

NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
COMMISSIONER OF INSURANCE

IN THE MATTER OF:

RODDY D. ROSEMAN
(NPN #10004167)

and

BARBARA C. ROSEMAN
(NPN #10004681)

Respondents.

ORDER AND
FINAL AGENCY DECISION

Docket Number: 1601 – REMAND
Docket Number: 1725 – REMAND

THIS MATTER was heard on September 14, 2021, by the undersigned Hearing Officer, designated by the North Carolina Commissioner of Insurance (“Commissioner”) under N.C. Gen. Stat. § 58-2-55, pursuant to an Order entered by Superior Court Judge Anna Mills Wagoner on August 14, 2019, in which she remanded the matter to the Commissioner of Insurance in order to consider new evidence submitted by Respondent Roddy D. Roseman pursuant to N.C. Gen. Stat. § 150B-49.

Petitioner North Carolina Department of Insurance, Agent Services Division (“Department”) was present at the hearing and was represented by Thomas J. Felling, Assistant Attorney General.

Respondents Roddy D. Roseman and Barbara C. Roseman were present at the hearing and were represented by Attorney Eric D. Levine.

At the first hearing on January 29, 2015 (“Initial Hearing”), Petitioner offered into evidence Administrative Exhibits A1 through A12, and said documents were admitted into evidence. In addition, Petitioner offered into evidence Exhibits P1 through P19, including all subparts to those exhibits, and said documents were admitted into evidence. Respondents did not offer any exhibits into evidence at the Initial Hearing.

At the rehearing on July 6, 2017 (“Remand Hearing 1”), the Hearing Officer incorporated the exhibits entered into evidence at the Initial Hearing into evidence. In addition, Petitioner offered into evidence Administrative Exhibits A13 through

A23, and said documents were admitted into evidence. In addition, Petitioner offered into evidence Exhibits P20 through P22, and said documents were admitted into evidence. Respondents did not offer any exhibits into evidence at the Remand Hearing 1.

At the second rehearing on September 14, 2021 ("Remand Hearing 2"), the Hearing Officer incorporated the exhibits entered into evidence at both the Initial Hearing and Remand Hearing 1 into evidence. In addition, Petitioner offered into evidence Administrative Exhibits A24 through A28, and said documents were admitted into evidence. Respondents offered into evidence Respondents' Exhibits 1, 1A, 1B, 1C and 1D, and said documents were admitted into evidence.

BASED UPON careful consideration of the evidence and arguments presented, including the new evidence presented pursuant to N.C. Gen. Stat. § 150B-49, and based upon the entire record in the proceeding, the Hearing Officer hereby modifies the Findings of Fact and Conclusions of Law outlined in the September 1, 2017 Order and Final Agency Decision as follows:

FINDINGS OF FACT

1. Respondent Roddy D. Roseman ("Roddy Roseman") was first licensed by the Department as a Surety Bail Bondsman in 1994 and assigned License Number 0010004167.

2. Respondent Barbara C. Roseman ("Barbara Roseman") was first licensed by the Department as a Surety Bail Bondsman in 1994 and assigned License Number 0010004681.

3. Both Roddy Roseman and Barbara Roseman were appointed by Accredited Surety and Casualty Company ("Accredited") as surety bail bondsmen authorizing them to issue bonds on behalf of Accredited in 2000.

4. Roddy Roseman subsequently received appointments from International Fidelity Insurance Company in 2008, Seneca Insurance Company in 2012, and U.S. Specialty Insurance Company in 2017.

5. Barbara Roseman subsequently received appointments from International Fidelity Insurance Company in 2008, Seneca Insurance Company in 2011, and U.S. Specialty Insurance Company in 2017.

Procedural History

6. A Notice of Administrative Hearing for the Initial Hearing was issued to Roddy Roseman (Docket Number 1601) and Respondent Barbara Roseman (Docket Number 1725), on March 10, 2014.

7. The Notice of Administrative Hearing was properly served on Roddy Roseman on March 13, 2014, pursuant to Rule 4 of the North Carolina Rules of Civil Procedure and N.C. Gen. Stat. § 58-2-69(d).

8. The Notice of Administrative Hearing was properly served on Barbara Roseman on March 13, 2014, pursuant to Rule 4 of the North Carolina Rules of Civil Procedure and N.C. Gen. Stat. § 58-2-69(d).

9. The Department moved to consolidate the two matters for hearing on April 9, 2014, citing the fact that both matters involve common questions of law and similar allegations. An Order was entered on June 17, 2014, consolidating the matters for hearing.

10. On January 29, 2015, these matters were heard by a hearing officer designated by the Commissioner of Insurance pursuant to N.C. Gen. Stat. § 58-2-55. Thereafter, the hearing officer issued an Order and Final Agency Decision on March 27, 2015, in which the surety bail bondsman license of Roddy Roseman was revoked, and the surety bail bondsman license of Barbara Roseman was suspended for a period of four (4) years.

11. Respondents filed a Petition for Judicial Review pursuant to N.C. Gen. Stat. § 150B-43 on April 22, 2015 in Cabarrus County Superior Court (Docket Number 15 CVS 1287) ("First PJR").

12. Respondents' Petition for Judicial Review was heard in Cabarrus County Superior Court before the Honorable A. Robinson Hassell, Superior Court Judge Presiding, on December 14, 2015.

13. Superior Court Judge A. Robinson Hassell subsequently entered an Order on December 18, 2015, in which he vacated the Order and Final Agency Decision issued on March 27, 2015, and remanded the matter to the Commissioner of Insurance for further proceedings ("Remand Order 1").

14. On July 6, 2017, Remand Hearing 1 was heard by the undersigned hearing officer designated by the Commissioner of Insurance pursuant to N.C. Gen. Stat. § 58-2-55. Thereafter, the hearing officer issued an Order and Final Agency

Decision on September 1, 2017, in which the surety bail bondsman license of Roddy Roseman was revoked, and the surety bail bondsman license of Barbara Roseman was suspended for a period of two (2) years.

15. Respondents filed a Petition for Judicial Review pursuant to N.C. Gen. Stat. § 150B-43 on October 5, 2017 in Cabarrus County Superior Court (Docket Number 17 CVS 3067) ("Second PJR").

16. In the Second PJR, Respondents noted, pursuant to N.C. Gen. Stat. § 150B-46, exceptions to certain Findings of Fact and Conclusions of Law in the Hearing Officer's September 1, 2017 Order and Final Agency Decision. The exceptions, as well as the items that were not excepted, are noted below beginning with Finding of Fact ¶22.

17. Respondents' Second PJR was heard in Cabarrus County Superior Court before the Honorable Anna Mills Wagoner, Superior Court Judge Presiding, on August 12, 2019.

18. Prior to the hearing on the Second PJR, Roddy Roseman filed an Affidavit in Support of Judicial Review on August 7, 2019 ("Roseman Affidavit"). In his Affidavit, Roddy Roseman made the following averments:

- a. After the Accredited Surety and Casualty Co. Inc., terminated my employment, this company refused to return any part of the buildup fund to me. Accordingly, I filed a lawsuit which had the caption of Barbara Roseman, Roddy D. Roseman and Roseman Bail Bonding Inc v. Accredited Surety and Casualty Co., Inc and Southeastern Sureties Group Inc. 12-CVS-18863 ("Lawsuit against Accredited and/or Henderson County Action"). See Affidavit of Roddy D. Roseman in Support of Judicial Review, at ¶3.
- b. Sometime after this lawsuit was filed in Mecklenburg County, it was transferred to Henderson County. A copy of the Complaint filed by me is attached hereto as Exhibit A and incorporated herein by reference. See Affidavit of Roddy D. Roseman in Support of Judicial Review, at ¶4.
- c. Sometime thereafter, Defendants Accredited Surety and Casualty Co., Inc and Southeastern Sureties Group Inc filed an Answer and Counterclaim. In this Counterclaim,

the Defendants made claims against the Plaintiffs which included all amounts regarding the Reece Harris Bond, the Desmond Jamir Robinson Bond and the return of Powers of Attorney. A copy of this Answer and Counterclaim is attached hereto as Exhibit B and incorporated by reference. *See* Affidavit of Roddy D. Roseman in Support of Judicial Review, at ¶5.

- d. Each of these three claims were referred to as part of the Counterclaim in the Henderson County Lawsuit. *See* Affidavit of Roddy D. Roseman in Support of Judicial Review, at ¶6.
- e. This is more clearly shown in a pleading entitled Affidavit of Roddy D. Roseman in opposition to Motion for Summary Judgment which was filed in the Cabarrus County Lawsuit. A copy of this Affidavit is attached hereto as Exhibit C and incorporated herein by reference. *See* Affidavit of Roddy D. Roseman in Support of Judicial Review, at ¶7.
- f. On the eve of the Henderson County Lawsuit, Plaintiffs, and Defendants agreed to settle their claims and executed mutual releases. The amount of the settlement was \$33,000.00. This including any and all amounts owed to Defendant Accredited Surety and Casualty Co., Inc. and/or Southeastern Sureties Group Inc on the Reece Harris Bond, the Desmond Jamir Robinson Bond and the return Powers of Attorney. A copy of the Settlement Agreement and Mutual Release, executed by all parties, is attached hereto as Exhibit D and incorporated herein by reference. *See* Affidavit of Roddy D. Roseman in Support of Judicial Review, at ¶8.
- g. The claims being made by the Department of Insurance regarding the Reece Harris Bond, the Desmond Jamir Robinson Bond and the return of the Powers of Attorney were all settled by the Settlement Agreement and Mutual Release that was entered into by all parties. *See* Affidavit of Roddy D. Roseman in Support of Judicial Review, at ¶9.

