

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

In the Matter of:
Antonio Ibarra Jr.
NPN 20639653

**Administrative Proceeding: 23-IC-156507;
23-IC-156139; 23-IC-156406; 23-IC-156396;
23-IC-156666**

FINAL ORDER

The undersigned, Insurance Commissioner of the State of West Virginia, does hereby adopt and approve the Recommended Decision of the Hearing Examiner, appended hereto, as well as the findings of fact and conclusions of law therein contained. It is consequently ORDERED that the West Virginia Offices of the Insurance Commissioner proved that the Respondent, Antonio Ibarra Jr. (NPN 20639653), violated W.Va. Code §51-10-5a and W.Va. Code R. §§ 114-103-11.1.2, 114-103-11.1.4, 114-103-11.1.6, and 114-103-11.1.7.

The West Virginia Offices of the Insurance Commissioner failed to prove that the Respondent violated West Virginia Code § 51-10-7 or West Virginia Code of State Rules § 114-103-108.

Due to the proven violations and as authorized under W.Va. Code §51-10-9, W.Va. Code R. §§114-103-11.1 and §114-103-11.3, it is **HEREBY ORDERED** that the resident producer license and the surety bail bondsman license of the Respondent is hereby **REVOKED**. It is further **ORDERED** that the Respondent is fined \$700.00 pursuant to W.Va. Code R. §114-103-11.3. Pursuant to W.Va. Code § 33-1-13, the cost of the hearing, service of subpoenas, and stenographic record and transcript is **HEREBY TAXED** to the Respondent. The Respondent is **ORDERED** to

return his bail bondsman identification card to the West Virginia Offices of the Insurance Commissioner “**within 10 working days.**” W.Va. Code R. § 114-103-3.6.

The Commissioner’s final orders 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 of the entry of the judgment being appealed**, file an appeal as set forth in W.Va. Code § 33-2-14 and Rule 5(b) of the West Virginia Rules of Appellate Procedure.

ENTERED this 7th day of March, 2024.



ALLAN L. MCVEY, CPCU, ARM, AAI, AAM, AIS
INSURANCE COMMISSIONER

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

**In Re: Antonio Ibarra Jr.
Respondent,**

Admin. Proceeding No. 23-IC-156507, 23-IC-156139, 23-IC-156406, 23-IC-156396, 23-IC-156666

**RECOMMENDED DECISION
OF THE HEARING EXAMINER**

On January 11, 2024, a hearing was held before Hearing Examiner Mark W. Carbone, Esq. There then being present on behalf of the West Virginia Offices of the Insurance Commissioner: Andrew Ryan, Esq., Jeffrey Black, Esq., Robert Grishaber, Director of Licensing and Education and Jo Taylor, Bail Bond Analyst. Ms. Sandra Timmerman, Esq., General Counsel for Williams National Surety. Mr. Antonio Ibarra, (hereinafter “Respondent”) appeared on his own behalf.

Statement of the Case

This matter arises out of the Administrative Complaint filed against Respondent for several violations of West Virginia law dealing with bail bondsmen.

Findings of Fact

1. The Respondent owns and operates a bail bond company known as Big Dawgz Bail Bondz located at 200 East King Street, Unit C, Martinsburg, West Virginia 25446. (WVOIC Ex. 3)

2. On February 28, 2023, the Respondent signed the Bail Bondsman Affidavit. In the Affidavit the Respondent signed the statement that he “has read and understands and will in all respects abide by the terms and provisions of the West Virginia Insurance Commissioner’s legislative rule entitled ‘Bail Bondsmen in Criminal Cases’ (114 CSR 103) and W.Va. Code §51-10-1 *et.seq.*” (WVOIC Ex. 7)

3. The Respondent has a producer license for bail bonds which was issued on March 7, 2023. His license number is 20639653. (WVOIC Ex. 5)

4. On February 27, 2023, the Respondent entered into a Producer Agreement with Crum and Forster Indemnity Company (“Crum and Forster”) and Williams Surety. The purpose of the Producer Agreement was to establish the terms under which a producer may write bail bonds. (Tr. P.15; WVOIC Ex. 2)

