BEFORE ALLAN L. MCVEY, INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA

TERRY SHAFER,

Complainant,

v. Administrative Proceeding No. 24-IC-175894

GARY LEO SOWARDS &
SOWARDS BONDING COMPANY,

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING REQUEST FOR A HEARING

This matter came before the Insurance Commissioner of West Virginia (hereinafter, "Commissioner"), on Terry Shafer's (hereinafter, "the Complainant") request for a hearing on his administrative complaint filed against Gary Leo Sowards and Sowards Bonding Company, (hereinafter, "the Respondent"). After consideration of the Complainant's hearing request, the undersigned Commissioner proceeded to make the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. On June 30, 2024, a felony warrant was served upon Miranda Myers, charging her with grand larceny.

2. Raleigh County Magistrate Michael McCarthy held Ms. Myers initial appearance and set Ms. Myers's bond as a $15,000.00 property or surety bond.

3. On July 3, 2024, the Complainant engaged the Respondent's services as a surety bail bondsman to post bond for Ms. Myers.

4. The Complainant paid the Respondent $1,500.00 to post bond for Ms. Myers. The $1,500.00 dollars paid to the Respondent was the only money or property provided to him as compensation for posting Ms. Myers's bond.

5. The Complainant signed a "Co-Signer Agreement," prepared by the Respondent, that provides, among other things, that the Complainant had been advised that the $1,500.00 paid to the Respondent was the "fee for executing the bond and will never be returned."

6. The Respondent posted bond for Ms. Myers, and the magistrate prepared her jail release order on July 3, 2024.

7. On July 8, 2024, Ms. Myers's charges were dismissed.

8. On July 28, 2024, the Complainant filed the instant complaint. The Complainant alleged that Ms. Myers was "jailed on erroneous charges for four days." He stated that at Ms. Myers's first hearing, "they dropped the charges and was told it was a civil matter." The Complainant argued that he never received a receipt for the money he paid to the Respondent and, therefore, he could not recover his costs in small claims court.

9. On or about August 29, 2024, the Respondent filed a response. The Respondent agreed that the Complainant paid him a $1,500.00 bonding fee on July 3, 2024, to execute bond for Ms. Myers. The Respondent produced the "Co-Signer Agreement" that the Complainant signed. The Respondent denied that he failed to provide a receipt to the Complainant and stated that it was his business practice to provide every client a receipt of payment and the next scheduled court date on the back of his business card.

10. Following an investigation, the Commissioner found that the Respondent had not violated any of the laws or rules related to surety bail bondsmen.

11. On October 10, 2024, the Commissioner sent the Complainant a letter informing him that the Respondent committed no violations of West Virginia law or regulations.

12. On October 28, 2024, the Complainant filed a request for a hearing on the Commissioner's findings, based on "the fact that no receipt was given or copies of papers, which voids the contract" and that the charges against Ms. Myers were dropped four days after the Respondent executed bond for Ms. Myers.

CONCLUSIONS OF LAW

1. W. Va. Code §33-2-13 states, in pertinent part, "the commissioner may call and hold hearings for any purpose deemed necessary by him for the performance of his duties. He shall . . . upon a written demand therefor by a person aggrieved by any act or failure to act by the commissioner or by any rule, regulation or order of the commissioner." *See also* W.Va. Code R. § 114-13-3.1.

2. Pursuant to W.Va. Code R. § 114-13-3.2, "[a]ny written demand filed pursuant to subsection 3.1 of this section by a person claiming to be aggrieved shall specify the grounds to be relied upon as basis for the relief to be requested at such hearing."

3. Further, W.Va. Code R. § 114-13-3.3 states:

> 3.3 Hearing on written demand ~ When the commissioner is presented with a demand for a hearing as described in subsections 3.1 and 3.2 of this section, he or she shall conduct a hearing within forty-five (45) days of receipt by him or her of such written demand, unless postponed to a later date by mutual agreement. However, if the commissioner shall determine that the hearing demanded:
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> a. Would involve an exercise of authority in excess of that available to him or her under the law; or
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> b. Would serve no useful purpose, the commissioner shall, within forty-five (45) days of receipt of such demand, enter an order refusing to grant the hearing as requested, incorporating therein his or her reasons for such refusal. Appeal may be taken from such order as provided in W.Va. Code §33-2-14.

4. The Commissioner has jurisdiction over this matter pursuant to W.Va. Code §§ 51-10-8 and 33-12-1, *et seq*, as well as W.Va. Code St. R. § 114-103-1, *et seq*.

5. The Respondent is a licensed surety bail bondsman pursuant to W.Va. Code § 51-10-8 and a resident producer license holder pursuant to W.Va. Code § 33-12-9.

6. With respect to consumer complaints filed against licensed bail bondsmen, the Commissioner has authority to file an administrative complaint alleging that the bail bondsman committed violation of law and, after notice to the bail bondsman and a hearing on the allegations, suspend or revoke the license of the bail bondsman and/or assess a civil fine against the bondsman. *See* W.Va. Code R. § 114-103-11.

7. W.Va. Code R. § 114-103-1, *et seq*, does not provide the Commissioner authority to make monetary judgments against bail bondsmen in favor of complainants.

8. The Complainant has asserted two bases for hearing: 1) no receipt or related paperwork was provided to him; and 2) the charges against Ms. Myers were dropped four days after she was released on bond.

9. To the extent that the Complainant asserts that a receipt is required upon following the payment or execution of a bond by a licensed surety bail bondsman, the Commissioner finds that a receipt is not required by statute or rule.