- h. In Order for the court to see a full and final picture of the Henderson County Lawsuit, Petitioners are submitting a certified copy of the lawsuit to the court in conjunction with this Affidavit. *See Affidavit of Roddy D. Roseman in Support of Judicial Review*, at ¶10.
- i. Regarding the allegations that I wrote Bonds without appointment, this was clearly a mistake because I sent in the proper documentation and believed that the proper documentation had been submitted. This is more clearly set out in the Petition for Judicial Review and in the First Hearing that occurred in this case. *See Affidavit of Roddy D. Roseman in Support of Judicial Review*, at ¶11.
- j. I have never done anything intentionally wrong or anything involving malfeasance. I have always lived up to my obligation as a bail bondsman. *See Affidavit of Roddy D. Roseman in Support of Judicial Review*, at ¶12.

19. At the hearing on the Second PJR on August 12, 2019, Petitioner's counsel attempted to have the Roseman Affidavit stricken from the record. However, Respondents' counsel argued vehemently in favor of allowing the Roseman Affidavit to be considered:

Now, I argue today that this is extremely relevant to what happened. And I'm just gonna go into some of the elements of my argument of why that is true. They have made arguments in four different areas. If you look at the previous Superior Court judge, he categorized the case into four categories.

All four of those categories are being discussed and resolved in the Superior Court case. In fact, he, "he" being Mr. Friedman with the North Carolina Department of Insurance, has repeatedly gone through things in their brief claiming that they were not -- let's say Mr. Roseman didn't pay back Accredited.

The reason that the settlement agreement is coming in is for me to prove to this Court that, unlike their allegations that certain bonds were not paid, whether it be the [Reece Dwight] Harris bond or the Lamar -- Jamar Robinson bond, the parties were discussing these bonds in terms of the Accredited settlement.

That's what the affidavit of Mr. Roseman proves, which is Exhibit C to his affidavit. And then the settlement agreement is proof that the parties reached an agreement. How can the Department of Insurance stand there and claim that certain things are supposed to be paid, and that was a fault of Mr. Roseman and Ms. Roseman as the bail bondsmen, when there was a settlement agreement reached in the Accredited case?

...

None of this is a surprise to the Department of Insurance. In fact, if you want to hear my whole argument, the basis for it is that Accredited has pushed this hearing, these alleged violations, but the case itself, the alleged violations are all disproved by the complaint that was filed, the answer and counterclaim that was filed by Accredited, the affidavit filed by Mr. Roseman, which of course I did, and then the settlement agreement.

...

So they're saying this today. The reason they're saying it is because it really resolves most, if not all, of the allegations against Mr. and Ms. Roseman with regard to the bond statutes. In fact, I would say it resolves all of them. The lawsuit, their answer and counterclaim, the affidavit.

Like I said, I have the whole file here. And I would argue that this Court shouldn't have a hearing today without considering this affidavit. Or should remand it for another hearing, where that settlement agreement and the entire file comes into play.

We are at a loss to properly defend without having the evidence necessary to do so. Now, I understand you're telling me I've got to abide by rules --

...

I understand that I have to do that. But I also understand that I'm at a point here where I have to defend Mr. Roseman the best that I can. And I have things that take care -- that obviate all the issues they've brought up.

And I can't understand why the Department of Insurance would be against it. They've known about it. They've known about the lawsuit. Really, if you really think about it, nine-tenths, if not a hundred percent of the items from the lawsuit, are present in these violations. And the only way they got them was they got them from Accredited after during the lawsuit.

See Second PJR Hearing Transcript, at pp. 19-22.

20. After hearing arguments from counsel, Superior Court Judge Anna Mills Wagoner entered an Order on August 14, 2019, in which she found that the Roseman Affidavit was material and "could not reasonably have been presented earlier to the Agency . . . , and it's not cumulative." She then remanded the matter to the Commissioner of Insurance pursuant to N.C. Gen. Stat. § 150B-49 "to conduct an additional administrative hearing on the contents of the [Roseman Affidavit]" ("Remand Order 2").

21. A Notice of Administrative Hearing was duly issued and served upon Respondents on August 2, 2021, setting Remand Hearing 2 for hearing on September 14, 2021.

The Reece Dwight Harris Bond

22. Respondents were appointed by Accredited as surety bondsmen and authorized to issue bonds on behalf of Accredited. *See* September 1, 2017 Order, Finding of Fact ¶8. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

23. Respondents were required to report to Accredited when one of their Powers of Attorney had been issued. *See* September 1, 2017 Order, Finding of Fact ¶9. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

24. In addition, Respondents and Roseman Bail Bonding were required to remit 1.2 percent of any bond premium they received to Accredited, and 1.0 percent of the bond premium to a Build-Up Fund, or BUF Account, established at Accredited. *See* September 1, 2017 Order, Finding of Fact ¶10. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

25. Respondents had a limit of \$100,000 on their appointment, such that if they wished to write a bond for a defendant in excess of \$100,000, they first had to obtain Accredited's consent to the increased amount. See September 1, 2017 Order, Finding of Fact ¶11. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

26. On July 13, 2010, Roddy Roseman posted a \$200,000 bond for Reece Dwight Harris (hereinafter "Harris") in Iredell County, Docket Number 10 CR 055192. The bond was written on a Power of Attorney (Power Number AH-00463385) issued by Accredited. See September 1, 2017 Order, Finding of Fact ¶12. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

27. The Harris bond was in excess of Respondents' authority of \$100,000. Therefore, Respondents were required to obtain advance approval from Accredited prior to writing the bond. See September 1, 2017 Order, Finding of Fact ¶13. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

28. Roddy Roseman testified that prior to writing the Harris bond, he contacted Accredited's office in Hendersonville, North Carolina, and spoke with the Officer Manager at the time, Lisa Ashe. At that time, Roddy Roseman states that he informed Ms. Ashe of the increased bond request, the defendant's name, and the power intended to be used. According to Roddy Roseman, he then obtained Ms. Ashe's approval to write the bond for the increased amount. See September 1, 2017 Order, Finding of Fact ¶15. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

29. Ms. Ashe did not testify at the hearing, and Roddy Roseman did not produce any supporting evidence of the prior approval to write the bond. See September 1, 2017 Order, Finding of Fact ¶17. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

30. However, Julia Henderson, an Accredited employee, did testify at the hearing. According to Ms. Henderson, a bond is considered to be reported when a copy of the bond, along with the payment required to the surety insurance company, is received. See September 1, 2017 Order, Finding of Fact ¶18. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

31. Ms. Henderson also testified that requesting prior approval does not satisfy the reporting requirement. One of the reasons for this is the fact that the bond may not have been written at the time prior approval was obtained. See September 1, 2017 Order, Finding of Fact ¶19. Respondents did file an exception to this Finding of Fact in the Second PJR. However, the new evidence submitted by Respondents does not contradict this Finding of Fact. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

32. On the Affidavit required by N.C. Gen. Stat. § 58-71-140(d) contained on the second page of the Appearance Bond for Pretrial Release (AOC Form No. AOC-CR-201), Roddy Roseman indicated that he had been promised a premium in the amount of \$20,000, that such premium was due on July 13, 2010, and that he had not received any amount of the premium as of that date. See September 1, 2017 Order, Finding of Fact ¶20. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

33. Roddy Roseman stated that the \$20,000 bond premium listed on the Affidavit was incorrect and was just a place filler until a price could be negotiated. The actual bond premium agreed upon by the parties was \$15,000. See September 1, 2017 Order, Finding of Fact ¶21. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

34. On July 20, 2010, Harris' mother, Warner Leake (hereinafter "Leake") paid Roddy Roseman \$12,000 by check as a partial payment for Harris' bond premium. See September 1, 2017 Order, Finding of Fact ¶22. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

35. Pursuant to N.C. Gen. Stat. § 58-71-167(a), when an agreement between the principal and the surety requires some portion of the bond premium payments to be deferred or paid after the defendant has been released from custody, a written memorandum of agreement between the defendant and the surety is required to be executed. The memorandum of agreement is required to contain certain information, such as the amount of the bond premium payment deferred and the due date, and be signed by the defendant and the surety. See September 1, 2017 Order, Finding of Fact ¶23. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

36. Roddy Roseman did not execute a written memorandum of agreement with Harris. See September 1, 2017 Order, Finding of Fact ¶24. Respondents did file an exception to this Finding of Fact in the Second PJR.

37. At the Initial Hearing the following exchange between Roddy Roseman and his attorney demonstrates the lack of a written memorandum of agreement with Harris:

Q. All right, Ms. [Leake] came to your office and paid \$12,000?

A. Yes, some days later after Mr. Harris had been released. I -- excuse me, when I wrote the bond, I had not received anything on the \$200,000.

Q. You did not give her a memo?

A. No.

Q. Why not?

A. Because I knew her, and her word was fine with me as far as contractually as to getting her son out of jail. I knew she'd make it good.

Q. Did you think you were required to give her a memo of deferred payment?

A. No.

Q. Why not?

A. Because she wasn't a principal nor a defendant as required by the statute.

See Initial Hearing Transcript, at pp. 226-227.

38. Furthermore, at the Initial Hearing and in the Second PJR, Roddy Roseman stated that despite not entering into a Memorandum of Agreement with Leake, a verbal contract existed for the payment of the agreed-to premium of \$15,000, and that this was upheld by a Small Claims Court in June 2012. See Initial Hearing Transcript, at pp. 290-294; see also Second PJR, at ¶5.