5. On May 16, 2023, a batch of Powers of Attorney were sent to the Respondent from Williams Surety. This batch was not received by the Respondent but was eventually returned to Williams Surety by the United States Postal Service. (Tr. P. 21)

6. On May 25, 2023, another batch of Powers of Attorney were sent to the Respondent. The Respondent stated that he did not receive these Powers of Attorney. The Powers of Attorney were never found. (Tr. P. 23)

7. On July 6, 2023, Williams Surety received a report and two checks from the Respondent to pay the premiums and the buildup funds for the bail bonds listed on the report. On July 14, 2023, these checks were returned to Williams Surety for insufficient funds. The first check was for premiums collected in the amount of \$7,015.50. The second check for the Build Up Fund was for \$4,677.00. (Tr. P. 25, 31; WVOIC Ex. 1)

8. On July 18, 2023, Williams notified the Respondent that the checks had been returned due to insufficient funds. The Respondent informed Williams Surety that he would send in a cashier's check to cover the rejected checks. He also stated that he did not understand why the checks hadn't cleared since there were funds in the account. (Tr. P. 27-28; WVOIC Ex. 1)

9. On July 17, 2023, Williams received two checks and a report from the Respondent. These checks were returned on July 25, 2023, for insufficient funds. The first check was for premiums collected in the amount of \$2611.50. The second check for Build Up Fund was for \$1,741.00. (Tr. P. 27, 32; WVOIC Ex. 1)

10. The Respondent admitted that the four checks had been returned for insufficient funds. (Tr. P. 30)

11. Following the second batch of checks returned for insufficient fund, Williams again contacted the Respondent. The Respondent did not respond. (Tr. P. 28; WVOIC Ex. 1)

12. On August 13, 2023, Ms. Timmerman sent an email to the Respondent requesting that he return the money from the checks that had been returned and all Powers of Attorney in his possession. She requested that those items be returned no later than August 18, 2023. (Tr. P. 28, 47; WVOIC Ex. 1)

13. The Respondent testified that he did not receive the August 13, 2023, email. (Tr. P. 48; WVOIC Ex. 1)

14. On August 25, 2023, Crum and Forster sent a termination letter to the Respondent. The letter stated that the contract between the parties is terminated immediately. The letter also requested that the Respondent return the money for the checks that have been returned and the Powers of Attorney in his possession. The Respondent admitted that he received the August 25, 2023, letter. (Tr. P. 49; WVOIC Ex. 1)

15. The Respondent claimed that once he received the August 25, 2023, letter from Crum and Forster, the Respondent prepared a letter and a bond report which was sent to Crum and Forster and Williams Surety, on September 1, 2023. Both Crum and Forster and Williams Surety denied ever receiving the report or letter (Tr. P. 49; WVOIC Ex. 3)

16. The Respondent admitted that he did not send any money with the September 1, report. (Tr. P. 37-38)

17. In the September 1, 2023, letter, the Respondent stated that he had enclosed the final report concerning the surety bonds issued by Williams Surety. The Respondent claimed that Williams Surety still had six Powers of Attorney listed for the Respondent that he did not receive. The Respondent claimed that he had asked Williams Surety to investigate what happened to the lost Powers of Attorney, but they had not yet determined the location of the Powers of Attorney. (Tr. P. 118-120; WVOIC Ex. 1)

18. In the September 1, 2023, letter the Respondent stated that until he received an accurate accounting of the outstanding Powers of Attorney, and that Williams Surety acknowledges that the lost Powers of Attorney are not the responsibility of the Respondent, no further monies would be sent to Williams Surety. (Tr. P. 52)

19. Ms. Timmerman testified that the Respondent never told her that he was withholding payment because of the missing Powers of Attorney. (Tr. P. 40)

