

FILED

SEP 02 2011

SMA

DAVID V. NIELSEN, ISB NO. 3607
P.O. Box 1192
Boise, Idaho 83701
Telephone: (208)336-5525
Facsimile: (208) 336-8848

Department of Insurance
State of Idaho

COPY

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE
STATE OF IDAHO

In the Matter of:

CATHERINE M. HUNTER,
Resident Bail Agent License No. 108189,

Respondent.

Docket No. 18-2662-11

**HEARING OFFICER'S FINDINGS
OF FACT, CONCLUSIONS OF LAW
AND PRELIMINARY ORDER**

INTRODUCTION

This matter came before the Hearing Officer on an evidentiary hearing on June 10, 2011. Richard B. Burleigh, Deputy Attorney General appeared on behalf of the Department of Insurance. Marty Durand appeared on behalf of Catherine M. Hunter. Following hearing the Department submitted opening briefing on July 12, 2011, followed by Respondent's Reply brief of July 29, 2011 and the Department's Response brief filed on August 5, 2011.

The charges brought by the Department in a Verified Complaint can be broken down into three separate matters where Hunter as the bail bond agent issued bonds to (1) Peggy Rodriguez; (2) Rudy Arellano; and (3) Arturo Cordova. The Rodriguez matter concerns alleged violations of Idaho Code §§ 41-10-16(1)(d) and IDAPA 18.01.10.014.03.a regarding the misappropriation/conversion/failure to deposit funds and the efforts to conceal these misdoings. The Arellano matter concerns alleged violations of Idaho Code §§ 41- 41-1041(2) and 41-

1043(2)(b); regarding improper documentation and handling of collateral. The Cordova matter concerns alleged violations of Idaho Code §§ 41-1041(2) and 41-1324 regarding the adequacy of bond issuance documentation. Following a general statement of Findings each matter will be separately addressed with corresponding Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Catherine M. Hunter is licensed under the Idaho Department of Insurance, Resident Bail Agent License No. 108189 which was initially issued on December 18, 2003.
2. Hunter was employed as a bail bond agent by Hometown Bailbonds (hereinafter Hometown). Hearing Transcript page. 53/ line 4 (hereinafter Hrg. Trans.p.#/l.#).
3. Hunter's supervisor at Hometown was Kevin Elliott (hereinafter Elliott) who was the general manager for the Company operations in Idaho. Hrg. Trans. 50/23; 51/15-16; 84/20-25; 85/1-7.
4. Hometown used a corporate office located in Michigan which handled various bookkeeping matters for the branch offices. Hrg. Trans. 52/4-8.
5. The agents in the individual Hometown offices maintained their own files. Hrg. Trans. 52/15-24.
6. Hometown maintains a central trust account and agents do not maintain their own individual trust accounts. Hrg. Trans. 56/18-23; 57/2-7.
7. All cash received by an agent is to be placed into the Hometown trust account. Hrg. Trans. 56/24-25; 57/1.
8. Hometown's bail documents used a format where multiple carbonless copies are created when certain documents are generated. This includes the bond, corresponding receipt, application and underlying bail contract. These copies in turn are distributed to and/or retained

by the company who is writing the bond, the criminal defendant, the indemnitor and the Hometown bond agent. Hrg. Trans. 14/10-22; 88/7-25; 89/1-17; 234/23-5; 235/1-11.

9. In the case of the bond receipt the agent is required to forward one of the copies to the Boise office of Hometown. Hrg. Trans. 236/21-25. In turn the receipt is forwarded to the corporate offices of Hometown located in Michigan. Hrg. Trans. 236/12-15; 237/1-6

10. Deposits made by an agent are reported by forwarding a copy of the deposit log and any promissory notes that went with the deposit to the corporate office in Michigan. This was done by Hunter via fax. Hrg. Trans. 238/10-15; 268/5-9.

11. Hometown charges a fee of 10% for the writing of a bond. A criminal defendant also customarily is charged additional expenses such as jail fees. These amounts are incorporated in the charges passed on to the criminal defendant. Hrg. Trans. 14/22-25; 15/1-9.

12. A criminal defendant obtaining a bond can provide to Hometown a promissory note for the amount owed if that individual is unable to pay directly the full amount of the fee. The bond receipt customarily generated lists the amount charged in total by Hometown and the amount paid by or on behalf of the criminal defendant. This in turn illustrates the balance owed by the party and the corresponding amount for which the promissory note is executed. Exhibits T and U.

13. Original promissory notes are retained by the individual agents and not forwarded to the Hometown central office. Hrg. Trans. 95/19-25; 96/1-3.