39. Thus, despite Respondents' exception to Finding of Fact ¶24, Respondents have admitted to the allegation that they did not execute a written memorandum of agreement with Mr. Harris, which is a technical violation of N.C. Gen. Stat. § 58-71-167. However, based upon this new information, this Finding of Fact is modified by the undersigned Hearing Officer as noted herein.

40. On July 20, 2010, Roddy Roseman issued Leake a receipt, numbered 219430, as evidence of the \$12,000 payment. *See* September 1, 2017 Order, Finding of Fact ¶27. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

41. The receipt indicates that the total amount of premium owed was \$15,000, and that an additional \$3,000 was owed on the premium. A note on the receipt indicated that the account balance would be reviewed on October 4, 2010. *See* September 1, 2017 Order, Finding of Fact ¶28. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

42. Receipt number 219430 did not contain the name and address of Roddy Roseman or his company, Roseman Bail Bonding. *See* September 1, 2017 Order, Finding of Fact ¶29. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

43. Furthermore, with regard to receipt number 219430, Respondents' Second PJR states that "[w]hile the receipt does not show the name and address of Roddy Roseman, Mr. Roseman has expressed his commitment to address this technical deficiency and provide receipts that show his name and address." *See* Second PJR, at ¶6.

44. At some point, another receipt dated July 20, 2010, numbered 219455, was issued to Leake indicating the same information listed on receipt number 219430. The only difference between the two receipts was that receipt number 219430 indicated that the money was paid via check, while receipt number 219455 indicated that the money was paid in cash. *See* September 1, 2017 Order, Finding of Fact ¶30. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

45. Receipt number 219455 did not contain the name and address of Roddy Roseman or his company, Roseman Bail Bonding. *See* September 1, 2017 Order, Finding of Fact ¶31. Respondents did not file an exception to this Finding of Fact in

the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

46. On July 22, 2010, after Harris was released on bond, upon a motion filed on behalf of Harris, the Iredell County District Court reduced Harris' bond for file number 10 CR 55192 from \$200,000 to \$50,000. See September 1, 2017 Order, Finding of Fact ¶32. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

47. Pursuant to N.C. Gen. Stat. § 58-71-95(5), a surety bondsman is prohibited from receiving a bond premium in excess of 15% of the face amount of the bond. See September 1, 2017 Order, Finding of Fact ¶25. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

48. On a \$50,000 bond, the maximum amount of bond premium that can be received by a surety bondsman is \$7,500. See September 1, 2017 Order, Finding of Fact ¶33. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

49. Following the reduction in bond, Harris requested a refund of \$4,500 from Roddy Roseman and Roseman Bail Bonding, representing the difference between the amount of bond premium paid (\$12,000) and the maximum amount allowed by law (\$7,500). Roddy Roseman and Roseman Bail Bonding refused such request. See September 1, 2017 Order, Finding of Fact ¶34. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

50. Roddy Roseman testified that when Leake failed to remit the additional \$3,000 of premium that was owed on the Harris bond, he sued Leake in Small Claims Court and obtained a judgment for the full amount, plus interest. However, Roddy Roseman did not submit any evidence to substantiate this claim. See September 1, 2017 Order, Finding of Fact ¶35. Respondents did file an exception to this Finding of Fact in the Second PJR. Upon further review, the undersigned Hearing Officer finds Roddy Roseman's testimony that he obtained a judgment in Small Claims Court from Leake to be credible.

The Desmond Jamar Robinson Bond

51. On June 3, 2010, Roddy Roseman posted a \$2,000 bond for Desmond Jamar Robinson (hereinafter "Robinson") in Cabarrus County, Docket Number 10 CR

004895. The bond was written on a Power of Attorney (Power Number AB-00490850) issued by Accredited. See September 1, 2017 Order, Finding of Fact ¶36. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

52. Respondents were required to report to Accredited when one of their Powers of Attorney had been issued. See September 1, 2017 Order, Finding of Fact ¶37. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

53. In addition, Respondents and Roseman Bail Bonding were required to remit 1.2 percent of any bond premium they received to Accredited, and 1.0 percent of the bond premium to a Build-Up Fund, or BUF Account, established at Accredited. See September 1, 2017 Order, Finding of Fact ¶38. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

54. Roddy Roseman and Roseman Bail Bonding did not report the issuance of this power to Accredited. See September 1, 2017 Order, Finding of Fact ¶39. Respondents did file an exception to this Finding of Fact in the Second PJR.

55. However, in the Second PJR, Respondents alleged the following:

While Roddy Roseman did not specifically report to Accredited the use of [Power Number AB-00490850], it appears that the premium owed to Accredited for this Power was only \$20, and it is unclear whether or not this amount was debited from Roddy Roseman's BUF Account.

See Second PJR, at ¶12.

56. Further, Respondents did not file an exception to Finding of Fact ¶41 in the September 1, 2017 Order, as evidenced below. That Finding of Fact indicates that Accredited first learned that Power Number AB-00490850 had been used by Roddy Roseman when it received a Bond Forfeiture Notice issued by the Cabarrus County Clerk of Superior Court. Thus, despite Respondents' exception to Finding of Fact ¶39, Respondents have admitted to the allegation that they did not report the issuance of this power to Accredited. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

57. In addition, Roddy Roseman and Roseman Bail Bonding neither submitted the 1.2 percent of the bond premium to Accredited, nor did they submit the 1.0 percent of the bond premium to the BUF account. See September 1, 2017 Order, Finding of Fact ¶40. Respondents did file an exception to this Finding of Fact in the Second PJR.

58. However, as noted above, in the Second PJR Respondents indicate “it appears that the premium owed to Accredited for this Power was only \$20, and it is unclear whether or not this amount was debited from Roddy Roseman’s BUF Account.” Thus, although this is not an admission by Respondents of their failure to submit the required amounts to Accredited and to the BUF account, it also does not contradict this Finding of Fact. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

59. Accredited first learned that Power Number AB-00490850 had been used by Roddy Roseman on August 26, 2010, when it received a Bond Forfeiture Notice issued by the Cabarrus County Clerk of Superior Court indicating that Robinson had failed to appear in court, and that the bond be forfeited. See September 1, 2017 Order, Finding of Fact ¶41. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

60. The Bond Forfeiture Notice was issued more than 60 days after Power Number AB-00490850 was used by Roddy Roseman. See September 1, 2017 Order, Finding of Fact ¶42. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

Failure to Return Powers

61. On December 17, 2010, Accredited sent a letter to Roseman Bail Bonding in which it notified Roseman Bail Bonding that it was terminating its contract. In the letter, Accredited ordered Roseman Bail Bonding to cease from posting bonds through Accredited, and to return all unused powers to Accredited along with a final report of all written powers to date including a premium and build up fund check. See September 1, 2017 Order, Finding of Fact ¶43. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

62. As of July 21, 2011, Roddy Roseman and Roseman Bail Bonding had not returned any unused powers to Accredited, as requested. See September 1, 2017 Order, Finding of Fact ¶44. Respondents did file an exception to this Finding of Fact

in the Second PJR.

63. However, in the Second PJR, Respondents alleged the following: Roddy Roseman lost a total of approximately 117 Powers of Attorney. Some of these 117 Powers of Attorney were lost when a briefcase containing numerous unused powers was accidentally left on the roof of his car and was lost. Some of these 117 Powers of Attorney were physically taken from Roddy Roseman's office in December of 2011 by Julie Henderson of Accredited. Roddy Roseman thereafter told Accredited that the powers were "lost" because they were no longer in his possession. Critically, there is no evidence that any of these 117 lost powers were ever used in any North Carolina court proceeding, nor that Accredited has ever become liable for any amounts as a result of the lost powers.

See Second PJR, at ¶14.

64. In addition, the new evidence submitted by Respondents does not contradict Finding of Fact ¶44. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

65. On July 21, 2011, Accredited sent another letter to Roddy Roseman and Roseman Bail Bonding requesting that any powers and any documentation of cases that are disposed be returned by August 1, 2011. *See* September 1, 2017 Order, Finding of Fact ¶45. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

66. The July 21st letter included an outstanding liability report for Accredited and an unreported powers report for Accredited, dated July 21, 2011. *See* September 1, 2017 Order, Finding of Fact ¶46. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

67. The July 21st list of unreported powers included 118 total powers, including Power Number AH-00463385, which was the Harris bond. *See* September 1, 2017 Order, Finding of Fact ¶47. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

68. Roddy Roseman and Roseman Bail Bonding did not return the requested information to Accredited by August 1, 2011, as requested. *See* September 1, 2017 Order, Finding of Fact ¶48. Respondents did file an exception to this Finding of Fact in the Second PJR. However, the new evidence submitted by Respondents does not contradict this Finding of Fact. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

69. On April 11, 2012, nearly 16 months after the date of the first request from Accredited, Barbara Roseman and Roseman Bail Bonding sent a letter to Accredited which included an Affidavit of Lost Powers, a list of unreported powers and a list of outstanding liabilities with disposition. *See* September 1, 2017 Order, Finding of Fact ¶49. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

70. The April 11th letter also stated as follows: "I am aware that the enclosed list of Unreported Powers that was provided by you on 7/21/11 may have been a complete list at the time; I feel that there may perhaps be other unreported powers that are forfeitures. Should that be the case please provide me with a copy of those additional powers." *See* September 1, 2017 Order, Finding of Fact ¶50. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

71. In addition, the April 11th letter stated the following: "It has also come to my attention that you have in your possession powers that have not had the premium paid. Please pay the required premium from our BUF account and provide me with any and all copies of such powers as well as the documentation that supports the payment of such premium." *See* September 1, 2017 Order, Finding of Fact ¶51. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

72. The Affidavit of Lost Powers, dated April 3, 2012, and signed by Roddy Roseman, simply indicates that all of the powers enumerated in the July 21, 2011 list of unreported powers from Accredited were lost, with no further explanation given. *See* September 1, 2017 Order, Finding of Fact ¶52. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

73. According to Barbara Roseman, the 118 powers that were reported lost by Roddy Roseman were in a briefcase that he inadvertently placed on top of his vehicle and drove off. Barbara Roseman could not recall the exact date that this happened, but did state that it occurred prior to Accredited terminating its contract

with Roseman Bail Bonding on December 17, 2010. *See* September 1, 2017 Order, Finding of Fact ¶53. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

74. Roddy Roseman corroborated his wife's testimony that he lost a briefcase that was on top of his vehicle when he drove off. However, Roddy Roseman also testified that he signed the Affidavit of Lost Powers without actually checking to see if the powers listed on the July 21st list of unreported powers were lost. *See* September 1, 2017 Order, Finding of Fact ¶54. Respondents did file an exception to this Finding of Fact in the Second PJR.