20. In August 2023, the West Virginia Offices of the Insurance Commissioner received the Notice of Termination for Cause issued by Crum and Forster. It is the duty of Mr. Grishaber's department to handle the termination of producer appointments. (Tr. P. 67)

21. Once the West Virginia Offices of the Insurance Commissioner receives a Notice of Termination for Cause, that information is entered into the SBS system. The SBS system is the licensing database used by Mr. Grishaber. (Tr. P. 68)

22. The SBS generates a report called the Comprehensive Licensing History Report. As to the Respondent, the report states that the Respondent's appointment with Crum and Forster had been terminated. The report also lists the Respondent's other appointments. (Tr. P. 68-71; WVOIC Ex. 5)

23. The WVOIC maintains a list of bail bond license holders. This report lists the other bail bond license holders that work for the Respondent. The names on that list that are associated with Big Dawgz Bail Bondz are Antonio Ibarra, Mario Berry, Dylan Breeden, Rhiannon Crawford, Richard Moore and Kristen Venable. (Tr. P. 73; WVOIC Ex. 6)

24. The West Virginia Offices of the Insurance Commissioner attempted to introduce an affidavit from Mr. Scott Clark, a Consumer Complaint Specialist. The Respondent objected to the affidavit but did not object to the attached documents. It was ruled that the affidavit would not be admitted but the attachments would be admitted into evidence. (Tr. P. 85-86)

25. The first document attached to the affidavit was a Consumer Complaint filed on July 19, 2023, by Mr. Tommy Weatherholtz, Consumer Complaint number was 155601. In the complaint, Mr. Weatherholtz stated that he had initial contact with Ms. Baumgardner, asking that they post a bond for Mr. Javonte Lyle. At the time that Mr. Weatherholtz's company had been approached, Mr. Lyle's bond was cash only so they could not help him. Later that day, the magistrate contacted Mr. Weatherholtz and informed him that she had changed her mind and now would allow Mr. Lyle to post a surety bond. According to the complaint, Weatherholtz contacted Ms. Baumgardner and told her about the change in circumstances. Ms. Baumgardner told

Weatherholtz that she had been called by Big Dawgz Bail Bondz. Big Dawgz informed Ms. Baumgander that she could not use Weatherholtz because Big Dawgz was already working on it. Mr. Lyle was eventually bailed out of jail by Big Dawgz. (WVOIC Ex. 8)

26. In response to Consumer Complaint 155601, the Respondent sent a letter to Mr. Clark. In the letter the Respondent stated that Ms. Baumgardner had initially contacted Weatherholtz company but that her husband had told her to contact the Respondent. She also told the Respondent that Weatherholtz employees were intimidating and allegedly lied to her. Mr. Lyle was bonded out by Big Dawgz and did not pay his bail money until after he had been bailed out. The Respondent did admit that he had did not know that he had to receive payment before Mr. Lyle could be bonded. (WVOIC Ex.8)

27. Also attached to the Respondent's response to complaint 155601 was a signed letter from Ms. Baumgardner supporting the statement in the Respondent's response. There was also a letter attached from Mr. Lyle. In that letter, Mr. Lyle stated that he had initially contacted Mr. Weatherholtz company but after hearing some disconcerting things about Weatherholtz's company, he had his wife contact Big Dawgz Bail Bondz. These letters were not notarized. (WVOIC Ex. 8)

28. On June 29, 2023, a complaint was filed against the Respondent by Tommy Weatherholtz, Consumer Complaint number 155227. In the complaint, Mr. Weatherholtz claimed that Big Dawgz Bail Bondz had posted a bond for Mr. McKinney without first obtaining payment for that bond. Mr. Weatherholtz had been negotiating with the family of the individual attempting to obtain the required payment. According to the complaint, Mr. Weatherholtz found out that Big Dawgz Bail Bondz had posted the bail. Mr. Weatherholtz called the magistrate on the phone with

the individual also on the call. The individual confirmed that he did not have to post any monies before he was released.

