Mrs. Lindsey's



payment of \$3,000.00 to Mr. Malachi on September 26, 2012.

10. On May 12, 2014, Ms. Thompson e-mailed a letter to Mr. Malachi which requested that he provide the following to the Department within 10 days: (a) a written, notarized response to the allegation that he failed to refund \$1,500.00 to Shawn Lindsey's parents and (b) a copy of all forms related to Shawn Lindsey's bond, including a copy of the Appearance Bond and any indemnity agreement. Mr. Malachi failed to respond to the Department's May 12, 2014 requests.

11. On June 2, 2014, Ms. Thompson called Mr. Malachi and spoke to him regarding this matter. During that conversation, Mr. Malachi acknowledged that he received Ms. Thompson's May 12, 2014 requests. He also acknowledged that he had collected the \$3,000.00 from Mrs. Lindsey and that he owed Mrs. Lindsey \$1,500.00. Mr. Malachi told Ms. Thompson that he would contact Mrs. Lindsey to get the matter resolved.

12. On June 4, 2014, Ms. Thompson spoke to Mrs. Lindsey and informed her of her conversation with Mr. Malachi and his promise to contact Mrs. Lindsey to resolve the matter with her. Mrs. Lindsey informed Ms. Thompson that she had not yet heard from Mr. Malachi.

13. On June 6, 2014, Ms. Thompson called Mr. Malachi and spoke to him again. During that conversation, Mr. Malachi told Ms. Thompson that he had tried to get in touch with Mrs. Lindsey but was unable to reach her.

14. On June 9, 2014, Mr. Malachi called Ms. Thompson and told her that he spoke with Mrs. Lindsey regarding payment of the \$1,500.00 and that he would pay Mrs. Lindsey the \$1,500.00 owed to her. Several days later, on June 12, 2014, Mr. Malachi called Ms. Thompson and conferenced her in a three way phone call with Mrs. Lindsey. During that conversation, Mr. Malachi promised Mrs. Lindsey and Ms. Thompson that he would pay the \$1,500.00 he owed to Mrs. Lindsey within 30 days. Ms. Thompson asked Mr. Malachi to send her an e-mail confirming his agreement to refund the \$1,500.00 to Mrs. Lindsey. However, Ms. Thompson never received an e-mail from Mr. Malachi confirming this agreement.

15. Over a month later, on July 14, 2014, Mrs. Lindsey called Ms. Thompson and informed her that she still had not received any money from Mr. Malachi. Ms. Thompson then called Mr. Malachi and asked him why he still had not paid Mrs. Lindsey. Mr. Malachi told Ms. Thompson that he did not have the money to pay Mrs. Lindsey but again promised that he would refund the \$1,500.00 to Mrs. Lindsey.

16. Subsequently, Mrs. Lindsey called Ms. Thompson and informed her that she had spoken again with Mr. Malachi and that he had promised to mail her a check for the \$1,500.00 within several days. However, Mrs. Lindsey never received a check from Mr. Malachi.



17. On August 29, 2014, Ms. Thompson e-mailed a letter to Mr. Malachi which requested that he attend an informal conference with the Department on September 25, 2014 to discuss allegations against his license arising out of the complaint. In the conference letter, Ms. Thompson reiterated the Department's request that Mr. Malachi provide copies of all forms related to Shawn Lindsey's bond within 10 days. Mr. Malachi failed to provide the requested copies of the forms related to Shawn Lindsey's bond.

18. On September 24, 2014, Ms. Thompson called Mr. Malachi to confirm that he would be appearing for the conference. At that time, Mr. Malachi told Ms. Thompson that he did not receive the conference letter. Thus, Ms. Thompson rescheduled the conference for November 13, 2014 and e-mailed an updated conference letter to Mr. Malachi on September 30, 2014. The letter informed Mr. Malachi of the new conference date and reiterated the Department's request for copies of all forms related to Shawn Lindsey's bond.

19. Mr. Malachi failed to provide copies of any of the requested forms related to Shawn Lindsey's bond and failed to appear for the conference on November 13, 2014. On November 14, 2014, Respondent called Ms. Thompson. During this conversation, Mr. Malachi acknowledged receiving notice of the conference and that he had missed the conference. Mr. Malachi also reiterated his intention to refund the \$1,500.00 he owed Mrs. Lindsey. However, Mr. Malachi never refunded the money to Mrs. Lindsey.

20. Mrs. Lindsey informed Ms. Thompson that she did not recall signing an indemnity agreement and that she had provided Ms. Thompson with all of the documentation she had regarding the matter. Moreover, Mr. Malachi failed to provide any written statement in response to the allegations of the Lindsey's complaint in response to the Department's request and failed to provide any documents in response to the Department's repeated requests for copies of all forms related to Mr. Lindsey's bond. Thus, the Department has been unable to confirm the existence of a written indemnity agreement signed by Mr. Lindsey's parents. Nevertheless, it appears that an indemnity agreement, whether written or verbal, existed between Mr. Lindsey's parents and Mr. Malachi given their conduct in this matter.