75. But, a review of the transcript from the Initial Hearing reveals the following exchange between Roddy Roseman and the Department's counsel:

Q: Okay. You haven't done -- you signed this affidavit without checking to see if the powers were actually lost?

A: Not to my knowledge. Had any of them showed up or turned up in a forfeiture situation, we would have been notified. That many powers written, at least one or two should have showed up. I've never had everybody go to court.

See Initial Hearing Transcript, at p. 271.

76. In addition, the new evidence submitted by Respondents does not contradict Finding of Fact ¶54. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

77. Further, Roddy Roseman testified that he wasn't entirely sure when the incident with the briefcase occurred, but that it was probably in 2009 or 2010, and that he immediately notified Accredited and received new powers in return. *See* September 1, 2017 Order, Finding of Fact ¶55. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

78. Roddy Roseman's testimony regarding reporting the lost powers to Accredited and receiving replacement powers was not corroborated by any other witnesses or documentary evidence. *See* September 1, 2017 Order, Finding of Fact ¶56. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

Writing Bonds Without Proper Appointment

79. On July 13, 2011, Barbara Roseman submitted a Licensing and Producer Application for Seneca Insurance Company (hereinafter “Seneca”) and Bail USA, Inc. (hereinafter “Bail USA”) in order to receive an appointment as a surety bondsman authorizing her to issue bonds on behalf of Bail USA. See September 1, 2017 Order, Finding of Fact ¶57. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

80. The “Name of Applicant” listed on the application is Barbara Coleman Roseman. See September 1, 2017 Order, Finding of Fact ¶58. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

81. The only Social Security Number listed on the application is for Barbara Roseman. See September 1, 2017 Order, Finding of Fact ¶59. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

82. The only Date of Birth listed on the application is for Barbara Roseman. See September 1, 2017 Order, Finding of Fact ¶60. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

83. The only Surety Bail Bonds License Number listed on the application is for Barbara Roseman. See September 1, 2017 Order, Finding of Fact ¶61. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

84. The application required the applicant to attach a copy of his/her drivers’ license. The only copy of a drivers’ license attached to the application was that of Barbara Roseman. See September 1, 2017 Order, Finding of Fact ¶62. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

85. On August 1, 2011, Barbara Roseman signed an Authorization to Open Build Up Fund Account with Bail USA. Barbara Roseman is listed as an “agent” on the form. See September 1, 2017 Order, Finding of Fact ¶63. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

86. On August 15, 2011, Barbara Roseman received a letter from Bail USA indicating that her underwriting authority for writing bonds with Bail USA would be \$100,000. Barbara Roseman signed the letter attesting that she understood her underwriting authority on August 16, 2011. See September 1, 2017 Order, Finding of Fact ¶64. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

87. On August 15, 2011, Seneca filed an Appointment of Surety Bondsman form with the Department listing Barbara Roseman as a Surety Bondsman authorized to issue bonds on its behalf. Barbara Roseman's name, social security number and date of birth are the only such items listed on the appointment. See September 1, 2017 Order, Finding of Fact ¶65. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

88. On August 15, 2011, Seneca and Bail USA entered into a Surety Bail Bond Independent Contractor Agreement (hereinafter "Independent Contractor Agreement") with Barbara Roseman. In the Independent Contractor Agreement, Barbara Roseman and Roseman Bail Bonding are listed as "Independent Contractor/Indemnitor," Roddy Roseman is listed as "Indemnitor," and all three are collectively referred to as "Contractor." See September 1, 2017 Order, Finding of Fact ¶66. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

89. The Independent Contractor Agreement defines "Independent Contractor" as "the 'Bondsman' or 'Contractor' who provides services under the terms specified in this agreement, but who controls the manner and method of the work performed." See September 1, 2017 Order, Finding of Fact ¶67. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

90. Paragraph 2 of the Independent Contractor Agreement, entitled "Appointment of the Contractor" provides as follows: "[u]ntil such time as the Contractor obtains necessary licenses and appointments in all applicable jurisdictions, the Contractor shall not be authorized to solicit and/or execute surety bail bonds or take any other action pursuant to this Agreement." See September 1, 2017 Order, Finding of Fact ¶68. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

91. Barbara Roseman signed the Independent Contractor Agreement as “Independent Contractor/Indemnitor,” as “President, Roseman Bail Bonding, Inc.,” and as “Secretary/Treasurer, Roseman Bail Bonding, Inc.,” while Roddy Roseman signed it only as “Indemnitor.” See September 1, 2017 Order, Finding of Fact ¶69. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

92. According to *Black’s Law Dictionary*, an “Indemnitor” is defined as “[t]he person who is bound, by an indemnity contract, to indemnify or protect the other.” “Indemnify” is defined as “to give security for the reimbursement of a person in case of an anticipated loss falling upon him.” See BLACK’S LAW DICTIONARY 769 (6th ed. 1990). See September 1, 2017 Order, Finding of Fact ¶70. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

93. Roddy Roseman being listed as an “Indemnitor” in the Independent Contractor Agreement does not convey upon him the right to act as a surety bondsman. Rather, it simply means that if Seneca or Bail USA become liable for a loss resulting from the acts of Barbara Roseman or Roseman Bail Bonding, Roddy Roseman, as a principal of Roseman Bail Bonding, would also be on the hook for that loss. See September 1, 2017 Order, Finding of Fact ¶71. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

94. On September 23, 2011, Barbara Roseman mailed a package to AIA Holdings, Inc. – International Fidelity. In the cover letter for such package, Barbara Roseman stated “I have enclosed an Affidavit of Surety Bondsman Regarding Appointment.” See September 1, 2017 Order, Finding of Fact ¶72. Respondents did file an exception to this Finding of Fact in the Second PJR.

95. However, the undersigned Hearing Officer has reviewed Petitioner’s Exhibit 18 that was submitted at the Initial Hearing, and has confirmed that an undated letter, signed by Barbara Roseman, was mailed via UPS to AIA Holdings, Inc. with a UPS Tracking Number of 1Z8R23010199671095. Further, the tracking information for that package that is included as part of Petitioner’s Exhibit 18 from the Initial Hearing indicates that an “order” for that UPS Tracking Number was processed on September 23, 2011 and was delivered on September 26, 2011. Finally, the new evidence submitted by Respondents does not contradict Finding of Fact ¶72. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

96. On September 23, 2011, Barbara Roseman mailed a package to Accredited Surety and Casualty Co., Inc. In the cover letter for such package,

Barbara Roseman stated “I have enclosed an Affidavit of Surety Bondsman Regarding Appointment.” See September 1, 2017 Order, Finding of Fact ¶73. Respondents did file an exception to this Finding of Fact in the Second PJR.

97. However, the undersigned Hearing Officer has reviewed Petitioner’s Exhibit 18 that was submitted at the Initial Hearing, and has confirmed that an undated letter, signed by Barbara Roseman, was mailed via UPS to Accredited with a UPS Tracking Number of 1Z8R23010196062301. Further, the tracking information for that package that is also included as part of Petitioner’s Exhibit 18 indicates that an “order” for that UPS Tracking Number was processed on September 23, 2011 and was delivered on September 26, 2011.

