

NORTH CAROLINA DEPARTMENT OF INSURANCE  
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE  
COMMISSIONER OF INSURANCE

IN THE MATTER OF:

THE LICENSURE OF  
SHONTEK SMALLWOOD

AGENCY DECISION AND  
FINAL ORDER

Docket Number 1924

Petitioner.

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This matter was heard on June 27, 2019, by the undersigned Hearing Officer, designated by the North Carolina Commissioner of Insurance ("Commissioner") under N.C. Gen. Stat. S 58-2-55, pursuant to a Notice of Administrative Hearing and an Amended Notice of Administrative hearing that was duly issued and served on Shontek Smallwood ("Petitioner").

Petitioner was present and represented by Chad E. Axford, with Levinson and Axford. Petitioner testified on her own behalf.

Respondent Bail Bond Regulatory Division ("BBRD") of the North Carolina Department of Insurance ("NCDOI") ("Respondent") was present at the hearing and was represented by Rebecca E. Lem, Assistant Attorney General. Steve Bryant, the Senior Complaint Analyst with BBRD, testified at the hearing.

Respondent offered into evidence Respondent's Exhibits 1 — 10, which were admitted into evidence.

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

FINDINGS OF FACT

1. The Notice of Administrative Hearing ("Notice") and Amended Notice of Administrative Hearing ("Amended Notice") were properly served on Petitioner on March 1, 2019, and May 1, 2019, respectively and were admitted into evidence as Respondent's Exhibits 1a and 1b. The Affidavits of Service for the Notice and Amended Notice were admitted into evidence as 2a and 2b.

2. The Notice was initially issued in this matter on February 27, 2019, setting the hearing for April 17, 2019.

3. The Amended Notice was subsequently filed on or about April 29, 2019 and served on Petitioner and the hearing was rescheduled to June 11, 2019.

4. The hearing was subsequently continued until June 27, 2019 pursuant to the Continuance and Scheduling Order, which was admitted into evidence as Respondent's Exhibit 1c.

5. Petitioner applied to the Department for a surety bondsman license on or about June 22, 2018 with an electronically signed surety bondsman license application ("license application"), after completing at least 12 hours of pre-licensing education. The license application was admitted into evidence as Respondent's Exhibit 3a.

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

7. Petitioner uploaded documentation with her license application disclosing several convictions for simple misdemeanor assault, worthless check, shoplifting and larceny. Petitioner's documentation was admitted into evidence as Respondent's Exhibit 3b.

8. The routine background check conducted as part of the bail bonds license application process revealed that Petitioner had six (6) criminal convictions.

9. The convictions included Disposition dates from 1997 through 2011. All six (6) convictions indicated a guilty plea. At the hearing, Petitioner introduced evidence that she was very young in most instances and that restitution had been paid through the court system to any alleged victims in these matters.

10. Petitioner answered "no" to Question 7 on the license application, which asked "[d]o you individually and/or jointly have any civil judgments, decrees or liens outstanding against you for any reason, including failing to pay State or Federal income tax, as of the date of this application?" (emphasis in original) The question asks for relevant documentation to be attached if the answer is "yes".

11. Even though she had responded "no" to Question 7, Petitioner provided documentation that showed that, as of June 27, 2018, Petitioner owed unpaid taxes of \$4,195.14, which she had agreed to have drafted from her checking account at the rate of \$100 per month, for a period of forty-two (42) months.

12. On or about August 21, 2018, BBRD notified the Petitioner that her application for a license had been denied. A copy of the denial notification was admitted into evidence as Respondent's Exhibit 4a.

13. On or about October 30, 2018, BBRD held a review with Petitioner of the denial of Petitioner's license application.



14. On November 2, 2018, BBRD sent a letter to Petitioner upholding its license denial and informing Petitioner that the denial was final unless she submitted a written request for a formal hearing. Petitioner thereafter timely requested an administrative hearing to review the denial. BBRD's November 2 letter and Petitioner's request for a formal hearing were admitted into evidence as Respondent's Exhibits 4d and 4e, respectively.

