

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
TORIANO ADARYLL THOMAS
(NPN # 18888329)

Respondent.

ORDER AND
FINAL AGENCY DECISION

Docket Number: 2103

THIS MATTER came on for hearing on January 19, 2023, in Hearing Room #131 of the Albemarle Building, located at 325 North Salisbury Street, Raleigh, North Carolina, before the undersigned Hearing Officer, as designated by the North Carolina Commissioner of Insurance ("Commissioner") under N.C. Gen. Stat. § 58-2-55.

Petitioner, the Bail Bond Regulatory Division of the North Carolina Department of Insurance ("Petitioner" or "BBRD"), was represented by Assistant Attorney General Nathan Childs. Respondent Toriano Adaryll Thomas ("Respondent") did not appear and was not represented by counsel at the hearing.

BBRD moved, pursuant to 11 N.C.A.C. 1.0423(A), for the imposition of sanctions due to Respondent's failure to appear at the hearing. Petitioner's motion for sanctions is DENIED. The undersigned Hearing Officer proceeded to accept and consider testimony and evidence offered by BBRD in support of its Petition at the hearing.

BBRD's Exhibits 1 through 13, including all subparts, were admitted into evidence. Judicial notice was taken of two statutes, N.C. Gen. Stat. §§ 58-71-85 and 58-71-80, that were marked as BBRD's Exhibits 14 and 15.

Jennifer Bullins-Spivey, BBRD Complaint Analyst, appeared and testified on behalf of Petitioner.

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

FINDINGS OF FACT

1. BBRD is a division of the North Carolina Department of Insurance (“NCDOI”), which is a state agency responsible, in accordance with Chapter 58 of the North Carolina General Statutes, for enforcement of bail bonding laws and regulating and licensing bail bondsmen and runners.

2. Respondent was issued a North Carolina surety bail bondsman license (“License”) on August 20, 2018. *See* Pet’r’s Ex. 3. Respondent’s License came up for biennial renewal, but BBRD refused to renew Respondent’s License, giving notice via letter dated May 27, 2021. *See* Pet’r’s Ex. 13A.

3. Pursuant to N.C. Gen. Stat. § 58-71-85(b), Respondent made written demand for review of the renewal denial on June 23, 2021. *See* Pet’r’s Ex. 13B. Following multiple continuances of the review, *see* Pet’r’s Exs. 13D–13F, the review took place on July 27, 2022. *See* Pet’r’s Ex. 13F. BBRD informed Petitioner of its decision to uphold its denial of a renewal of Respondent’s License via letter dated August 3, 2022. *See id.*

4. On September 1, 2022, Respondent made written demand for a hearing to review BBRD’s decision. *See* Pet’r’s Ex. 13G.

5. The hearing in this matter was originally set for December 15, 2022, *see* Pet’r’s Ex. 1, but was continued to January 19, 2023, upon Respondent’s request. *See* Pet’r’s Exs. 2–3.

6. Respondent again asked for a continuance on January 16, 2023. The untimely request for continuance, however, was denied by order entered January 18, 2023, and communicated to Respondent that same day. *See* January 18, 2023, Order Denying Respondent’s Motion to Continue, which is part of the Official Record in this case.

7. At the time of the January 19, 2023, hearing, Respondent was not appointed by any insurer to write bail bonds in North Carolina. *See* Pet’r’s Exs. 1A–1C, 3, and 13A–13G.

8. Service of the Scheduling Order providing Respondent with due notice of the January 19, 2023, hearing was deemed perfected via first class U.S. Mail on December 26, 2022, by operation of N.C. Gen. Stat. § 58-2-69(e), as shown by the Affidavit of Service admitted into evidence at the hearing. *See* Pet’r’s Ex. 2B.

9. Jennifer Bullins-Spivey is a Complaint Analyst with BBRD. Among her other duties, Ms. Bullins-Spivey handles licensure investigations of North Carolina bail bondsmen.

10. On January 28, 2018, Respondent submitted an application to the Commissioner for Respondent's initial licensure as a surety bail bondsman. Respondent certified, under penalty of perjury, that all information submitted in the application and its attachments was true and complete. See Pet'r's Ex. 4.

