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FILED
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Department of Insurance
State of Idaho

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

| | | |
|---------------------------------|---|-------------------------------|
| IDAHO DEPARTMENT OF INSURANCE |) | |
| |) | |
| Complainant, |) | |
| vs. |) | |
| |) | |
| WALTER ALMARAZ, an individual |) | |
| holding Resident Bail Agent |) | |
| License No. 124889; and |) | Docket No. 18-3469-18 |
| ABSOLUTE BAIL BONDS LLC., an |) | |
| Idaho corporation holding |) | |
| Idaho Resident Bail Agency |) | FINDINGS OF FACT, |
| License No. 339507, |) | CONCLUSIONS OF LAW AND |
| |) | PRELIMINARY ORDER |
| Respondents, |) | |
| and |) | |
| |) | |
| AMERICAN CONTRACTORS |) | |
| INDEMNITY COMPANY, a California |) | |
| corporation holding Idaho |) | |
| Certificate of Authority |) | |
| No. 3091, |) | |
| |) | |
| Surety. |) | |

This matter came on for hearing on January 28, 2019, before Jean Uranga, the designated Hearing Officer. John Keenan, Deputy Attorney General, appeared representing Complainant. Neither of the Respondents nor the Surety appeared at the hearing. Complainant presented testimony and written exhibits.

PROCEDURAL HISTORY

On March 28, 2018, the Department of Insurance filed a Verified Complaint, Claim on Bond, and Notice of Right to Hearing against Walter Almaraz and Absolute Bail Bonds, LLC, as Respondents, and American Contractors Indemnity Company, as Surety. That Complaint alleged four causes of action against Respondents for failure to refund money paid for a bail bond on behalf of Jose Garcia. The Complaint also included a Claim on Bond against American Contractors Indemnity Company for Respondents' failure to return the premium.

By letter received by the Department of Insurance on April 13, 2018, Respondents denied the claims and requested a hearing. By email dated May 1, 2018, Joseph Rosas, an attorney representing American Contractors, notified the Department of Insurance that American Contractors will not contest or oppose the Complaint and Claim on Bond and would take further action on the bond after a final order had been entered. Throughout these proceedings, American Contractors has been served with copies of all pleadings and has at various times reiterated their position that they would not be contesting or opposing the Claim on Bond against them.

A Notice of Appointment of Hearing Officer was issued May 3, 2018. A telephonic prehearing conference was scheduled for June 6, 2018. At that conference, a hearing was scheduled for July 10, 2018. A Stipulation to Continue Hearing dated June 19,

2018, was filed by the parties, and an Order to Vacate Hearing was issued June 26, 2018.

A second telephonic prehearing conference was conducted September 17, 2018. A second hearing was scheduled for November 6, 2018. In a Motion to Vacate Hearing dated October 24, 2018, the Department of Insurance moved to vacate the November 2018 hearing in order to file an Amended Complaint. Hearing on that Motion to Vacate was scheduled for October 30, 2018. Both Mr. Keenan and Mr. Almaraz participated in the motion hearing. An Order to Vacate Hearing was issued October 30, 2018.

A Motion to Amend Verified Complaint was filed October 30, 2018. Respondents filed no response or opposition to the Motion to Amend. A telephonic hearing on the Motion to Amend was set for December 14, 2018. Mr. Keenan appeared at the hearing, but Respondents and the Surety did not. A Third Notice of Hearing and Order Granting Motion to Amend Complaint was issued December 18, 2018, setting the evidentiary hearing for January 28, 2019. Respondents and the Surety were served with that pleading. That pleading required all parties to disclose the names of all witnesses and provide copies of all proposed exhibits no later than January 21, 2019. Neither Respondents nor the Surety filed the required notice of witnesses and exhibits.

The Amended Complaint was filed December 18, 2018. The Amended Complaint alleged seven causes of action against Respondents and included a Claim on Bond against American

Contractors. The evidentiary hearing was conducted January 28, 2019. Respondents and the Surety did not appear at the hearing and did not file an Answer to the Amended Complaint. At the hearing, the Department of Insurance called one witness, Karl Fromm, and presented testimony and admitted Exhibits 1 through 11.

FINDINGS OF FACT

Respondent, Walter Almaraz, holds Idaho Resident Bail Agent License No. 124889, which was issued by the Department of Insurance on June 28, 2005. Mr. Almaraz is the designated licensed producer for Respondent, Absolute Bail Bonds, LLC. Absolute Bail Bonds, LLC, filed Articles of Organization with the Idaho Secretary of State on February 18, 2010 and holds Idaho Resident Bail Agency License No. 339507, issued March 8, 2010.