29. In Response to the complaint by Mr. Weatherholtz, the Respondent pointed out in a letter to Mr. Scott that he had been contacted by a Mr. McKinney to see if he could post a bond for Mr. Lyle. He denied soliciting his business. The Respondent did admit that he had posted the bond without any cash. He claimed that he was unaware of the rule that required that he have cash in hand before bonding out anyone from the jail. (WVOIC Ex. 8)

30. Also attached to the Respondent's letter was a statement from Mr. Mario Berry, an employee of Big Dawgz Bail Bondz, stating that he was present when Mr. McKinney had contacted the Respondent about posting bail. There was also a statement from Ms. Rhiannon Crawford, another employee of Big Dawgz Bail Bondz, wherein she admitted that she did not require Mr. McKinney to pay money prior to her posting bond. She explained that due to the fact that she was newly licensed and was unaware of the rule. Neither statement was notarized.

31. The next complaint filed against the Respondent, Consumer Complaint number 155714, was filed by Stephen Thompson on July 25, 2023. In the complaint, Mr. Thompson alleged that he had been working on getting Mr. Hines released from jail and had spent three days trying to get Mr. Hines out of jail but was finding it difficult to find a co-signer for the bond. Evidently, Mr. Hines had a debit card but was unable to use it while in jail. While Mr. Thompson was looking for a co-signor, Mr. Hines was served with another capias. This increased his bond by another \$1,000.00.

32. While at the jail, Mr. Hines contacted Mr. Thompson and told him that he had found someone to cosign for his bail and that this person would be calling Mr. Thompson later that evening. No one called Mr. Thompson.

33. Later that night, Mr. Hines called Mr. Thompson and told him that he no longer needed the services of Mr. Thompson's company because Big Dawgz Bail Bondz had posted his bond without any money up front. He learned later that Big Dawgz was having problems collecting the money from Mr. Hines.

34. The Respondent asserted, in his response to the complaint, that Mr. Hines had contacted him about obtaining a bond. Mr. Hines asked the Respondent to contact Mr. Hines's girlfriend. The Respondent then posted the bond and met Mr. Hines and his girlfriend at his office, and he was paid in full. Again, the Respondent claims he was unaware of the law requiring that the bond be paid prior to the bonding out of an inmate.

35. The next complaint was filed by Mr. Weatherholtz, Consumer Complaint number 155598. In the complaint Mr., Weatherholtz alleged that his firm had been contacted by Mr. Orga Gomez to post bond for Misael Marroquin. Once Weatherholtz's firm had collected the fee, he went down to the courthouse to post the bond. When he arrived at the courthouse, he learned that Big Dawgz Bail Bondz had already posted the bond. Mr. Weatherholtz then refunded the money to Ms. Gomez. Ms. Gomez then contacted Big Dawgz and was told to take the funds to the jail.

36. In his response to the complaint, the Respondent stated that Mr. Marroquin had contacted his firm and was unaware that anyone was attempting to cosign for a bond with Weatherholtz. Mr. Marroquin told the Respondent that he had called his wife Selena Gomez, the sister of Orga Gomez, to have her meet at the jail and pay the Respondent for the bail.

37. The Respondent stated that at no time did his employee enter the jail nor did he tell Selena Gomez to meet them at the jail. He also denies the claim that the Respondent did not contact Mr. Marroquin since the jail is not equipped to receive calls.

38. In his response to complaint 155598, the Respondent claims that Mr. Weatherholtz is a direct competitor of the Respondent. The Respondent alleged that Mr. Weatherholtz is filing these complaints in order to stifle and limit the Respondent's business. The Respondent alleged that Mr. Weatherholtz is guilty of the same illegal activities he is accusing the Respondent of doing. He went on to state that none of these complaints were filed by consumers but by Mr. Weatherholtz, implying that they should not be given credence.

39. Attached to the Respondent's response to Consumer Complaint 155598 was a statement signed by Mr. Marroquin. In that statement he said that he had contacted the Respondent's firm to obtain his services. He went on to say that he was unaware of the actions being taken by his sister-in-law at the time.

