

**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	)	
JAMES MAYBERRY	)	Docket Number: 1880
NPN #8393724	)	
	)	
Respondent.	)	
	)	

THIS MATTER was heard on Thursday, April 26, 2018 by the undersigned Hearing Offer, designated by the North Carolina Commissioner of Insurance ("Commissioner") under N. C. Gen. Stat. §§ 58-2-50 and 58-2-55, pursuant to a Notice of Hearing that was duly served and issued.

Respondent James Mayberry ("Respondent") was present and represented himself at the hearing. The Agent Services Division ("Agent Services") of the North Carolina Department of Insurance ("NCDOI") was present at the hearing and was represented by LaShawn Strange Piquant, Assistant Attorney General. Agent Services' Senior Complaint Analyst Megan Daniels testified at the hearing on behalf of NCDOI. Respondent also testified at the hearing.

Agent Services offered into evidence Exhibits 1 through 10, which were admitted into evidence. Respondent also entered Exhibit R-1 into evidence.

Based upon careful consideration of the evidence and arguments presented, and based upon the entire record in this proceeding, the Hearing Officer hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The North Carolina Department of Insurance is a state agency responsible for the enforcement of the insurance laws of North Carolina and for regulating and licensing insurance agents and business entities in accordance with Chapter 58 of the North Carolina General Statutes.

2. Respondent is licensed both as a bail bond runner and as a surety bondsman. Respondent was initially licensed as a surety bondsman in March 2003. Agent Services issued Respondent a bail bond runner license in July 2003. Licensure to conduct business in North Carolina as a surety bondsman or runner is required pursuant to N.C. Gen. Stat. § 58-71-40.

3. Respondent's surety bondsman license and bail bond runner license are current and active. At the time of allegations set forth herein, Respondent was properly licensed and employed as a surety bondsman with American Bail Bonds located in Statesville, North Carolina.

4. On or about, December 7, 2015, North Carolina consumer Kay Presbury submitted a complaint to Agent Services alleging that she was the indemnitor on two bonds written by Respondent on her grandson Ti-teon Burton, the defendant. The bonds totaled \$5,000 and Ms. Presbury paid Respondent bond premium in the amount of \$500. Ms. Presbury's grandson was never released from jail and she felt

her monies should have been refunded.

5. Prior to the defendant being released on the initial bond, additional charges were filed against defendant, and the bond amount was increased to \$35,000. Defendant remained in jail until trial.

6. Respondent signed the bond documents in question as the surety. At the hearing, Respondent testified that since he was an employee for American Bail Bonds, and the owner, Cheri Collins was a professional bail bondsman, he was really acting in the role of bail bond runner. However, Respondent's name is the only name listed on the bond documents – as the surety, the bail agent— not as a runner.

7. Agent Services notified Respondent of Ms. Presbury's allegations via e-mail December 8, 2015 and requested Respondent provide Agent Services with a written response to the allegations within ten (10) days.

8. In his written response to Agent Services, Respondent confirmed the complaint allegations of Ms. Presbury, advising that no refund could be issued as all the information was entered into the jail's computer. Respondent specifically advised that his employer, the owner of American Bail Bonds, Cheri Collins, informed him there was a "no refund" policy. Respondent reiterated this information in his testimony.

9. The indemnity agreement signed by Respondent and the indemnitor, Ms. Presbury, did not indicate the "no refund" policy. In fact, the agreement states when a refund will not be given and lists the seven statutory reasons under N.C. Gen. Stat. §58-71-20 when bond premium would not be returned; the non-release of a

defendant from jail due to no fault of the defendant or indemnitor was not listed.

10. Respondent remained on the two bonds written on Defendant Burton. These two specific cases were adjudicated in Iredell County in May 12, 2017, resulting in active jail time followed by probation and fines. The defendant remained confined to jail.

11. Agent Services held an informal conference with Respondent on September 25, 2017 to discuss the complaint allegations of Ms. Presbury. Agent Services was particularly concerned that Respondent did not refund the premium to the indemnitor where the defendant was never released from jail as no risk was assumed by Respondent.

12. Megan Daniels testified on behalf of Agent Services that after reviewing all the information obtained by Agent Services in its review of the complaint, Respondent was advised during the conference that the premium monies received should be refunded as the defendant was never released from jail, the bargained for services were not provided, and Respondent did not provide any statutory authority to support his failure to refund the bond premiums paid by the indemnitor.