21. An agreement to indemnify only requires the indemnitor to reimburse a bondsman for those amounts which the bondsman is actually ordered to pay as a result of the bond forfeiture. Thus, Mr. Malachi acted dishonestly and demonstrated incompetence, untrustworthiness, and financial irresponsibility by his conduct in demanding and collecting \$3,000.00 from Mr. Lindsey's parents before he was ordered to pay any amounts for the forfeiture and just two days after he had filed a Motion to Set Aside the forfeiture. Mr. Malachi further acted dishonestly and demonstrated incompetence, untrustworthiness, and financial irresponsibility by failing to inform Mr. Lindsey's parents that he had filed a Motion to Set Aside the forfeiture, by failing to later inform them that the court had ordered that he only had to pay



\$1,500.00 for the forfeiture, and by failing to immediately refund the \$1,500.00 to Mrs. Lindsey after he was ordered to pay only \$1,500.00 instead of \$3,000.00.

22. Mr. Malachi demonstrated incompetence, untrustworthiness, and financial irresponsibility by his repeated broken promises to refund the \$1,500.00 to Mrs. Lindsey after he received the Department's request regarding Shawn and Katie Lindsey's complaint.

### **CONCLUSIONS OF LAW**

1. Mr. Malachi was properly served with the Notice of Hearing in this matter. The Department has personal jurisdiction over Mr. Malachi and subject matter jurisdiction in this matter.

2. N.C.G.S. § 58-71-80(a)(4) provides that a bondsman's license may be suspended or revoked for misappropriation, conversion or unlawfully withholding of moneys belonging to insurers or others and received in the conduct of business under the license.

3. Mr. Malachi misappropriated, converted, and unlawfully withheld \$1,500.00 which he received from Mrs. Lindsey in the conduct of business under his license. Mr. Malachi's bondsman license should be revoked or suspended pursuant to N.C.G.S. § 58-71-80(a)(4) for misappropriating, converting, and unlawfully withholding \$1,500.00 received from Mrs. Lindsey in the conduct of business under his license.

4. N.C.G.S. § 58-71-80(a)(5) provides that a bondsman's license may be suspended or revoked for engaging in fraudulent, coercive, or dishonest practices in the conduct of business or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or any other jurisdiction. Mr. Malachi acted dishonestly and demonstrated incompetence, untrustworthiness, and financial irresponsibility by his conduct in demanding and collecting \$3,000.00 from Mr. Lindsey's parents before he was ordered to pay any amounts for the forfeiture and just two days after he had filed a Motion to Set Aside the forfeiture. Mr. Malachi further acted dishonestly and demonstrated incompetence, untrustworthiness, and financial irresponsibility by failing to inform Mr. Lindsey's parents that he had filed a Motion to Set Aside the forfeiture, by failing to later inform them that the court had ordered that he only had to pay \$1,500.00 for the forfeiture, and by failing to immediately refund the \$1,500.00 to Mrs. Lindsey after he was ordered to pay only \$1,500.00 instead of \$3,000.00. Mr. Malachi demonstrated incompetence, untrustworthiness, and financial irresponsibility by his repeated broken promises to refund the \$1,500.00 to Mrs. Lindsey after he received the Department's request regarding Shawn and Katie Lindsey's complaint. Mr. Malachi's license should also be revoked pursuant to N.C.G.S. § 58-71-80(a)(5).

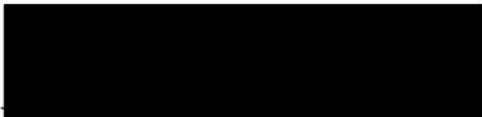
5. The evidence presented at the hearing, in the form of testimony and the exhibits introduced, is sufficient to support entry of an order revoking Mr. Malachi's license.

6. Pursuant to 11 NCAC 1.0423(a)(1), if a party fails to appear at a hearing, the hearing officer may find that the allegations of or the issues set out in the notice of hearing may be taken as true or deemed to be proved without further evidence. The allegations contained in the notice of hearing in this matter are thus taken as true pursuant to 11 NCAC 1.0423(a)(1) and further support a decision to revoke Mr. Malachi's license.

### **ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Mr. Malachi's bondsman license is hereby permanently revoked.

This 24<sup>th</sup> day of August, 2015.


  
Stewart Johnson, Hearing Officer  
N.C. Department of Insurance

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing **FINAL AGENCY DECISION AND ORDER** on David Malachi by first class mail as follows:

**David Malachi  
3840 Crusade Drive  
Winston-Salem, NC 27101**

This the 26<sup>th</sup> day of August, 2015.

  
Anne Goco Kirby  
Assistant Attorney General  
N. C. Department of Justice  
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