The Department of Insurance records on Absolute Bail Bonds, LLC, in the section entitled "Contact Information" list a business location of 220 N. 5th Street West, Homedale, Idaho, and a mailing address of 416 W. Montana Avenue, Homedale, Idaho. (Exhibit 1, page 5.) However, in the "Address History" section of Exhibit 1, page 5, on April 12, 2012, the business location address was changed from 220 N. 5th Street West to 416 W. Montana Avenue, Homedale, Idaho. Exhibit 1, pages 5 and 6, also indicate that the email address never changed and that electronic mail was the preferred communication method.

American Contractors Indemnity Company is a California corporation holding Idaho Certificate of Authority No. 3091 since February 23, 1999, to issue surety bonds for bail agencies operating in the State of Idaho. On April 16, 2014, American Contractors issued a \$15,000 surety bond in favor of the Director of the Department of Insurance for the benefit and protection of the public for loss by acts of fraud or dishonesty by Respondents.

On September 17, 2012, Jose Luis Garcia was charged with Theft-Petty in Canyon County Case No. CR-2012-0023262-C. (Exhibit 2, pages 28 and 29.) Mr. Garcia's mother, Maria Garcia, contracted with Respondents to issue a bail bond in that case. On October 15, 2012, Respondents posted a bond in the petty theft case in the amount of \$8,000. (Exhibit 2, page 28.) On October 24, 2012, before Mr. Garcia was released from jail, Respondents revoked the bond after receiving a call from ICE that Mr. Garcia was an undocumented immigrant. (Exhibit 2, page 29.)

In addition, Jose Luis Garcia was charged with misdemeanor Driving Under the Influence on October 15, 2012, in Canyon County Case. No. CR-2012-0025742-C. (Exhibit 2, pages 26 and 27.) Mr. Garcia's mother, Maria Garcia also contracted with Respondents to issue a bail bond in that case. On October 16, 2012, Respondents posted a bond in the DUI case in the amount of \$25,000. (Exhibit 2, page 26). On October 24, 2012, before Mr.

Garcia was released from jail, Respondents revoked that bond after receiving a call from ICE that Mr. Garcia was an undocumented immigrant. (Exhibit 2, page 26.)

Respondents failed to refund the bail bond payments made by Jose Garcia and Maria Garcia and, on May 2, 2013, the Garcias filed a civil action against Respondents in Canyon County Case No. CV-2013-4362C. (Exhibit 4, pages 4-12.) Respondents did not appear and defend that Complaint and, on May 6, 2015, District Judge George Southworth issued a Memorandum Decision and Order Upon Plaintiff's Motion to Amend Re. Punitive Damages. (Exhibit 4, pages 28-35.) The District Court denied the Garcias' request to amend their Complaint to include punitive damages, but did find the cost of the two bonds to Plaintiffs was \$3,300 and Plaintiffs were entitled to attorneys fees in the amount of \$2,500, for a judgment of \$5,800 in favor of Plaintiffs. (Exhibit 4, pages 33-34 and page 36.) Plaintiffs appealed the District Court decision to the Idaho Supreme Court and the Idaho Supreme Court affirmed the District Court decision on December 21, 2016. (Exhibit 4, pages 18-27.)

By letter dated April 6, 2017, the attorney for the Garcias, Richard Hammond, made demand upon Respondents and the Department of Insurance for payment of the judgment of \$5,800, plus post judgment interest at the rate of 5.125% since May 6, 2017. (Exhibit 4, page 3.) (The attorney letter used the date of May 6, 2017, but the actual Judgment date is May 6, 2015.)

Karl Fromm, with the Department of Insurance, emailed a letter to Respondents dated August 2, 2017 notifying Respondents of Mr. Hammond's demand for payment and requesting proof of payment. (Exhibit 4, page 2.) That letter from the Department of Insurance noted that the Department was working toward a paperless environment and requested that any responses be emailed.

On August 10, 2017, Karl Fromm, with the Department of Insurance, also emailed a letter to Respondents indicating the Department had received a complaint from Maria Rodriguez regarding a bond written for Ricardo Alvarez. (Exhibit 6, page 1.) No other documents concerning the nature or disposition of that complaint were admitted as evidence and the Amended Complaint did not include any causes of action related to bonds issued on behalf of Ricardo Alvarez.

The Department of Insurance initiated further investigation of Respondents and, in February 2018, requested U.S. Specialty Insurance Company and Williamsburg National Insurance Company to provide information on all bail bonds sold by Walter Almaraz from January 1, 2017, to present. By letter emailed June 28, 2018, signed by Elaine Mellon, Consumer Services Bureau Chief, Respondents were notified that the Department of Insurance was performing an audit of their bail bond business and demanded copies of multiple records for the last six months. (Exhibit 6, page 6.) In response to the demand for records, the records

provided to the Department of Insurance by Respondents are included in Exhibit 6, pages 9 through 60. Those documents were received July 3, 2018.