ISSUE

Whether the Respondent violated any of the West Virginia Insurance Statutes or any West Virginia Insurance Code of State Rules dealing with being a Bail Bondsman? If so, what is the remedy?

ANALYSIS

In the Administrative Complaint there were ten counts of alleged violations on the part of the Respondent. All counts found in the Administrative Complaint are reviewed below to determine whether the West Virginia Offices of the Insurance Commissioner met its burden of proof. Upon finding a violation of W.Va. Code R. §114-103-11, the Insurance Commissioner is empowered to suspend or revoke the bail bondsman's license. Further, pursuant to W.Va. Code R. §114-103-11.3, the Insurance Commissioner may levy a fine of no more than one-hundred dollars (\$100.00) per violation of W.Va. Code R. § 114-103-11, in addition to any suspension or revocation of license.

The first set of issues to be addressed are the ones dealing with the relationship between the Respondent and Crum and Forster and Williams Surety. The Respondent obtained his producer license on March 7, 2023, from the State of West Virginia. After receiving his producer license, the Respondent entered into a Producer Agreement with Crum and Forster and Williams Surety.

Under the terms of the Producer Agreement, Crum and Forster and Williams Surety would give the Respondent various Powers of Attorney to use when bailing out individuals that have been arrested. In return, the Respondent would pay one-percent and one-half percent (1.5%) of the face value of each bond executed to Williams Surety as premium. Further, the Respondent would pay one-percent (1%) of the face value of each bond to Williams Surety to fund a separate build up fund to cover Respondent's potential liabilities.

There was quite a bit of discussion at the hearing concerning two different batches of Powers of Attorney that were sent by Williams Surety but never received by the Respondent. One of these batches was returned to Williams Surety by the United States Postal Service. The second batch was never found. Under normal circumstances the terms of the producer agreement requires that the Respondent would be charged for the Powers of Attorney that were lost, however Williams Surety did not exercise that right.

On July 6, 2023, the Respondent submitted two different checks to Williams Surety of \$7,015.50 and \$4,677.00 to pay funds owed for various Powers of Attorney. Both of these checks were returned due to insufficient funds.

When the Respondent was informed that the two checks had been returned, he stated that he would send a cashier's check to cover the two checks that were returned. The Respondent did not send in a cashier's check.

On July 17, 2023, another two checks sent to Williams Surety were returned for insufficient funds. The amount of these two checks was \$1,741.00 and \$2,611.50. Again, the Respondent was contacted by email about the returned checks. The Respondent did not respond to that email.

During the hearing, the Respondent admitted that the four checks had been returned due to insufficient funds but argued that the reason he did not honor those checks was in protest for the lost batches of Powers of Attorney that were not received by the Respondent. Williams Surety's representative testified that the Respondent never informed them that he was withholding payment in protest for the lost Powers of Attorney.

Count One of the Administrative Complaint cites as the applicable Code of State Rules to this factual scenario is §114-103-11 which states the following:

§114-103-11. License Suspension and Revocation

Any license issued pursuant to this section may, after notice and hearing pursuant to W. Va. Code §§33-2-12 and 33-2-13, be suspended or revoked for good cause at any time by the Commissioner. Good cause includes, but is not limited to:

11.1.4. Misappropriation, conversion or unlawful withholding of monies or property belonging to insurers, insureds or others received in the conduct of business under the license.

As stated above the producer license of the Respondent can be suspended or revoked if the Respondent withholds monies which belong to the insurer. In this matter, the Respondent admitted that the checks were returned for insufficient funds and were never replaced.

The Respondent argued that the funds were withheld in protest for the lost batches of Powers of Attorney. This argument is without merit, especially since the Respondent failed to inform Williams Surety of the reason for the withholding of the money. Even if the Respondent had informed Crum and Forster or Williams Surety of the reason for withholding the money, the Respondent's actions would still be a violation of West Code of State Rules §113-103-11.1.4.

Therefore, the West Virginia Offices of the Insurance Commissioner proved that the Respondent violated West Code of State Rules §113-103-11.1.4.