10. Receipts are mentioned in the statutes and rules in connection to collateral.

11. For instance, W.Va. Code § 51-10-5a(c) provides

> (c) When collateral or security is received by a bail bondsman, a receipt shall be furnished. Copies of all receipts issued shall be kept by the bail bondsman for a minimum of five years. All receipts issued shall:
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> (1) Be prenumbered and used and filed in consecutive numerical order;
>
> (2) Show the name and address of the bail bondsman;

(3) Show the name and address of the person providing the collateral;

(4) Show the amount and nature of the collateral and the date received;

(5) Show the name of the person accepting collateral; and

(6) Show the total amount of the bond for which the collateral is being accepted and the name of the defendant.

See also W.Va. Code R. § 114-103-7, entitled "Receipts for Collateral."

12. Collateral is "[p]roperty which is pledged as security for the satisfaction of a debt" or "additional security for performance of principal obligation, or that which is by the side, and not in direct line." Black's Law Dictionary, Sixth Edition.[1]

13. While it is clear from the statute and rule that a receipt must be furnished when a bail bondsman accepts collateral, this requirement is specific to collateral and is separate from the payment of the statutorily required bonding fee.

14. W.Va. Code § 51-10-5 provides that "it shall be unlawful for any person . . . engaged in the bonding business . . . to charge, accept, or receive any sum of money, or other thing of value, *other than the bonding fee* from any person for whom he has executed bond." (Emphasis added). *See also* W.Va. Code St. R. § 114-103-5.2.

15. W.Va. Code § 51-10-5a sets forth requirements for a "bonding fee" and provides that

(a) The bonding fee required by a bail bondsman shall be at least ten percent of the amount of the bond. The bonding fee received by the bondsman shall not, in the aggregate, exceed the amount of the bond.

(b) The bonding fee may be paid as follows:

(1) In full at the time of the issuance of the bond; or

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[1]Collateral is not defined in W.Va. Code § 51-10-1, *et seq*, nor W.Va. Code R. § 114-103-1, *et seq*.

(2) At least three percent paid at the issuance of the bond with the remaining percentage to be paid over a period not to exceed twelve months.

16. These statutes clearly provide that a bonding fee is required in every case, whether in full or in a percent and paid over twelve months. However, the bail bondsman accepting and receiving collateral is on a case-by-case basis and is not always required.

17. Notably, there is no statutory or regulatory requirement for a bail bondsman to furnish a receipt upon the payment of a bonding fee.

18. In this case, the magistrate court set Ms. Myers's bond as a $15,000.00 property or surety bond. The Complainant and the Respondent both agree that the Complainant paid $1,500.00 to the Respondent and that the Respondent executed the bond. The "Co-Signer Agreement" that the Respondent provided, and that the Complainant signed, proclaims in capitalized letters that the money paid "is the fee for executing the bond and will never be returned." Although the Respondent asserts that he provided a receipt to the Complainant, the existence of the receipt is inconsequential. West Virginia law does not require that a receipt be furnished when a bail bondsman accepts a bonding fee. Even if the Respondent failed to provide a receipt for a bonding fee, this is not a violation of rules regulating bail bondsmen and could not form the basis of an administrative action against the Respondent.

19. There is no indication that either party believed that the $1,500.00 was collateral to be held by the Respondent and returned a later time. Neither party refers to the sum as collateral and neither party suggested that a separate payment constituted the required bonding fee.

20. Accordingly, the Commissioner finds that a hearing on the issue of whether the Respondent provided a receipt to the Complainant would serve no useful purpose.

21. The Complainant also requests a hearing on the basis that the charges against Ms. Myers were dropped four days after the Respondent executed her bond.

22. The Complainant has not alleged that the Respondent effected the outcome of Ms. Myers's criminal charges in any manner nor is there any evidence to support such a conclusion.

23. The decision to pursue or dismiss criminal charges against Ms. Myers is not the responsibility of the Respondent.

24. The Commissioner has no authority to regulate the individuals who filed charges against Ms. Myers or presided over Ms. Myers's criminal prosecution and, therefore, has no authority to investigate those matters.

25. Consequently, the Commissioner finds that a hearing on the circumstances surrounding Ms. Myers's criminal charges and prosecution would involve an exercise of authority in excess of that available to him under the law.

26. Further, as cited above, for each executed bond, a bail bondsman *must* collect a bonding fee, regardless of the length of time that passes prior to the Court releasing the bond on that defendant.

27. The Respondent executed a bond for Ms. Myers and lawfully collected the bonding fee.

28. The Respondent was required by law to collect a bonding fee and bear responsibility for the defendant's appearance before the Court from which the bond was issued until the bond is released or a bail piece is issued.

29. The Respondent performed his agreed duty of executing the bond for Ms. Myers for the statutory bonding fee.

30. Accordingly, the Commissioner finds that a hearing on the issue would serve no useful purpose because the Respondent committed no violations of West Virginia law in his performance as a bail bondsman for Ms. Myers.

ORDER

Wherefore, since a hearing in this matter would serve no useful purpose and would involve an exercise of authority in excess of that available to the Commissioner under the law, it is **ORDERED** that the Complainant's request for a hearing is **DENIED**. Inasmuch as orders entered by the Commissioner are subject to judicial review in the Intermediate Court of Appeals as set forth in W.Va. Code §51-11-4(b)(4), any person aggrieved by this Order may, within 30 days after the entry of the judgment being appealed, file an appeal as set forth in W.Va. Code §33-2-14 and W.Va. R.A.P., Rule 5(b).

ENTERED this the 7th day of November, 2024.

Allan L. McVey
CPCU, ARM, AAI, AAM, AIS
Insurance Commissioner