On July 5, 2018, another letter from Elaine Mellon was emailed to Respondents requesting additional business records. (Exhibit 8.) That letter was sent both via email and regular mail to 416 W. Montana Avenue, Homedale, Idaho, and 220 N. 5th Street West, Homedale, Idaho. The letter sent to the address of 220 North 5th Street West was returned to the Department by the post office with a notation that there was no mail receptacle and they were unable to forward. (Exhibit 8, page 4.)

On July 19, 2018, United States Fire Insurance Company provided the Department of Insurance with the names of five bail bonds which had been posted by Respondents during June and July, 2018. (Exhibit 9.)

Karl Fromm testified that he is a Consumer Affairs Officer for the Department of Insurance and handled the investigation of Respondents. Mr. Fromm testified that he wrote to Respondents and various sureties to obtain records of all bail bonds written by Respondents during 2018. The records provided by Respondent were missing multiple required records. Mr. Fromm reviewed the records provided by Respondents and by sureties U.S. Specialty and North River and prepared a summary of missing records which Respondents were required by law to maintain. That summary was admitted as Exhibit 3.

Exhibit 3 lists each bond number; the name of the person for whom the bond was issued; whether Respondents provided records and financial agreements for each bond; whether Respondents provided receipts for each bond; whether Respondents provided records on how much premium was paid and how much was financed; whether the bond was reported to the surety; and the date each bond was written. That summary indicates that Respondents failed to provide the Department of Insurance with multiple required records for twenty bail bonds issued by Respondents in 2018.

CONCLUSIONS OF LAW

First Cause of Action

Idaho Code Section 41-1044(1) states: *"A bail agent shall immediately return in full all premium and collateral associated with a bail transaction if the bail agent without good cause or in violation of the bail contract surrenders the defendant to custody before the time specified in the undertaking of bail or the bail bond for the appearance of the defendant or, if no time is specified in the undertaking or bond, before the time the defendant is lawfully required to appear in court."*

Idaho Code Section 41-1016(1)(b) allows the Director of the Department of Insurance to impose various disciplinary sanctions, including revocation of licenses and administrative penalties not to exceed \$1,000 for violations of the insurance code.

The Canyon County District Court entered a Judgment against Respondents May 6, 2015, determining that Respondents were not entitled to retain and must repay the \$3,300 the Garcias paid on the two bonds, plus attorneys fees of \$2,500. This Judgment was upheld by the Idaho Supreme Court. Respondents have failed to return to Garcias the premiums paid by Garcias and as ordered by the Idaho Courts in violation of Idaho Code Section 41-1044(1) and are subject to discipline pursuant to Idaho Code Section 41-1016(1)(b).

Second Cause of Action

Idaho Code Section 41-1016(1)(h) provides that a licensee may be disciplined for *"using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility, or being a source of injury and loss to the public or others, in the conduct of business in this state or elsewhere."*

The District Court Judgment entered May 6, 2015, determined that Respondents were not entitled to retain the bail premiums paid by the Garcias and Respondents have failed to return the premiums to the Garcias. Respondents' failure to return the bail premiums of \$3,300 and pay the Judgment of \$5,800 constitutes dishonest practices, untrustworthiness and financial irresponsibility and Respondents were a source of injury or loss to Garcias in violation of Idaho Code Section 41-1016(1)(h) and are subject to discipline pursuant to Idaho Code Section 41-

1016(1)(h).

Third Cause of Action

Idaho Code Section 41-1016(1)(d) provides that a licensee may be disciplined for *"improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business."*

By failing to repay \$3,300 in bail premiums and the Judgment of \$5,800 to Garcias as ordered by the Canyon County District Court, Respondents have improperly withheld moneys received in the course of doing business in violation of Idaho Code Section 41-1016(1)(d) and are subject to discipline pursuant to Idaho Code Section 41-1016(1)(d).

Fourth Cause of Action

Idaho Code Section 41-1007(2) requires that a business entity acting as an insurance producer must have a license from the Department and must maintain a designated a licensed producer who is an individual responsible for the business entity's compliance with the insurance laws and rules of this state. Idaho Code Section 41-1016(1)(b) allows for discipline against a licensee for violating any provision of the insurance code.

Since Mr. Almaraz is the designated responsible licensed producer for the business entity, Absolute Bail Bonds, LLC, revocation of Mr. Almaraz's license would require simultaneous revocation of the Bail Agency License of Absolute Bail Bonds,

LLC.

Fifth Cause of Action

Idaho Code Section 41-1036(1) requires that a bail bond producer shall maintain and make available to the Department through his principal place of business complete records of transactions through or countersigned by the producer. Idaho Code Section 41-1036(2) details the records which must be kept and maintained.