The next issue, found in Count Two of the Administrative Complaint, was whether the Respondent violated West Virginia Code of State Rule §114-103-11.1.6 which states as follows:

11.1.6. Fraudulent or dishonest practices or demonstrating financial irresponsibility in conducting business under the license.

The fact that the Respondent had sent four checks to Williams Surety returned for insufficient funds, is a direct violation of West Virginia Code of State Rule §114-103-11.1.6. The failure to honor checks that were owed to Williams Surety clearly demonstrates financial irresponsibility.

The Count Three of the Administrative Complaint against the Respondent claims that he violated West Virginia Code of State Rule §114-103-11.1.7 which states as follows:

11.1.7. When the licensee has, in the conduct of affairs under the license, demonstrated incompetency, or untrustworthiness, or conduct or practices rendering the licensee unfit to carry on bonding business or making continuance in the business detrimental to the public interest.

The West Virginia Offices of the Insurance Commissioner alleges that the Respondent violated this State Rule by breaching the contract that he had with Crum and Forster and Williams Surety. The contract required the Respondent to submit payments whenever the Respondent uses the Powers of Attorney to bail out an individual that had been arrested.

The evidence was that the Respondent failed to honor the contract between the parties when he submitted checks that were returned for insufficient funds. That fact alone proves that the Respondent demonstrated incompetence and untrustworthiness as a bail bondsman.

Count Four of the Administrative Complaint is the next issue to discuss. The issue is whether the Respondent violated West Virginia Code of State Rule §114-103-11.1.2 and West Virginia Code §51-10-5a.

West Virginia Code §51-10-5a states as follows:

§51-10-5a. Bonding fee and collateral security required by bail bondsmen.

(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

(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.

West Virginia Code §51-10-5a must be read in conjunction with West Virginia Code of State Rule §114-103-11.1.2 which states as follows:

11.1.2. Violation of any laws of this State or any lawful rule or order of the Commissioner[.]

The law under West Virginia Code §51-10-5a is that the bonding fee must either be paid in full or at least three percent at the time the bond is issued. A prisoner cannot be released from jail until the bond is issued.

In this matter, the evidence was that the Respondent issued a bond for Mr. McKinney prior to obtaining a full fee or at least three percent fee for that bond. The Respondent stated during the hearing that he was unaware of this Code Section and Rule. He also stated that once he determined that the Code Section and Rule existed, he informed his staff of the requirement and took steps to make sure that it did not occur again.

There is an old maxim that ignorance of the law is no excuse. It was the responsibility of the Respondent to make sure that he knows and understands the rules governing being a bail bondsman. The Respondent, when signing the Bail Bondsmen Affidavit, attested to the fact that

he read and understood West Virginia Code §51-10-1 *et seq.* and West Virginia Code of State Rule §114-103.

The fact that the Respondent states that he was unaware of the relevant statute and rule is not persuasive and it was proven that he violated West Virginia Code §51-10-5a and West Virginia Code of State Rule §114-103-11.1.2.

Counts Five, Six and Seven all deal with the same issues raised in Count Four but for different individuals. Count Five alleges that the Respondent issued a bond for Mr. Marroquin prior to receiving payment for the bond.

Count Six alleges that again the Respondent issued a bond for Mr. Lyle prior to receiving payment for the bond. Count Seven also alleges that the Respondent issued a bond to Mr. Hines prior to payment.

The Respondent admitted on the record that he did issue a bond to Mr. Marroquin, Mr. Lyle and Mr. Hines prior to receiving payments. Therefore, the Respondent, by his own admission violated West Virginia Code §51-10-5a and West Virginia Code of State Rule §114-103-11.1.2. Thus, the West Virginia Offices of the Insurance Commissioner proved Counts Four, Five, Six and Seven as found in the Administrative Complaint.

Counts Eight, Nine and Ten allege that the Respondent or an employee of Big Dawgs Bail Bondz entered into a place of detention with the intent to gain employment as a bail bondsman.