13. To date, the indemnitor has not been refunded any bond premium. Respondent advised Agent Services that he did not have the funds to repay the premium. At hearing, Respondent testified that he did not believe he was at fault and he is not responsible for repaying the indemnitor. The decision not to pay the indemnitor was not made by him as the surety—but instead by his employer.

14. On or about October 11, 2016, Respondent was convicted in Iredell

County District Court of violating N.C. Gen. Stat. §58-71-167 Portion of Bond Premium Payments Deferred, a misdemeanor, acting in his capacity as a bail bondsman. The criminal summons reads that Respondent “unlawfully and willfully did write bonds as a licensed surety bondsman and defer premium payments on at least 11 bonds during this time period. Defendant failed to complete a written memorandum of agreement when a portion of the premium was deferred, as required by G.S. 58-71-167” Iredell County criminal records indicate that Respondent pled guilty.

15. Respondent failed to notify the Commissioner of this conviction within ten (10) days as required by § 58-2-69(c).

16. North Carolina General Statutes § 58-71-80(a)(2) provides that “the Commissioner may deny, place on probation, suspend, revoke, or refuse to renew any license issued under this Article . . . a conviction of any misdemeanor committed in the course of dealings under the license issued by the Commissioner.”

CONCLUSIONS OF LAW

1. This matter is properly before the North Carolina Commissioner of Insurance (hereinafter “Commissioner”), and the Commissioner has jurisdiction over the parties and the subject matter pursuant to N. C. Gen. Stat. §§ 58-2-50, 58-2-55, 58-71-80, 150B-38, 150B-40 and other applicable statutes and regulations.

2. Respondent was properly served with the Notice of Hearing in this matter.

3. Respondent was properly licensed as a bail bond runner and surety

bondsman at all times alleged herein.

4. Respondent's actions provide sufficient grounds for administrative action pursuant to N.C. Gen. Stat. § 58-71-80.

5. Respondent's criminal conviction provides sufficient grounds for administrative action pursuant to N.C. Gen. Stat. §58-71-80(a)(2) which provides that the Commissioner may deny, place on probation, suspend, revoke, or refuse to renew any license issued under this Article where the licensee has ". . . a conviction of any misdemeanor committed in the course of dealings under the license issued by the Commissioner."

6. Respondent's actions provide sufficient grounds for administrative action pursuant to N.C. Gen. Stat. § 58-71-80(a)(4) which provides that the Commissioner may deny, place on probation, suspend, revoke, or refuse to renew any license issued under this Article where the licensee has "misappropriation, conversion or unlawful withholding of moneys belonging to insurers or others and received in the conduct of business under the license."

7. Respondent's actions provide sufficient grounds for administrative action pursuant to N.C. Gen. Stat. § 58-71-80(a)(8) which provides that the Commissioner may deny, place on probation, suspend, revoke, or refuse to renew any license issued under this Article where the licensee has " When in the judgment of the Commissioner, the licensee has in the conduct of the licensee's affairs of under the license, demonstrated incompetency, financial irresponsibility, or untrustworthiness; or that the licensee is no longer in good faith carrying on the bail

bond business . . .”

ORDER

Based upon the foregoing Finding of Fact and Conclusions of Law, it is ORDERED that both the bail bond runner and surety bondsman licenses of James Mayberry be revoked.

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 1.0413 and N.C.G.S. § 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 and requires service of the Petition on all parties. 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.**

This 25th day of May, 2018.



Meghan N. Cook
Hearing Officer

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 addresses provided to the Commissioner pursuant to N.C. Gen. Stat. § 58-2-69(b); and via State Courier, addressed as follows:

James Mayberry
1116 Lewis Ferry Road
Statesville, NC 28677
(Respondent)

Certified Mail Tracking #:70170530000073198814

James Mayberry
P.O. Box 6106
Statesville, NC 26877
(Respondent)

Certified Mail Tracking #:70170530000073198807

LaShawn S. Piquant
Assistant Attorney General
N.C. Department of Justice
Insurance Section
9001 Mail Service Center
Raleigh, NC 27699-9001
(Attorney for Petitioner)

This 25th day of May, 2018.


Mary Faulkner
Paralegal
N.C. Department of Insurance
General Counsel's Office
1201 Mail Service Center
Raleigh, NC 27699-1201