Respondents have failed to maintain and make available to the Department all required records as itemized in Exhibit 3 and confirmed through the testimony of Karl Fromm.

Sixth Cause of Action

In the Seventh Cause of Action, the Department has alleged that Respondents failed to notify the Department because a envelope addressed to Respondents at 220 North 5th Street West, Homedale, Idaho, was returned to the Department as "unable to forward." The Department's records establish that Respondents changed the business address to 416 W. Montana Avenue, Homedale, Idaho on April 12, 2012. The letter addressed to Respondents at the Montana Avenue address was not returned and emailed documents were also not returned.

The Hearing Officer concludes that Department has not proven the Sixth Cause of Action.

Seventh Cause of Action

Idaho Code Section 41-1024 provides that all premium funds

received by the producer are fiduciary funds received in trust by the producer, and that the producer, in the regular course of business, shall account for such fiduciary funds and shall pay the same to the bail bond insurer entitled to the fiduciary funds. IDAPA 18.01.10.014 provides a process and timetable that a producer must follow to remit fiduciary premiums received in the form of a negotiable instrument or in the form of cash.

During 2018, Respondents failed to notify the applicable bail bond insurer in the case of six separate bail bonds written by Respondents. The names of the individuals for whom Respondents failed to report are Ricardo Alejos; Pablo Barajas; Abran Albor; and three bail bonds for Rocky Nix. In all six of those cases, Respondents also failed to account for the premium funds received by them and failed to pay the premium funds over to the bail bond insurer. Respondent's conduct violates Idaho Code Section 41-1024 and IDAPA 18.01.10.014 and subjects them to discipline pursuant to Idaho Code Section 41-1016(1)(b).

Claim on Bond Against American

Idaho Code Section 41-1040 provides: "After January 1, 2004, a producer shall not act as a bail agent unless the producer first files with the department and thereafter maintains in force a surety performance bond, executed by an authorized surety insurer, in favor of the director in the amount of fifteen thousand dollars (\$15,000). Such bond shall be held in trust for the benefit and protection of the public

against a judicial or administrative determination by the department of loss by acts of fraud or dishonesty by the bail agent."

On May 6, 2015, the Canyon County District Court made a judicial determination that Garcias had suffered loss by Respondents acts of fraud or dishonesty. American Contractors is required to pay the Garcias \$5,800, plus post judgment interest on the judgment from May 6, 2015.

PRELIMINARY ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED:

1. The license of Walter Almaraz, Resident Bail License No. 124889, shall be revoked for five (5) years, and pursuant to Idaho Code Section 41-1026(3), Respondent Almaraz shall not be allowed to apply for licensure for a period of five (5) years from the date of this Preliminary Order. If Respondent Almaraz applies for a license at the end of the five (5) year period, Respondent Almaraz shall be required to show cause why the prior revocation shall not be deemed a bar to the issuance of a new license.

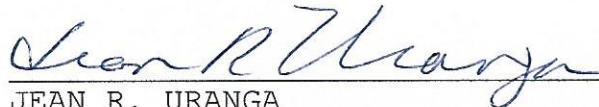
2. The Resident Bail Agency License No. 339507 of Respondent Absolute Bail Bonds, LLC, shall be revoked for five (5) years, and pursuant to Idaho Code Section 41-1026(3), Respondent Absolute Bail Bonds, LLC, shall not be allowed to apply for licensure for a period of five (5) years from the date

of this Preliminary Order. If Respondent Absolute Bail Bonds, LLC, applies for a license at the end of the five (5) year period, Respondent Absolute Bail Bonds, LLC, shall be required to show cause why the prior revocation shall not be deemed a bar to the issuance of a new license.

3. Respondent Almaraz shall pay an administrative penalty in the amount of One Thousand Dollars (\$1,000) for each of the violations found in the six causes of action for a total of Six Thousand Dollars (\$6,000) payable within thirty (30) days of the entry of this Preliminary Order.

4. American Contractors Indemnity Company shall pay to the Director of the Department of Insurance for the benefit of the Garcias, pursuant to Bond No. 100246049, the amount of \$5,800 plus post judgment interest from May 6, 2015, to date of payment.

DATED This 20th day of February, 2019.



JEAN R. URANGA
Hearing Officer

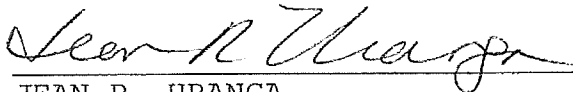
CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 20th day of February, 2019, I served true and correct copies of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND PRELIMINARY ORDER by emailing and depositing copies thereof in the United States mail, postage prepaid, in envelopes addressed to:

Walter Almaraz
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