The entering of a place of detention in order to gain employment is a violation of West Virginia §51-10-7 and West Virginia Code of State Rules §114-103-5.8.

West Virginia §51-10-7 states as follows:

§51-10-7. Bondsman prohibited from entering place of detention unless requested by prisoner; record of visit to be kept.

It shall be unlawful for any bondsman, agent, clerk, or representative of any bondsman to enter a police precinct, jail, prisoner's dock, house of detention, justice of the peace court, or other place where persons in the custody of the law are detained in the State of West Virginia, for the purpose of obtaining employment as a bondsman, without having been previously called by a person so detained, or by some relative or other authorized person acting for or on behalf of the person so detained, and whenever any person engaged in the bonding business as principal, or as clerk, or representative of another, shall enter a police precinct, jail, prisoner's dock, house of detention, justice of the peace court, or other place where persons in the custody of the law are detained in the State of West Virginia, he shall forthwith give to the person in charge thereof his mission there, the name of the person calling him and requesting him to come to such place, and the same shall be recorded by the person in charge of the said place of detention and preserved as a public record, and the failure to give such information, or the failure of the person in charge of said place of detention to make and preserve such a record, shall constitute a violation of this article.

West Virginia Code of State Rules §114-103-5.8 is also applicable and states as follows:

5.8. A bail bondsman, or any agent, clerk or representative thereof, is prohibited from entering a police precinct, jail, prison, court or other place of detention for the purpose of obtaining employment as a bail bondsman, without having been previously contacted by a person detained, or by some relative or other authorized person acting for or on behalf of the person detained. Whenever a bail bondsman, or any agent, clerk or representative thereof, enters a place of detention, he or she shall immediately identify the purpose 114CSR103 7 of the visit and the name of the person who has contacted him or her to request their services.

In Count Eight, which is based on Consumer Complaint 155227 and filed by Tommy Weatherholtz, it is alleged that Big Dawgz Bail Bondz had gone to jail to bond Mr. McKinney. As stated above a bail bondsman is not allowed to go to a place of detention in order to obtain a client.

The evidence presented at the hearing included the Consumer Complaint filed by Mr. Weatherholtz, Respondent's response to the Complaint, a statement by Mr. Mario Berry and a statement by Ms. Rihannon Crawford. Mr. Berry and Ms. Crawford are employed by Big Dawgz Bail Bondz as bail bondsmen.

In Mr. Berry's statement he stated that he was present in the room at Big Dawgz Bail Bondz office when a call came in from Mr. McKinney to have the company bail him out of jail. Ms. Crawford's statement indicated that she was the one to bail out Mr. McKinney after he called the office.

In a situation such as this, when none of the parties giving the statements are available at the hearing to give testimony and be cross-examined, it is difficult to determine the truth of the matter. However, the West Virginia Offices of the Insurance Commissioners has the burden of proof, by a preponderance of the evidence, to prove that someone entered into a detention center to obtain employment. The West Virginia Offices of the Insurance Commissioner failed to meet its burden of proof as to Count Eight.

Count Nine of the Administrative Complaint also deals with an alleged violation of West Virginia §51-10-7 and West Virginia Code of State Rules §114-103-5.8. This Count is based on Consumer Complaint 155598, which was also filed by Mr. Weatherholtz. In his Complaint, Mr. Weatherholtz alleged that a Ms. Gomez contacted him to provide a bond for Mr. Marroquin. In his complaint he cites West Virginia Code of State Rules §114-103-5.8, however in the factual section of his Complaint he does not allege that anyone from Big Dawgz Bail Bondz actually went to the jail to obtain employment from Mr. Marroquin. The Complaint did state that Ms. Gomez received a call to go down to the jail and bring money for the bail. However, even if that is true, there was no proof presented that anyone from Big Dawgz Bail Bondz ever went into the jail.

The West Virginia Offices of the Insurance Commissioner failed to meet its burden of proof to prove the allegations contained in Count Nine of the Administrative Complaint.