#### Testimony of Steve Bryant

15. Steve Bryant testified on behalf of BBRD. Mr. Bryant is an employee of NCDOT with approximately 12 years of tenure. Mr. Bryant has been a Senior Complaint Analyst in BBRD for approximately two (2) years since the creation of that division. Prior to his current position, Mr. Bryant held positions in the NCDOT as a complaint analyst and call center supervisor. Mr. Bryant, in his current position as a Senior Complaint Analyst, has responsibility for reviewing bail bonds license applications, attending conferences and hearings relating to bail bonds licensure, and assisting other division staff with bail bond related matters. Mr. Bryant has been involved in the current matter regarding the Petitioner's license application and denial since early in the process.

16. Mr. Bryant explained that in initially denying the Petitioner's license application, all information regarding her misdemeanor convictions, tax issue, and her driving record, as well as Petitioner's explanations regarding the aforementioned matters, were taken into consideration. Of primary concern were the tax issue, which indicated a lack of financial responsibility, and the various convictions involving theft, which under N.C. Gen. Stat. § 58-71-80 (a)(6) qualified as crimes involving "dishonesty, breach of trust, or moral turpitude." With regard to the many traffic violations on Petitioner's record, Mr. Bryant indicated that these just reinforced the decision to deny the Petitioner a license, even though traffic violations alone are not grounds for a license denial.

17. Mr. Bryant testified that in considering the denial of a license application, a panel of BBRD staff meet to discuss the issues, and he confirmed that it was the joint decision of the BBRD panel after the October 30, 2018 denial review to uphold its initial decision to deny Petitioner a license.

18. Mr. Bryant testified concerning the general duties of surety bail bondsmen and explained that they are responsible for maintaining other people's collateral in the form of property and money, which requires a trust relationship as well as financial responsibility. Mr. Bryant also explained that the duties of a surety bail bondsman included a significant amount of record-keeping, attention to detail, and accurate documentation.

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

20. Mr. Bryant noted that BBRD generally is more concerned with crimes that are recent and acknowledged that Petitioner's convictions are old. However, Mr. Bryant expressed strong concern that the convictions show a pattern of unlawful behavior that spans multiple years as well as giving rise to ongoing and continuous concerns as to the conduct of Petitioner's personal life.

21. Mr. Bryant stated that in light of Petitioner's criminal convictions involving crimes of dishonesty and breach of trust and the financial irresponsibility evidenced by the unpaid taxes, that he believes it is possible that this behavior could carry over into Petitioner's job as a bondsman, and it is BBRD's opinion that Petitioner should not be granted a surety bondsman license.

#### Testimony of Shontek Smallwood

22. Petitioner testified concerning her general life situation. Petitioner stated that she has overcome previous challenges in her life, such as a pregnancy in high school and a divorce several years later. She is currently employed, lives in the Charlotte area, and is a mother.

23. Petitioner testified about her educational and work background. After obtaining her high school degree, Petitioner completed cosmetology school, and for the last eight years, has been handling blood donations for the American Red Cross, where she has been promoted four (4) times. In her position with the American Red Cross she has access to a great deal of personal donor information, such as social security numbers, birthdates, and addresses, but she has never attempted to use this information to her own benefit or to disclose this information to others.

24. Petitioner explained that she wants to be a surety bail bondsman to help better her own situation in life and to help other people. She knows a current licensed bondsman who is willing to let her work as a bondsman in his Charlotte office and to mentor her.

25. Petitioner was required to take several hours of training and to pass a test before she could complete the application process. She stated that she was aware that failure to follow the laws and regulations pertaining to bail bondsmen would result in regulatory or even criminal action.

26. Petitioner explained the circumstances surrounding the criminal convictions for the misdemeanor larceny and shoplifting convictions. She explained that these actions were impulsive and that in her life now she makes a point to think before she acts and to always act in accordance with the law. Petitioner stated that the worthless check charge was simply an error of accounting where she thought there were sufficient funds to cover the check written for \$221.33. She repaid the amount owed on the check through the court proceeding.