98. In addition, in the lawsuit the Rosemans filed against Accredited and others (as more specifically described below beginning at ¶130), the Second Cause of Action specifically alleged the failure of Accredited to return the Affidavits of Surety for both Barbara Roseman and Roddy Roseman. However, that cause of action was dismissed by the Court on March 18, 2013. Therefore, the new evidence submitted by Respondents does not contradict Finding of Fact ¶73, and may in fact support the finding. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

99. Subsequently, both AIA Holdings, Inc. – International Fidelity and Accredited Surety and Casualty Co., Inc. returned affidavits for Barbara Roseman, and her appointment with Seneca was processed by the Department effective October 5, 2011. See September 1, 2017 Order, Finding of Fact ¶74. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

100. Barbara Roseman testified that the application was for her, Roddy Roseman and Roseman Bail Bonding. Barbara Roseman opined that since her husband was Vice President of Roseman Bail Bonding, and the application asked for the full name of your spouse, that the application was for both she and her husband. See September 1, 2017 Order, Finding of Fact ¶75. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

101. Barbara Roseman testified that packages she sent to AIA Holdings, Inc. – International Fidelity and Accredited Surety and Casualty Co., Inc. each contained two sets of affidavits – one for her and one for her husband, Roddy Roseman. See September 1, 2017 Order, Finding of Fact ¶76. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

102. On March 8, 2012, Roddy Roseman submitted a Licensing and Producer Application for Seneca Insurance Company (hereinafter “Seneca”) and Bail USA, Inc. (hereinafter “Bail USA”) in order to receive an appointment as a surety bondsman authorizing him to issue bonds on behalf of Bail USA. *See* September 1, 2017 Order, Finding of Fact ¶77. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

103. The “Name of Applicant” listed on the application is Roddy D. Roseman. *See* September 1, 2017 Order, Finding of Fact ¶78. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

104. The only Social Security Number listed on the application is for Roddy Roseman. *See* September 1, 2017 Order, Finding of Fact ¶79. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

105. The only Date of Birth listed on the application is for Roddy Roseman. *See* September 1, 2017 Order, Finding of Fact ¶80. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

106. The only Surety Bail Bonds License Number listed on the application is for Roddy Roseman. *See* September 1, 2017 Order, Finding of Fact ¶81. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

107. On March 16, 2012, Bail USA mailed an Affidavit of Surety Bondsman Regarding Appointment to Accredited Surety and Casualty Company, Inc. for Roddy Roseman. *See* September 1, 2017 Order, Finding of Fact ¶82. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

108. On March 16, 2012, Bail USA mailed an Affidavit of Surety Bondsman Regarding Appointment to Allegheny Casualty and International Fidelity for Roddy Roseman. *See* September 1, 2017 Order, Finding of Fact ¶83. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

109. On March 19, 2012, Valerie Harvey, a Licensing Supervisor with Accredited, forwarded an e-mail to Julie Henderson that contained the aforementioned Affidavit of Surety Bondsman Regarding Appointment for Roddy Roseman. *See* September 1, 2017 Order, Finding of Fact ¶84. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

110. According to Ms. Henderson, when she received this request, she researched Roddy Roseman's history in the Civil Case Processing System (hereinafter referred to as "VCAP") and discovered that he had several forfeitures issued against him for bonds he had written on behalf of Seneca. Ms. Henderson stated that it was standard practice when she received these types of Affidavits to check the VCAP system for any outstanding forfeitures before signing off on the Affidavit. *See* September 1, 2017 Order, Finding of Fact ¶85. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

111. As she had just received an Affidavit of Surety Bondsman Regarding Appointment regarding Roddy Roseman's request to be appointed as a Surety Bondsman for Seneca and Bail USA, Ms. Henderson found it odd that he would have already received forfeitures on bonds written on behalf of Seneca. *See* September 1, 2017 Order, Finding of Fact ¶86. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

112. As a result, Ms. Henderson then checked the Department's website to determine whether Roddy Roseman had already been appointed by Seneca, and discovered that he had not yet been appointed. *See* September 1, 2017 Order, Finding of Fact ¶87. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

113. The forfeitures that Ms. Henderson discovered in the VCAP system were for the following individuals: Danari Jaeshon Johnson (Docket Number 11 CRS 051427), Jerimy Eugene Bailey (Docket Number 11 CRS 004125), Joshua Brett Douglas (Docket Number 12 CRS 205477), and Joshua Brett Douglas (Docket Number 12 CRS 205478). *See* September 1, 2017 Order, Finding of Fact ¶88. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

114. The bond for Danari Jaeshon Johnson, Docket Number 11 CRS 051427, was for \$20,000 and was posted by Roddy Roseman on December 11, 2011. The bond was written on a Power of Attorney (Power Number S25-01777187) issued by Seneca. See September 1, 2017 Order, Finding of Fact ¶89. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

115. The bond for Jerimy Eugene Bailey, Docket Number 11 CRS 004125, was for \$15,000 and was posted by Roddy Roseman on November 3, 2011. The bond was written on a Power of Attorney (Power Number S25-01777185) issued by Seneca. See September 1, 2017 Order, Finding of Fact ¶90. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

116. The bond for Joshua Brett Douglas, Docket Number 12 CRS 205477, was for \$2,500 and was posted by Roddy Roseman on February 6, 2012. The bond was written on a Power of Attorney (Power Number S10-01822792) issued by Seneca. See September 1, 2017 Order, Finding of Fact ¶91. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

117. The bond for Joshua Brett Douglas, Docket Number 12 CRS 205478, was for \$1,000 and was posted by Roddy Roseman on February 6, 2012. The bond was written on a Power of Attorney (Power Number S10-01784475) issued by Seneca. See September 1, 2017 Order, Finding of Fact ¶92. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

118. On March 23, 2012, Bail USA sent a letter to Barbara Roseman which stated as follows:

It has been brought to our attention that there are individuals from your office posting bonds who do not hold an active Seneca Appointment.

This letter is to inform you that effective immediately, you are the only surety bondsman permitted to post bonds for Seneca Insurance Company. Please cease and desist from allowing any unappointed individuals from writing any bonds until we have completed the necessary paperwork with the North Carolina Department of Insurance.

See September 1, 2017 Order, Finding of Fact ¶93. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

119. Upon questioning by Steve Bryant, a senior complaint analyst with the N.C. Department of Insurance's Agent Services Division, Barbara Roseman sent a letter to Mr. Bryant dated March 29, 2012, in which she indicated that the four powers referenced above were provided by her to Roddy Roseman to bond out defendants, and that she provided those powers to Roddy Roseman without the knowledge that he did not have the power of appointment from Seneca. Barbara Roseman further stated that various Affidavits of Surety Bondsman Regarding Appointment were submitted to past surety companies for Roddy Roseman, but that "[s]omewhere between the afore-mentioned companies and DOI these affidavits fell of the radar." See September 1, 2017 Order, Finding of Fact ¶94. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

120. After reviewing these bonds, Mr. Bryant requested from Seneca and Bail USA additional bonds written by Roddy Roseman. In return, Mr. Bryant received an Affidavit of Certification from Bail USA on April 14, 2014, with 63 Seneca Powers of Attorney that were issued by Bail USA to Barbara Roseman, and that were all signed by Roddy Roseman. See September 1, 2017 Order, Finding of Fact ¶95. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

121. In reviewing these powers, Mr. Bryant discovered that of the four powers he previously reviewed, three of those powers were included among the 63 new powers he received, thus bringing the total number of powers issued by Bail USA to Barbara Roseman that were signed by Roddy Roseman to 64. See September 1, 2017 Order, Finding of Fact ¶96. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

122. One of the 64 powers was issued on March 10, 2012. The bond for James Anthony Smith in Cabarrus County, Docket Number unknown, was for \$3,000 and was posted by Roddy Roseman on March 10, 2012. The bond was written on a Power of Attorney (Power Number S10-01853930) issued by Seneca. This power was written by Roddy Roseman after the date that he submitted his application to receive an appointment as a surety bondsman authorizing him to issue bonds on behalf of Seneca and Bail USA (March 8, 2012). See September 1, 2017 Order, Finding of Fact ¶97. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

123. On March 30, 2012, Seneca filed an Appointment of Surety Bondsman form with the Department listing Roddy Roseman as a Surety Bondsman authorized to issue bonds on its behalf. *See* September 1, 2017 Order, Finding of Fact ¶98. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

124. Pursuant to N.C. Gen. Stat. § 58-71-140(e), a surety bondsman is required to register all licenses, powers of appointments or powers of attorney with the statewide Electronic Bondsmen Registry established by the North Carolina Administrative Office of the Courts prior to executing any bail bonds in the various counties of the state. *See* September 1, 2017 Order, Finding of Fact ¶99. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

125. Roddy Roseman was not appointed as a surety bondsman by Seneca until March 30, 2012. As a result, Roddy Roseman did not complete the registration of his appointment in the Electronic Bondsmen Registry until after March 30, 2012. *See* September 1, 2017 Order, Finding of Fact ¶100. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

126. The Hearing Officer finds that Barbara Roseman's testimony regarding the application does not conform with the documentary evidence in the case. Given that Barbara Roseman was the only "applicant" listed on the application, hers was the only Social Security Number listed, hers was the only date of birth listed, hers was the only Surety Bail Bonds License Number listed, and hers was the only drivers' license copy attached, it is clear that the application was intended to be an application for only one individual – namely, Barbara Roseman. *See* September 1, 2017 Order, Finding of Fact ¶101. Respondents did file an exception to this Finding of Fact in the Second PJR. However, the new evidence submitted by Respondents does not contradict this Finding of Fact. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

127. In addition, the Hearing Officer finds that Barbara Roseman's testimony regarding the Independent Contractor Agreement does not conform with the documentary evidence in the case. Barbara Roseman is clearly identified as the "Independent Contractor/Indemnitor," while Roddy Roseman is only listed as an "Indemnitor." Furthermore, the Independent Contractor Agreement also states that the Contractor (which includes both Barbara Roseman and Roddy Roseman) shall not solicit or execute bail bonds until they receive the necessary appointments. *See* September 1, 2017 Order, Finding of Fact ¶102. Respondents did file an exception to

this Finding of Fact in the Second PJR. However, the new evidence submitted by Respondents does not contradict this Finding of Fact. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

128. Also, Barbara Roseman is the only “agent” listed on the Authorization to Open Build Up Fund Account with Bail USA, and is the only name listed on the letter from Bail USA in which she attested that she understood her underwriting authority was limited to \$100,000. See September 1, 2017 Order, Finding of Fact ¶103. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, this Finding of Fact is affirmed by the undersigned Hearing Officer.