14. Hunter provided to her supervisor, Elliott, a daily email detailing the bonds written on the previous day. Hrg. Trans. 331/1-7.

15. Hometown uses a computer program/system referred to as Captira. Hrg. Trans. 98/18. All agents and employees of Hometown had access to this computer program. Hrg. Trans.

98/23-24. Each individual having access had a specific login number and password. Hrg. Trans. 99/10-15.

16. Captira was designed to perform recordkeeping functions and provide receipts to individuals when payments were received by Hometown along with information regarding the individual data collected from the party receiving the bond and their indemnitors. Hrg. Trans. 100/12-25; 101/1-6.

17. The Captira system allows for agents to input data on behalf of or using another agent's name. Hrg. Trans. 177/25; 178/1. Even though entries may be made by individuals other than the actual agent receiving payment, a receipt on the system will still generate a document with the initial agent's name. Hrg. Trans. 178/4-7.

18. The payment receipts generated by the Hometown computer system do not establish that in fact a payment was actually made to Hometown. Hrg. Trans. 187/21-25; 188/1-9.

19. Hunter's employment with Hometown was terminated. Following her termination Elliott removed files from her office (which was located inside of her residence) and took possession of a number of file boxes. Hrg. Trans. 200/15-25; 201/1-25.

20. Hometown withheld Four Hundred Dollars (\$400.00) from Hunter's final paycheck. Hrg. Trans. 206/7-10.

A.) RODRIGUEZ

FINDINGS OF FACT

21. Peggy Rodriguez (hereinafter Rodriguez) was a criminal defendant who obtained a bond from Hunter/Hometown on May 24, 2010 in the amount of \$10,000.00. The amount charged was

a total of One Thousand Forty-five Dollars (\$1,045.00) which was comprised of the premium charged for the bond and jail fee. Hrg. Trans.16/9-16; 240/20-24; Exhibit T.

22. Rodriguez was unable to pay the entirety of the amount owed and executed a promissory note for the balance owed. Hrg. Trans.241/1-5; Exhibit T.

23. Ultimately two separate promissory notes were contained in Hunter's file for Rodriguez; the first in the amount of One Hundred Forty-five Dollars (\$145.00) and a second larger note in the amount of Five Hundred Forty-five Dollars (\$545.00). Exhibit T.

24. The original (non photocopy) of the smaller One Hundred Forty-five Dollar (\$145.00) promissory note was offered into evidence. Only a photocopy of the larger (\$545.00) second note was produced and entered into evidence. Exhibit T.

25. Five Hundred Dollars was deposited into the Hometown Trust Account for the bond issued on behalf of Defendant Peggy Rodriguez. Hrg. Trans. 63/19-24; 250/20-24; Exhibit D.

26. The bond receipt issued for Rodriguez lists a payment amount of \$ 900.00. Exhibit T.

27. Hunter forwarded a copy of the second promissory note with her deposit log entries to Hometown corporate office in Michigan. Hrg. Trans. 250/16-24; 268/5-10.

28. Hunter did not void the original smaller dollar amount promissory note. Hrg. Trans. 249/7-8.

29. On July 5, 2010, a Two Hundred Dollar (\$200.00) payment was credited to Rodriguez's account on the Hometown Captira computer system. Exhibit F.

CONCLUSIONS OF LAW

1. The Peggy Rodriguez (hereinafter Rodriguez) matter at the most basic level confronts the question of whether Hunter misappropriated/converted funds and failed to conceal her actions or

instead if an error of recordkeeping has been misinterpreted. The allegations against Hunter concern the amount of money received by her for the bond issued for Rodriguez.

2. Distilling down the arguments of both sides in this matter two scenarios are advanced for an explanation of the course of events. The first as argued by the Department, is that Hunter when issuing the bail bond for Rodriguez collected Nine Hundred Dollars (\$900.00) and executed a promissory note for the remaining balance due, that of One Hundred Forty-five Dollars (\$145.00) which was signed by Rodriguez. Hunter, however, then deposited in the trust account only a portion of the amount received, Five Hundred Dollars (\$500.00). In an effort to conceal her misappropriation it is contended she executed a second promissory note which evidenced a lower amount paid initially (\$500.00) and a larger balance due, namely Five Hundred Forty-five Dollars (\$545.00). This note is alleged to have been created by cutting and pasting Rodriguez's signature onto a new blank form. The bond receipt was not altered nor was a different one generated. It still showed that Nine Hundred Dollars (\$900.00) had been paid. She then forwarded on to the company those records (her deposit log and the claimed false second larger promissory note) which would support a version of the facts where she could claim that only \$ 500.00 had been paid rather than the larger amount shown on the bond receipt.