27. Petitioner explained the circumstances surrounding the unpaid taxes stating that this occurred subsequent to her divorce when she was unemployed. She further testified that she has a repayment plan that is current with the Department of Revenue and that the balance is owed is less than of the original debt of \$4,195.14.

28. Petitioner testified that she has turned her life around and has changed since the time of her earlier criminal convictions. She has been gainfully employed for many years and wants to become a surety bail bondsman to better her life.



## CONCLUSIONS OF LAW

1. This matter is properly before the Commissioner, and he has jurisdiction over the parties and the subject matter pursuant to Chapter 58 of the North Carolina General Statutes, as well as N. C. Gen. Stat. §§ 150B-38 and 150-40, 11 N.C.A.C. 10401 *et seq.* and other applicable statutes and regulations. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

2. Petitioner was properly served with the Notice and Amended Notice in this proceeding.

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

4. Petitioner disclosed on her license application that she had previous criminal convictions and provided all required documentation regarding each incident along with an explanation. The latest conviction is at least eight (8) years old while the earlier convictions occurred in 1997, when Petitioner was a teenager, and 2003 thru 2004.

5. Given the age of the convictions and the progress and responsibility that the Petitioner has demonstrated in her current place of employment and in her personal life, the Hearing Officer does not find that these convictions are a sufficient basis for denial of Petitioner's application for a surety bondsman license in this case.

6. Although Petitioner does owe unpaid taxes, she provided documentation with her license application showing that she has entered into a repayment plan for those taxes and that the balance owned has been significantly reduced. The Hearing Officer does not find Petitioner's tax debt to be a sufficient basis for denial of Petitioner's surety bondsman license application in this case.

## ORDER

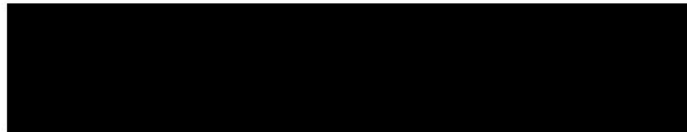
Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Bail Bond Regulatory Division's denial of Petitioner's application for a surety bondsman license be REVERSED, and that such license SHALL BE ISSUED to her.

## APPEAL RIGHTS

This is a Final Agency Decision issued under the authority of N.C. Gen. Stat. § 150B, Article 3A.

Under the provisions of N.C. Gen. Stat. S 150B-45, any party wishing to appeal a final decision of the North Carolina Department of Insurance must file a Petition for Judicial Review in the Superior Court of the County where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. The appealing party must file the Petition within 30 days after being served with a written copy of the Order and Final Agency Decision. In conformity with the 11 NCAC 01 .0413 and N.C. Gen. Stat. § 1A-I, 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. S 150B-46 describes the contents of the Petition, including explicitly stating what exceptions are taken to the decision or procedure and what relief the petitioner seeks, and requires service of the Petition by personal service or by certified mail upon all who were parties of record to the administrative proceedings. The mailing address to be used for service on the Department of Insurance is: A. John Hoomani, General Counsel, 1201 Mail Service Center, Raleigh, N.C. 27699-1201.

This the 25<sup>th</sup> day of July, 2019.



Sherri Hubbard  
Hearing Officer  
N.C. Department of Insurance  
1201 Mail Service Center  
Raleigh, N.C. 27699-1201

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the foregoing ORDER AND FINAL AGENCY DECISION by mailing a copy of the same via certified U.S. Mail, return receipt requested, in a first-class postage prepaid envelope, and via State Courier, addressed as follows:

Shontek Smallwood  
8613 Berrybrook Lane  
Charlotte, NC 28269  
*(Petitioner)*

Certified Mail Tracking Number: 70191120000089733797

Chad Axford  
LEVINSON & AXFORD  
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*(Attorney for the Petitioner)*

Rebecca E. Lem  
Assistant Attorney General  
N.C. Department of Justice  
9001 Mail Service Center  
Raleigh, NC 27699-9001  
*(Attorney for Respondent)*

This the 25<sup>th</sup> day of July, 2019.



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