129. Barbara Roseman has been a licensed Surety Bail Bondsman since 1994, and prior to her appointment with Seneca in 2011, had received at least two (2) prior appointments by surety insurance companies. As a result, and despite her assertions to the contrary, the foregoing facts lead to but one conclusion – that Barbara Roseman knew or should have known what the process was for receiving an appointment, including the fact that only one individual per application could apply for an appointment as a surety bail bondsman authorizing them to issue bonds on behalf of a surety insurance company.

Lawsuit Between Roseman Bail Bonding and Accredited Surety and Casualty Company

130. As noted in the Roseman Affidavit referenced above, the issues outlined above were part of a dispute between the Respondents and other parties in a lawsuit filed in October 2012. The procedural history of that lawsuit is outlined below.

131. On March 16, 2000, a Sub-Agent’s Contract (“Contract”) was entered into by and between Southeastern Sureties Group, Inc., as General Agent; and Barbara Roseman and Roddy Roseman d/b/a Roseman Bail Bonding, Inc., as Subagent; and Accredited Surety and Casualty Company, Inc. (“Accredited”).

132. On December 17, 2010, Accredited sent a letter to Roseman Bail Bonding terminating the Contract. Respondents did not file an exception to this Finding of Fact in the Second PJR. As a result, neither Roddy Roseman nor Barbara Roseman were authorized to issue bonds on behalf of Accredited thereafter.

133. Subsequently, a dispute arose between the Rosemans and Accredited regarding the duties and obligations pursuant to the Contract. This dispute concerned the return of the Roseman’s collateral account, also known as the Build Up Fund (or “BUF Account”).

134. On October 15, 2012, the Rosemans filed a lawsuit against Accredited Surety and Casualty Company, Inc. and Southeastern Sureties Group, Inc. in Mecklenburg County Superior Court (Case No. 12 CVS 18863) ("Lawsuit").

135. The Lawsuit alleged three (3) separate causes of action for Breach of Contract ("First Cause of Action"), Failure to File Affidavit of Former Insured/Failure of Defendants to Comply with N.C. Gen. Stat. § 58-71-141 ("Second Cause of Action"), and Unfair and Deceptive Trade Practices ("Third Cause of Action").

136. The First Cause of Action concerns the alleged failure of Accredited to return the funds in the Respondents' BUF Account according to the terms of the Contract after certain conditions precedent were met.

137. The Second Cause of Action concerns certain Affidavits of Surety Bondsmen that Barbara Roseman sent to Accredited in accordance with N.C. Gen. Stat. § 58-71-141. The Lawsuit claims that the Affidavits of Surety Bondsmen were sent to Accredited on or around August 2, 2011. However, as noted above (in ¶¶ 91-92) the undersigned Hearing Officer has reviewed Petitioner's Exhibit 18 that was submitted at the Initial Hearing, and has confirmed that an undated letter, signed by Barbara Roseman, was mailed via UPS to Accredited with a UPS Tracking Number of 1Z8R23010196062301. Further, the tracking information for that package that is also included as part of Petitioner's Exhibit 18 indicates that an "order" for that UPS Tracking Number was processed on September 23, 2011 and was delivered on September 26, 2011.

138. The Third Cause of Action alleges that Accredited's actions outlined above constitute unfair and deceptive trade practices in violation of N.C. Gen. Stat. § 75-1.1.

139. The Lawsuit was subsequently transferred to Henderson County Superior Court and assigned Case No. 12 CVS 002379.

140. On April 15, 2013, Accredited filed an Answer and Counterclaim in the Lawsuit. In its Answer, Accredited generally denied many of the allegations of the Lawsuit and asserted certain defenses.

141. In their counterclaim, Accredited alleged three (3) separate causes of action: Declaratory Judgment, Breach of Contract and Statutory Attorney's Fees. The underlying basis for each of these claims was the Respondents' alleged actions under the Contract, and specifically with regard to the BUF Account. This dispute over the proceeds of the BUF Account was what ultimately led Respondents to file the Lawsuit against Accredited.

142. One of the responses contained in Accredited's Supplemental Answers to [Respondents'] First Set of Interrogatories illustrates this fact:

[Interrogatory Question] 5. Identify all conditions and facts under which [Accredited] is entitled to keep the money in the buildup fund and/or pay the money to itself in the buildup fund.

ANSWER: Objection. Defendants did not keep or pay the money to itself from the buildup fund. Pursuant to the . . . Contract . . . dated October 30, 2007 and specifically Paragraph 6, 7 and 10 Defendant Accredited was entitled to reasonable attorney's fees from the [BUF Account]. There were additional breaches of the [Contract] entitling Accredited to attorneys' fees out of the [BUF Account] including, but not limited to, your client writing Bond Number AH-00463385 for [Reece Dwight] Harris in the amount of \$200,000 which exceeded your client's authority by the amount of \$100,000. Additionally, your clients never forwarded that Bond to Accredited, they collected a premium which they never disclosed to Defendants, failed to remit the premium to Accredited, failed to make a contribution to the [BUF] Account, filed false and incorrect affidavits stating that all premiums had been paid to Accredited, failed to provide proper records and documentation to Defendants.

143. In addition, Accredited indicated in its Answer that the Second Cause of Action was dismissed by the Court on March 18, 2013.

144. On December 16, 2015, the parties to the Lawsuit entered into a Settlement Agreement and Mutual Release ("Settlement") in which they resolved their dispute. Under the terms of the Settlement, Accredited agreed to pay Respondents a sum of money in return for a Voluntary Dismissal with Prejudice of the Lawsuit.

145. The Settlement contained a non-admissions clause, which provides:

It is expressly understood and agreed that no aspect of this Agreement is to be considered an admission of liability by any of the parties, or any of their Successors and Assigns, with respect to any claims or defenses that were, or could have been, raised in the lawsuit, but rather, that this Agreement is intended to compromise and settle fully and forever all claims of every kind,

character and description of the parties which were, or could have been raised, in the Lawsuit.

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)(4), the Commissioner may place on probation, suspend, revoke, or refuse to renew any license issued under Chapter 58, Article 71 of the North Carolina General Statutes for misappropriation, conversion or unlawful withholding of moneys belonging to insurers or others and received in the conduct of business under the license.

3. Pursuant to N.C. Gen. Stat. § 58-71-80(a)(5), the Commissioner may place on probation, suspend, revoke, or refuse to renew any license issued under Chapter 58, Article 71 of the North Carolina General Statutes for 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.

4. Pursuant to N.C. Gen. Stat. § 58-71-80(a)(7), the Commissioner may place on probation, suspend, revoke, or refuse to renew any license issued under Chapter 58, Article 71 of the North Carolina General Statutes for failure to comply with or violation of the provisions of this Chapter 58, Article 71 of the North Carolina General Statutes or of any order, subpoena, rule or regulation of the Commissioner or person with similar regulatory authority in another jurisdiction.

5. 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 issued under Chapter 58, Article 71 of the North Carolina General Statutes when, in the judgment of the Commissioner, the licensee has in the conduct of the licensee's affairs 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.

6. Pursuant to N.C. Gen. Stat. § 58-2-70(c):

If, under subsection (b) of this section, the Commissioner finds a violation of this Chapter, the Commissioner may, in addition to

or instead of suspending or revoking the license or certification, order the payment of a monetary penalty as provided in subsection (d) of this section or petition the Superior Court of Wake County for an order directing payment of restitution as provided in subsection (e) of this section, or both. Each day during which a violation occurs constitutes a separate violation.

7. Pursuant to N.C. Gen. Stat. § 58-71-95, no bail bondsman or runner shall:

(5) Accept anything of value from a principal or from anyone on behalf of a principal except the premium, which shall not exceed fifteen percent (15%) of the face amount of the bond; provided that the bondsman shall be permitted to accept collateral security or other indemnity from a principal or from anyone on behalf of a principal. Such collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond and shall be returned within 15 days after final termination of liability on the bond. Any bail bondsman who knowingly and willfully fails to return any collateral security, the value of which exceeds one thousand five hundred dollars (\$1,500), is guilty of a Class I felony. All collateral security, such as personal and real property, subject to be returned must be done so under the same conditions as requested and received by the bail bondsman.

8. N.C. Gen. Stat. § 58-71-16, which was enacted during the 2011 Session of the N.C. General Assembly and became effective on June 27, 2011, provides as follows:

Notwithstanding any other provision of law or rules adopted by the Commissioner under this Article, if, after an agreement has been entered into between a defendant and a surety, the defendant's bond is reduced, the surety shall not be required to return any portion of the premium to the defendant.

9. Pursuant to N.C. Gen. Stat. § 58-71-140(d):

(d) Professional bondsmen, surety bondsmen, and runners shall file with the clerk of court having jurisdiction over the

principal an affidavit on a form furnished by the Administrative Office of the Courts. The affidavit shall include, but not be limited to:

- (1) If applicable, a statement that the bondsman has not, nor has anyone for the bondsman's use, been promised or received any collateral, security, or premium for executing this appearance bond.
- (2) If promised a premium, the amount of the premium promised and the due date.
- (3) If the bondsman has received a premium, the amount of premium received.
- (4) If given collateral security, the name of the person from whom it is received and the nature and amount of the collateral security listed in detail.