11. The January 28, 2018, license application asked Respondent "[h]ave you ever been convicted, or are you currently charged with, committing a crime, whether or not adjudication was withheld?" The application further required "[i]f yes, attach (a) a written statement explaining the circumstances of each incident; (b) a copy of the charging document, and (c) a copy of the official document which demonstrates the resolution of the charges or any final judgment."

12. Respondent answered "yes" to this question on the January 28, 2018, North Carolina license application, and attached records disclosing his misdemeanor convictions in *State v. Thomas*, File No. 96-CR-736 (Cabarrus Co.), *State v. Thomas*, File No. 91-CRS-14193 (Cabarrus Co.), and *State v. Thomas*, File No. 99-CR-4396 (Stanly Co.). See Pet'r's Ex. 4.

13. However, in 2019, BBRD Complaint Analyst Keisha Burch found that Respondent had not disclosed all prior criminal convictions in his January 28, 2018, license application and opened a licensure investigation.

14. Ms. Burch left her position with Petitioner and the matter was reassigned to Complaint Analyst Linda Long. When Ms. Long left her position with BBRD in 2021, Ms. Bullins-Spivey took over handling the instant matter for BBRD.

15. Ms. Bullins-Spivey determined that Respondent had failed to disclose the following additional misdemeanor convictions:

- a. On December 10, 1991, in *State v. Thomas*, File No. 91-CR-5674, in the General Court of Justice, District Court Division, Stanly County, North Carolina, Respondent was convicted upon his plea of guilty to misdemeanor carrying of a concealed weapon in violation of N.C. Gen. Stat. § 14-269(a). See Pet'r's Ex. 5.
- b. On October 5, 1992, in *State v. Thomas*, File No. 91-CRS-5804, in the General Court of Justice, Superior Court Division, Stanly County, North Carolina, Respondent was convicted upon his plea of guilty to the lesser included charge of misdemeanor possession of stolen goods or property in violation of N.C. Gen. Stat. § 14-71.1. See Pet'r's Ex. 6.
- c. On November 28, 1995, in *State v. Thomas*, File No. 95-CR-2814, in the General Court of Justice, District Court Division, Stanly County, North Carolina, Respondent was convicted upon his plea of guilty to misdemeanor uttering a simple worthless check to Still Oil Company, in violation of N.C. Gen. Stat. § 14-107(d)(1). See Pet'r's Ex. 7.

- d. On November 28, 1995, in *State v. Thomas*, File No. 95-CR-2816, in the General Court of Justice, District Court Division, Stanly County, North Carolina, Respondent was convicted upon his plea of guilty to misdemeanor uttering a simple worthless check to Servco, in violation of N.C. Gen. Stat. § 14-107(d)(1). See Pet'r's Ex. 8.
- e. On November 28, 1995, in *State v. Thomas*, File No. 95-CR-2818, in the General Court of Justice, District Court Division, Stanly County, North Carolina, Respondent was convicted upon his plea of guilty to misdemeanor uttering a simple worthless check to Walmart, in violation of N.C. Gen. Stat. § 14-107(d)(1). See Pet'r's Ex. 9.
- f. On November 28, 1995, in *State v. Thomas*, File No. 95-CR-2819, in the General Court of Justice, District Court Division, Stanly County, North Carolina, Respondent was convicted upon his plea of guilty to misdemeanor uttering a simple worthless check to Walmart, in violation of N.C. Gen. Stat. § 14-107(d)(1). See Pet'r's Ex. 10.
- g. On October 23, 1998, in *State v. Thomas*, File No. 98-CRS-898, in the General Court of Justice, Superior Court Division, Stanly County, North Carolina, Respondent was convicted upon his plea of guilty to misdemeanor resisting a public officer, in violation of N.C. Gen. Stat. § 14-223. See Pet'r's Ex. 11.

See Pet'r's Ex. 4.

16. Pursuant to N.C. Gen. Stat. § 58-71-75(a), all licensed North Carolina bail bondsman and runners, including Respondent, are required to submit an application for renewal of their licenses "on July 1 of each even year..." Accordingly, Respondent submitted an application for the July 1, 2020, renewal of his surety bail bondsman license.

17. Section 58-71-80 of the General Statutes sets out the grounds on which the Commissioner is authorized to refuse to renew the license of a North Carolina bail bondsman or runner.