The final Count of the Administrative Complaint, Count Ten, also alleges violations of West Virginia §51-10-7 and West Virginia Code of State Rules §114-103-5.8. The underlying Consumer Complaint, 155714, was filed by Stephen Thompson.

The facts in the Complaint indicate that Mr. Thompson is accusing the Respondent of issuing a bail bond prior to receiving payment (see discussion above). In the fact section, it does state that someone from Big Dawgz Bail Bondz went into the detention center and bailed out an inmate named Mr. Hines. However, nowhere in the Complaint's fact section does it state that the person from Big Dawgz Bail Bondz went into the facility. Without an allegation that the Respondent, or one of his employees, went into the facility, there is no support for Count Ten of the Administrative Complaint.

Based on the discussion above, the West Virginia Offices of the Insurance Commissioner proved that the Respondent violated Counts One, Two, Three, Four, Five, Six and Seven of the Administrative Complaint. The West Virginia Offices of the Insurance Commissioner failed to meet their level of proof for Counts Eight, Nine and Ten as contained in the Administrative Complaint.

Conclusions of Law

1. The West Virginia Offices of the Insurance Commission has jurisdiction over this matter by virtue of West Virginia Code Chapter §51-10-8.

2. The West Virginia Offices of the Insurance Commissioner has the burden of proof, by a preponderance of the evidence, that the Respondent violated West Virginia Code §51-10-1 *et seq* and/or West Virginia Code of State Rules §114-103.

3. The West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent violated West Virginia Code of State Rules § 114-103-11.1.4 as alleged in Count One of the Administrative Complaint.

4. The West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent violated West Virginia Code of State Rules § 114-103-11.1.6 as alleged in Count Two of the Administrative Complaint.

5. The West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent violated West Virginia Code of State Rules § 114-103-11.1.7 as alleged in Count Three of the Administrative Complaint.

6. The West Virginia Offices of the Insurance Commissioner can suspend or revoke a producer license and/or issue a civil penalty under West Virginia Code of State Rules §114-103-11.3 for any violation of West Virginia Code of State Rules §114-103-11.4, West Virginia Code of State Rules §113-130-11.6 and West Virginia Code of State Rules §114-103-11.7.

7. The West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent violated West Virginia Code of State Rules § 114-103-11.1.2 and West Virginia Code §51-10-5a when he provided a bond for Mr. McKinney as alleged in Count Four of the Administrative Complaint.

8. The West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent violated West Virginia Code of State Rules § 114-103-11.1.2 and West Virginia Code §51-10-5a when he provided a bond for Mr. Marroquin as alleged in Count Five of the Administrative Complaint.

9. The West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent violated West Virginia Code of State Rules §

114-103-11.1.2 and West Virginia Code § 51-10-5a when he provided a bond for Mr. Lyle as alleged in Count Six of the Administrative Complaint.

10. The West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent violated West Virginia Code of State Rules § 114-103-11.1.2 and West Virginia Code §51-10-5a when he provided a bond for Mr. Hines as alleged in Count Seven of the Administrative Complaint.


11. The West Virginia Offices of the Insurance Commissioner can suspend or revoke the producer license of the Respondent and/or issue a civil penalty for each violation of West Virginia Code of State Rules §114-103-11.1.2 and West Virginia Code §51-10-5a.

12. The West Virginia Offices of the Insurance Commissioner did not meet its burden of proof, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 51-10-7 or West Virginia Code of State Rules § 114-103-5.8.

13. Counts Eight, Nine and Ten were not supported by a preponderance of the evidence, therefore, the Respondent did not violate those Counts as found in the Administrative Complaint.

RECOMMENDED DECISION

It is the recommendation of the Hearing Examiner that the Counts One, Two, Three, Four, Five, Six and Seven contained in the Administrative Complaint are supported by the evidence and the Respondent should have his producer license revoked and be fined \$100.00 for each count that he violated. Counts Eight, Nine and Ten were not proven by a preponderance of the evidence, therefore are denied.


Mark Carbone
March 5, 2024.