10. Pursuant to N.C. Gen. Stat. § 58-71-141:

(a) Before receiving an appointment, a surety bondsman shall submit to the Commissioner an affidavit, signed under oath, by the surety bondsman and by any former insurer, stating that the surety bondsman does not owe any premium or unsatisfied judgment to any insurer and that the bondsman agrees to discharge all outstanding forfeitures and judgments on bonds previously written. The affidavit shall be in a form prescribed by the Commissioner and shall be submitted by the surety bondsman to the former insurer. If the surety bondsman does not satisfy or discharge all forfeitures or judgments, the former insurer shall submit a notice, with supporting documents, to the appointing insurer, the surety bondsman, and the Commissioner, which states, under oath, that the surety bondsman has failed to satisfy, in a timely manner, the forfeitures and judgments on bonds written by the surety bondsman and that the former insurer has satisfied the forfeiture or judgment from its own funds. The former insurer shall submit the notice and supporting documents to the appointing insurer, the surety bondsman, and the Commissioner within 30 days after the former insurer receives the affidavit from the surety bondsman. Upon receipt of the notice and supporting documents, the appointing insurer shall immediately cancel the surety bondsman's appointment. The surety bondsman may be reappointed only upon certification by the former insurer that all forfeitures and judgments on bonds

written by the surety bondsman have been discharged. The appointing insurer or surety bondsman may, within 10 days after receiving the notice and supporting documents from the former insurer, appeal to the Commissioner.

...

(c) As used in this section, "former insurer" means the insurer with whom the surety bondsman had a prior appointment and who is responsible for any outstanding bonds written by the surety bondsman.

11. Pursuant to N.C. Gen. Stat. § 58-71-167:

(a) In any case where the agreement between principal and surety calls for some portion of the bond premium payments to be deferred or paid after the defendant has been released from custody, a written memorandum of agreement between the principal and surety shall be kept on file by the surety with a copy provided to the principal, upon request. The memorandum shall contain the following information:

- (1) The amount of the premium payment deferred or not yet paid at the time the defendant is released from jail.
- (2) The method and schedule of payment to be made by the defendant to the bondsman, which shall include the dates of payment and amount to be paid on each date.
- (3) That the principal is, upon the principal's request, entitled to a copy of the memorandum.

(b) The memorandum must be signed by the defendant and the bondsman, or one of the bondsman's agents, and dated at the time the agreement is made. Any subsequent modifications of the memorandum must be in writing, signed, dated, and kept on file by the surety, with a copy provided to the principal, upon request.

12. Pursuant to 11 NCAC 13 .0515:

Whenever a fee is received by a bail bondsman a receipt shall be furnished to the defendant. Copies of all receipts issued shall be kept by the bail bondsman. All receipts issued must:

- (1) be prenumbered by the printer and used and filed in consecutive numerical order,
- (2) show the name and address of the bail bondsman,
- (3) show the amount and date paid,

- (4) show the name of the person accepting payment,
- (5) show the total amount of the bond for which the fee is being charged and the name of the defendant.

13. In her August 14, 2019 Order, Superior Court Judge Anna Mills Wagoner remanded the matter to the Commissioner of Insurance pursuant to N.C. Gen. Stat. § 150B-49 “to conduct an additional administrative hearing on the contents of the [Roseman Affidavit].”

14. N.C. Gen. Stat. § 150B-49 provides as follows:

A party or person aggrieved who files a petition in the superior court may apply to the court to present additional evidence. If the court is satisfied that the evidence is material to the issues, is not merely cumulative, and could not reasonably have been presented at the administrative hearing, the court may remand the case so that additional evidence can be taken. If an administrative law judge did not make a final decision in the case, the court shall remand the case to the agency that conducted the administrative hearing under Article 3A of this Chapter. After hearing the evidence, the agency may affirm or modify its previous findings of fact and final decision. If an administrative law judge made a final decision in the case, the court shall remand the case to the administrative law judge. After hearing the evidence, the administrative law judge may affirm or modify his previous findings of fact and final decision. The additional evidence and any affirmation or modification of a final decision shall be made part of the official record.

N.C. Gen. Stat. § 150B-49 (2021).

**Lawsuit Between Roseman Bail Bonding
and Accredited Surety and Casualty Company**

15. In his Affidavit in Support of Judicial Review on August 7, 2019 (previously referred to as the “Roseman Affidavit”), Roddy Roseman states that the issues raised in the Notices of Administrative Hearing in this matter were already disposed of by the Lawsuit and its subsequent Settlement. Specifically, he claims:

- a. Sometime thereafter, Defendants Accredited Surety and Casualty Co., Inc and Southeastern Sureties Group Inc filed an Answer and Counterclaim. In this Counterclaim,

the Defendants made claims against the Plaintiffs which included all amounts regarding the Reece Harris Bond, the Desmond Jamir Robinson Bond and the return of Powers of Attorney. A copy of this Answer and Counterclaim is attached hereto as Exhibit B and incorporated by referenced. *See* Affidavit of Roddy D. Roseman in Support of Judicial Review, at ¶5.

- b. Each of these three claims were referred to as part of the Counterclaim in the Henderson County Lawsuit. *See* Affidavit of Roddy D. Roseman in Support of Judicial Review, at ¶6.
- c. This is more clearly shown in a pleading entitled Affidavit of Roddy D. Roseman: in opposition to Motion for Summary Judgment which was filed in the Cabarrus County Lawsuit. A copy of this Affidavit is attached hereto as Exhibit C and incorporated herein by reference. *See* Affidavit of Roddy D. Roseman in Support of Judicial Review, at ¶7.

16. Further, the Roseman Affidavit states that “[t]he claims being made by the Department of Insurance regarding the Reece Harris Bond, the Desmond Jamir Robinson Bond and the return of the Powers of Attorney were all settled by the Settlement Agreement and Mutual Release that was entered into by all parties.” *See* Affidavit of Roddy D. Roseman in Support of Judicial Review, at ¶9.

17. This is consistent with the argument of Respondents’ counsel at the Petition for Judicial Review hearing on August 12, 2019 before Superior Court Judge Anna Mills Wagoner referenced above:

That’s what the affidavit of Mr. Roseman proves, which is Exhibit C to his affidavit. And then the settlement agreement is proof that the parties reached an agreement. How can the Department of Insurance stand there and claim that certain things are supposed to be paid, and that was a fault of Mr. Roseman and Ms. Roseman as the bail bondsmen, when there was a settlement agreement reached in the Accredited case?

18. However, these statements contradict the plain language of the non-admissions clause contained in Paragraph 8 of the Settlement, which provides:

It is expressly understood and agreed that no aspect of this Agreement is to be considered an admission of liability by any of the parties, or any of their Successors and Assigns, with respect to any claims or defenses that were, or could have been, raised in the lawsuit, but rather, that this Agreement is intended to compromise and settle fully and forever all claims of every kind, character and description of the parties which were, or could have been raised, in the Lawsuit.

19. Furthermore, the Commissioner of Insurance, by and through his employees in the Department's Bail Bond Regulatory Division, is responsible for the enforcement of the laws governing bail agents in this State. See N.C. Gen. Stat. § 58-71-5 ("The Commissioner shall have full power and authority to administer the provisions of this Article, which regulates bail bondsmen and runners and to that end to adopt and promulgate rules and regulations to enforce the purposes and provisions of this Article.").

20. As such, whether the Respondents and Accredited resolved their dispute regarding the handling of the Roseman's BUF Account is of no importance to the regulation of the Rosemans' surety bail bondsman licenses. However, as noted above and below, the undersigned Hearing Officer has taken into account the new evidence submitted by Respondents in either affirming or modifying the Findings of Fact and Conclusions of Law stated herein.

Conclusions of Law for Roddy Roseman

The Reece Dwight Harris Bond

21. With regard to the Department's disciplinary allegations concerning Roddy Roseman's failure to pay Accredited its portion of the bond premium for the Harris bond (Power Number AH-00463385), the Department's burden of proof was not satisfied.

22. With regard to the Department's disciplinary allegations concerning Roddy Roseman's failure to report the use of Power Number AH-00463385 (the Harris bond), the Department's burden of proof was not satisfied.

23. Roddy Roseman's failure to enter into a written memorandum of agreement with Harris regarding the deferral of payment of the premium for the bond is technically a violation of N.C. Gen. Stat. § 58-71-167, and as such constitutes the failure to comply with or violation of the provisions of Chapter 58, Article 71 of the N.C. General Statutes, or any order, subpoena, rule or regulation of the

Commissioner in accordance with N.C. Gen. Stat. § 58-71-80(a)(7).

24. Roddy Roseman's failure to have his name and address or the name and address of his company, Roseman Bail Bonding, on both Receipt Number 219430 and Receipt Number 219455 is in violation of 11 NCAC 13 .0515, and as such constitutes the failure to comply with or violation of the provisions of Chapter 58, Article 71 of the N.C. General Statutes, or any order, subpoena, rule or regulation of the Commissioner in accordance with N.C. Gen. Stat. § 58-71-80(a)(7).

25. When the Harris bond was reduced to \$50,000, the maximum allowable bond premium allowed pursuant to N.C. Gen. Stat. § 58-71-95(5) was 15% of the face value of the bond, or \$7,500. N.C. Gen. Stat. § 58-71-16, which became effective on June 27, 2011, nearly one year after the Harris bond was written by Roddy Roseman, would have allowed Roddy Roseman to keep the full amount of premium despite the reduction in bond. Further, prior to the enactment of N.C. Gen. Stat. § 58-71-16, the Department, relying on the advice of the N.C. Attorney General's Office, interpreted N.C. Gen. Stat. § 58-71-95(5), which prohibits a surety bondsman from receiving a bond premium in excess of 15% of the face amount of the bond, to mean that if the bond is subsequently reduced any excess bond premium was required to be returned to the defendant.