18. Pursuant to N.C. Gen. Stat. § 58-71-85(b), Deputy Commissioner John G. Cable notified Respondent in writing on May 27, 2021, that BBRD had denied Respondent's application for renewal of his surety bail bondsman license. The May 27, 2021, letter states BBRD had information indicating that Respondent failed to disclose the above-mentioned Stanly County Misdemeanor Convictions and a February 3, 2021, civil judgment against him in Respondent's January 28, 2018, licensure application, and that, accordingly, the Commissioner was authorized to refuse to renew Respondent's License under N.C. Gen. Stat. §§ 58-71-80(a)(3) and 58-71-80(a)(6). The letter also states in part :

If you wish to dispute any of these factual allegations or otherwise be heard as to the denial of your application for

renewal, you may request a review under North Carolina General Statute § 58-71-85(b).

See Pet'r's Ex. 13A.

19. On June 23, 2021, Respondent sent an email to Ms. Long requesting a review of BBRD's decision to deny renewal of the License. *See Pet'r's Ex. 13B.*

20. The review was scheduled to occur at NCDOT's Piedmont Regional Office in Archdale, North Carolina, on March 24, 2022, but was continued at Respondent's request. The review was rescheduled for July 27, 2022. *See Pet'r's Exs. 13C and 13D.*

21. Respondent participated in the July 27, 2022, review via remote videoconference. Ms. Bullins-Spivey and counsel for Petitioner participated in the review on behalf of BBRD. *See Pet'r's Ex. 13F.*

22. Following the review, BBRD notified Respondent by letter dated August 3, 2022, that BBRD had completed its review of its decision not to renew Respondent's License and concluded that the decision "was reasonable due to your failure to disclose [the Stanly County Misdemeanor Convictions] in your January 28, 2018, new license application[]" and "due to your misrepresentation in the new license application that you did not have any civil judgments against you as of the date of the application, when in fact a \$10,134.30 civil judgment had been entered against you in *State Employees' Credit Union v. Thomas*, 11-CVD-1388 (Stanly Co.) on February 3, 2021, and remained unsatisfied when you submitted your license application on January 28, 2021." *See Pet'r's Ex. 13F.*

23. The August 3, 2022, letter also advised Respondent of his right to a formal hearing under N.C. Gen. Stat. § 58-71-85(b) stating:

The denial of your renewal application is final unless, within 30 days of your receipt of this letter, BBRD receives your written request for a formal hearing pursuant to the provisions of the Administrative Procedures Act, Chapter 150B of the North Carolina General Statutes.

See Pet'r's Ex. 13F.

24. On September 1, 2022, Respondent sent an email to counsel for Petitioner stating, "I would like to ask for a appeal" and attaching a signed statement stating, "I would like to a review to keep my NC Bail Bond License." *See Pet'r's Ex. 13G.*

CONCLUSIONS OF LAW

1. This matter is properly before the Commissioner, and the Commissioner has jurisdiction over the parties and the subject matter.

2. Respondent was properly served with the Notice of Administrative Hearing and the Scheduling Order providing him with due notice of the January 19, 2023, hearing in this matter but failed to attend the hearing or retain counsel to represent him at the hearing.

3. Respondent requested the hearing, pursuant to N.C. Gen. Stat. § 58-71-85, to review BBRD's decision to refuse to renew Respondent's License.

4. Pursuant to N.C. Gen. Stat. § 58-71-80(a)(3), the Commissioner may refuse to renew a license issued by NCDOT where an applicant has made a "material misstatement, misrepresentation or fraud in obtaining the license."

5. In the instant matter, BBRD offered evidence showing that Petitioner was convicted of misdemeanor carrying a concealed weapon, misdemeanor possession of stolen goods or property, misdemeanor uttering a simple worthless check to Still Oil Company, misdemeanor uttering a simple worthless check to Servco, two charges of misdemeanor uttering simple worthless checks to Walmart, and misdemeanor resisting a public officer, misdemeanors from Stanly County.

6. By failing to disclose the above-listed Stanly County misdemeanor convictions when asked to identify his prior criminal convictions in his January 28, 2018, license application, Respondent materially misrepresented his criminal history and obtained the License by providing materially untrue information. Respondent's omission, by itself, is sufficient to support BBRD's refusal to renew Respondent's License under N.C. Gen. Stat. § 58-71-80(a)(3).