26. However, Roddy Roseman testified that when Leake failed to remit the additional \$3,000 of premium that was owed on the Harris bond, he sued Leake in Small Claims Court and obtained a judgment for the full amount, plus interest. Although Respondents failed to produce the Small Claims Court Order, this fact was corroborated in Respondents' Second PJR, a legal filing that was made by their attorney under threat of sanctions in accordance with N.C. Gen. Stat. § 1A-1, Rule 11(a).¹

¹ Pursuant to N.C. Gen. Stat. § 1A-1, Rule 11(a):

(a) Signing by Attorney. – Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. . . . The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other

27. Therefore, the undersigned Hearing Officer finds that although Roddy Roseman's failure to return the excess bond premium of \$4,500 technically constituted a violation of N.C. Gen. Stat. § 58-71-95(5) and the Department's interpretation thereof, the Order issued by the Small Claims Court justified his withholding of the excess premium. As a result, with regard to the Department's disciplinary allegations concerning Roddy Roseman's failure to return the excess premium in accordance with N.C. Gen. Stat. § 58-71-95(5), the Department's burden of proof was not satisfied.

The Desmond Jamar Robinson Bond

28. Roddy Roseman's failure to report the issuance of Power Number AB-00490850 (the Robinson bond) demonstrates dishonest practices or untrustworthiness in the conduct of business in this State, in violation of N.C. Gen. Stat. § 58-71-80(a)(5).

29. Roddy Roseman's failure to report the issuance of Power Number AB-00490850 (the Robinson bond) demonstrates incompetency or untrustworthiness in the conduct of the licensee's affairs under his license, in violation of N.C. Gen. Stat. § 58-71-80(a)(8).

30. Roddy Roseman's failure to pay Accredited its portion of the bond premium on the Robinson bond (Power Number AB-00490850) demonstrates the unlawful withholding of moneys belonging to the insurers and received in the conduct of business under his license, in violation of N.C. Gen. Stat. § 58-71-80(a)(4).

31. Roddy Roseman's failure to pay Accredited its portion of the bond premium on the Robinson bond (Power Number AB-00490850) demonstrates dishonest practices, incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State, in violation of N.C. Gen. Stat. § 58-71-80(a)(5).

32. Roddy Roseman's failure to pay Accredited its portion of the bond premium on the Robinson bond (Power Number AB-00490850) demonstrates incompetency, financial irresponsibility or untrustworthiness in the conduct of the licensee's affairs under his license, in violation of N.C. Gen. Stat. § 58-71-80(a)(8).

Failure to Return Powers

33. Roddy Roseman's failure to report to Accredited that as many as 117

party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

powers had been lost in either 2009 or 2010 until April 11, 2012, demonstrates incompetence in the conduct of business in this State, in violation of N.C. Gen. Stat. § 58-71-80(a)(5).

34. Roddy Roseman's failure to report to Accredited that as many as 117 powers had been lost in either 2009 or 2010 until April 11, 2012, demonstrates incompetency in the conduct of the licensee's affairs under his license, in violation of N.C. Gen. Stat. § 58-71-80(a)(8).

35. Roddy Roseman's failure to return any unused powers to Accredited until April 11, 2012, nearly 16 months after the date of the first request from Accredited, demonstrates incompetence in the conduct of business in this State, in violation of N.C. Gen. Stat. § 58-71-80(a)(5).

36. Roddy Roseman's failure to return any unused powers to Accredited until April 11, 2012, nearly 16 months after the date of the first request from Accredited, demonstrates incompetency in the conduct of the licensee's affairs under his license, in violation of N.C. Gen. Stat. § 58-71-80(a)(8).

Writing Bonds Without Proper Appointment

37. Roddy Roseman's posting of 64 bonds on Powers of Attorney issued by Seneca when he was neither authorized nor appointed by Seneca to do so demonstrates incompetence in the conduct of business in this State, in violation of N.C. Gen. Stat. § 58-71-80(a)(5).

38. Roddy Roseman's posting of 64 bonds on Powers of Attorney issued by Seneca prior to receiving and registering his Power of Appointment from Seneca in the statewide Electronic Bondsmen Registry is in violation of N.C. Gen. Stat. § 58-71-140(e).

39. Roddy Roseman's violation of N.C. Gen. Stat. 58-71-140(e) constitutes the failure to comply with or violation of the provisions of Chapter 58, Article 71 of the N.C. General Statutes, or any order, subpoena, rule or regulation of the Commissioner in accordance with N.C. Gen. Stat. § 58-71-80(a)(7).

40. Roddy Roseman's posting of 64 bonds on Powers of Attorney issued by Seneca when he was neither authorized nor appointed by Seneca to do so demonstrates incompetency in the conduct of the licensee's affairs under his license, in violation of N.C. Gen. Stat. § 58-71-80(a)(8).

41. Roddy Roseman's posting of a bond for James Anthony Smith in Cabarrus County (Power Number S10-01853930) on March 10, 2012, after the date that he submitted his application to receive an appointment as a surety bondsman authorizing him to issue bonds on behalf of Seneca and Bail USA (March 8, 2012), demonstrates fraudulent or dishonest practices, or incompetence or untrustworthiness in the conduct of business in this State, in violation of N.C. Gen. Stat. § 58-71-80(a)(5).

42. Roddy Roseman's posting of a bond for James Anthony Smith in Cabarrus County (Power Number S10-01853930) on March 10, 2012, after the date that he submitted his application to receive an appointment as a surety bondsman authorizing him to issue bonds on behalf of Seneca and Bail USA (March 8, 2012), demonstrates incompetency or untrustworthiness in the conduct of the licensee's affairs under his license, in violation of N.C. Gen. Stat. § 58-71-80(a)(8).

Conclusions of Law for Barbara Roseman

Allowing the Writing Bonds Without Proper Appointment

1. By allowing Roddy Roseman to post 64 bonds on Powers of Attorney issued to her by Seneca when he was neither authorized nor appointed by Seneca to do so, Barbara Roseman demonstrated incompetence in the conduct of business in this State, in violation of N.C. Gen. Stat. § 58-71-80(a)(5).

2. By allowing Roddy Roseman to post 64 bonds on Powers of Attorney issued to her by Seneca when he was neither authorized nor appointed by Seneca to do so, Barbara Roseman demonstrated incompetency in the conduct of the licensee's affairs under his license, in violation of N.C. Gen. Stat. § 58-71-80(a)(8).

ORDER

1. Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that pursuant to N.C. Gen. Stat. §§ 58-71-80(a)(4), 58-71-80(a)(5), 58-71-80(a)(7) and 58-71-80(a)(8), the Surety Bail Bondsman license of Respondent Roddy Roseman, License Number 00100004167, is hereby SUSPENDED for a period of FOUR (4) YEARS.

2. Furthermore, in accordance with N.C. Gen. Stat. § 58-2-70(c), Respondent Roddy Roseman is ordered to pay a monetary penalty of \$750.00.

3. However, the undersigned Hearing Officer finds that Roddy Roseman's Surety Bail Bondsman license has been in revoked status since September 1, 2017 –

a period of 1,715 days from the date of this Order, or nearly five (5) years.

4. Therefore, the Surety Bail Bondsman license of Roddy Roseman shall be eligible for reinstatement upon payment of the monetary penalty outlined above, as well as any other administrative requirements of Chapter 58, Article 71 of the N.C. General Statutes, including the pre-licensing education requirements of N.C. Gen. Stat. § 58-71-71 and the associated administrative rules in 11 NCAC 13 .0500, *et seq.*

5. Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that pursuant to N.C. Gen. Stat. §§ 58-71-80(a)(5) and 58-71-80(a)(8), the Surety Bail Bondsman license of Barbara Roseman, License Number 00100004681, is hereby SUSPENDED for a period of TWO (2) YEARS.

6. Furthermore, in accordance with N.C. Gen. Stat. § 58-2-70(c), Respondent Barbara Roseman is ordered to pay a monetary penalty of \$250.00.

7. However, the undersigned Hearing Officer finds that Barbara Roseman's Surety Bail Bondsman license has been in suspension status since September 1, 2017 – a period of 1,715 days from the date of this Order, or nearly five (5) years.

8. Therefore, the Surety Bail Bondsman license of Barbara Roseman shall be eligible for reinstatement upon payment of the monetary penalty outlined above, as well as any other administrative requirements of Chapter 58, Article 71 of the N.C. General Statutes, including the pre-licensing education requirements of N.C. Gen. Stat. § 58-71-71 and the associated administrative rules in 11 NCAC 13 .0500, *et seq.*

9. Failure of either Respondents to comply with any of the terms of this Order constitutes a violation of an order of the N.C. Commissioner of Insurance and may result in the revocation of their licenses in accordance with N.C. Gen. Stat. § 58-33-46(a)(2).


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. 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 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 the 13th day of May, 2022.


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; via first-class U.S. Mail to the licensee at the address provided to the Commissioner pursuant to N.C. Gen. Stat. § 58-2-69(b); and, via State Courier, addressed as follows:

Thomas J. Felling
Assistant Attorney General
N.C. Department of Justice – Insurance Section
P.O. Box 629
Raleigh, NC 27602


Attorney for Petitioner

Eric D. Levine
Attorney at Law
Cameron Brown Building
301 South McDowell Street, Suite 1010
Charlotte, NC 28204

Attorney for Respondents

Certified Mail Tracking Number: 70170530000073198326

This the 13th day of May, 2022.


Mary Faulkner
N.C. Department of Insurance
1201 Mail Service Center
Raleigh, NC 27699-1201