7. N.C. Gen. Stat. § 58-71-80(a)(6) also authorizes the Commissioner to refuse to renew a license for "[c]onviction of a crime involving dishonesty, breach of trust, or moral turpitude."

8. BBRD's evidence establishes that Respondent was convicted of four charges of uttering simple worthless checks in violation of N.C. Gen. Stat. § 14-107(d)(1).

9. Uttering worthless checks is a crime involving dishonesty. N.C. Gen. Stat. § 14-107, the statute applicable to Respondent's convictions, requires knowledge that the maker or drawer has insufficient funds. The North Carolina Supreme Court has stated that, under Section 14-107, a check is a representation that there are sufficient funds that, "if known to be untrue, is a false pretense." *Nunn v. Smith*, 270 N.C. 374,

379, 154 S.E.2d 497, 501 (1967). Therefore, N.C. Gen. Stat. § 14-107 defines a crime involving dishonesty or false statement and Respondent was convicted of crimes involving dishonesty.

10. The undersigned Hearing Officer agrees with BBRD that a sufficient nexus exists between the criminal conduct involved in Respondent's multiple undisclosed violations of N.C. Gen. Stat. § 14-107 and the duties of a surety bail bondsman to warrant BBRD's refusal to renew the License. As a routine part of their business responsibilities, surety bail bondsmen are required to properly account for monies held in trust and are responsible for handling premium accepted from their bond principals. Furthermore, BBRD has offered evidence that Respondent was convicted of subsequent crimes, including misdemeanor resisting a public officer and misdemeanor fraudulent disposal of mortgaged property. *See* Pet'r's Exs. 4 and 11.

11. Accordingly, the undersigned Hearing Officer agrees with BBRD that Respondent's multiple undisclosed convictions of violating N.C. Gen. Stat. § 14-407, a financial crime involving dishonesty or false statement, are by themselves sufficient to support BBRD's refusal to renew Respondent's License under N.C. Gen. Stat. § 58-71-80(a)(6).

12. BBRD also presented evidence at the hearing that it satisfied the notification and review requirements of N.C. Gen. Stat. § 58-71-85(b) for decisions to deny reissuance of a license. On May 27, 2021, BBRD notified Respondent in writing of the reasons for the denial of renewal of Respondent's License. BBRD conducted a review of its decision on July 27, 2022, with Respondent's participation and notified Respondent of the outcome of the review in writing on August 3, 2022. *See* Pet'r's Exs. 13A and 13F.

13. Based on the evidence received and the applicable law, the undersigned Hearing Officer concludes that BBRD's decision to deny reissuance of Respondent's License was reasonable and authorized by N.C. Gen. Stat. §§ 58-71-80(a)(3) and (a)(6) because Respondent obtained the License through material misstatements and misrepresentations contained in his January 27, 2018, application and because Respondent was convicted of multiple charges of uttering worthless checks, which are financial crimes involving dishonesty and false statements.

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BASED UPON the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer enters the following:

ORDER

It is ORDERED that the Bail Bond Regulatory Division's decision to refuse to renew Respondent's North Carolina surety bail bondsman license is UPHELD, and that no license shall be reissued to him.

This 13th day of March, 2023.



Erin E. Gibbs
Hearing Officer
N.C. Department of Insurance

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 11 NCAC 01 .0413 and N.C. Gen. Stat. § 1A-1, Rule 5, this Order and Final Agency Decision was served on the parties on the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Order and Final Agency Decision. N.C. Gen. Stat. § 150B-46 describes the contents of the Petition 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.

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that I have this day served the foregoing **ORDER AND FINAL AGENCY DECISION** by mailing copies of the same via certified U.S. Mail, return receipt requested and via first class U.S. Mail to the Respondent at the address provided to the Commissioner pursuant to N.C. Gen. Stat. § 58-2-69(b); and via State Courier to Attorney for Petitioner, addressed as follows:

Toriano Adaryll Thomas
43663 Colonial Heights
New London, N.C. 28127
(Respondent)

Certified Mail Tracking Number: 70200640000031858347

Nathan D. Childs
Assistant Attorney General
N.C. Department of Justice
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(Attorney for Petitioner)

This 13th day of March, 2023.


Mary Faulkner
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