3. The second scenario is that advanced by Hunter who states that initial paperwork was generated following phone contact with Rodriguez, to reflect a payment of Nine Hundred Dollars (\$900.00), and in turn a promissory note for the remaining balance of One Hundred Forty-Five Dollars (\$145.00). Ultimately, however, after arriving at the jail Hunter was informed that Rodriguez (or her indemnitor) was unable to pay Nine Hundred Dollars (\$900.00) and she instead was required to execute a second promissory note reflecting the actual cash available which was only Five Hundred Dollars (\$500.00). The second promissory note then reflected the

larger balance due of Five Hundred Forty-five Dollars (\$545.00). The bond receipt was not changed at the time to reflect the payment supposedly made. Hunter denies converting funds and fabricating the second larger promissory.

4. Corresponding evidence as regards this narrative is as follows:

5. Hunter asserts that the original promissory note for Rodriguez was executed while Hunter was on the way to the jail/courthouse to post the bond. Hrg. Trans. 244/23-25; 245/1.

6. The second promissory note was alleged to have been filled out after Hunter was informed by Rodriguez that she did not have Nine Hundred Dollars (\$900.00) to pay. Hrg. Trans. 245/10-11.

7. Hunter acknowledges that she did write on the receipt that Nine Hundred Dollars (\$900.00) had been received but did not correct that notation to reflect as she alleges, that only Five Hundred Dollars (\$500.00) was paid. Hrg. Trans. 247/8-17; 330/9-17.

8. No explanation was given by Hunter why she did not execute a second receipt which accurately reflected the payment allegedly received compared to the incorrect amount entered other than she "didn't think to change it." Hrg. Trans. 293/8-9.

9. Hunter denied falsifying or cutting and pasting a second note. Hrg. Trans. 295/17-20; Exhibits C & E. Hunter asserts that a complete new promissory note was drafted. Hrg. Trans. 295/24; 296/17-23.

10. Hunter asserts that all original documents, including both promissory notes and other relevant materials on this transaction were placed in her file and kept in her office. Hrg. Trans. 249/17-25; 250/1-9. Additionally, as customary procedure Hunter faxed a copy of the deposit log and the promissory note (the second larger note alleged by Hunter to accurately reflect the transaction) to the Hometown office located in Michigan. Hrg. Trans. 250/9-24.

11. This rendition is then supplemented by two subsequent events of further note which raise more questions than answers. The first occurred on July 5, 2010 involving an entry/notation on Hometown's computer system (Captira) recording a payment of Two Hundred Dollars (\$200.00) on Rodriguez's account. Exhibit F.

12. The facts surrounding this event are disputed between the parties. Hunter contends that she first did not receive a Two Hundred Dollar (\$200.00) payment and second did not enter the data on Hometown's computer system. The Captira records, however, reveal that the entry code for this payment annotation was that of Hunter. Testimony was also advanced which established that the capability to enter a notation reflecting who in fact made the entry in the system is not protected; that is pragmatically anyone with access to the system could effectively make a notation either on someone else's behalf or evidencing activity of another, even if that individual was not responsible or the event did not in fact occur. Hrg. Trans. 177/25; 178/1-7; 251/19-21; 252/7-8; Exhibit F and Exhibit FF.

13. Hunter asserts that she was not responsible for this entry yet notes the fact that a Two Hundred Dollar (\$200.00) payment would be consistent with her version of the events, namely a balance of Five Hundred Forty-five Dollars (545.00) on the account with a Two Hundred Dollar (\$200.00) payment logically being made by Rodriguez to reduce the outstanding balance.

14. The second event is one which occurred on September 30, 2010, where company representatives claim that Hunter requested that the July 5, 2010 payment be removed from the Captira system. Hrg. Trans. 57/11-16. Hunter denies that she called and made such a request. Hrg. Trans. 253/7-9.

15. In response to this alleged request, Hometown (Boise office) at this time asked from Hunter to obtain a copy of the promissory note for Rodriguez. Hunter forwarded the note which

reflected the Nine Hundred Dollar (\$900.00) payment. Hunter asserts that this, the alleged incorrect promissory note was sent to Hometown's office after it was specifically requested. Hrg. Trans. 298/6-11. Hunter contends that she fully explained the course of events (that is her claim that two notes were executed) and that the local (Boise) office asked for this as a means of explanation of the surrounding facts and events. Hrg. Trans. 298/6-11; 299/1-25;301/1-22. Hunter also notes that the alleged correct promissory note (that for the larger dollar amount) was already in the possession of Hometown's main office in Michigan.

16. An investigation by Hometown into the activities of Hunter was then undertaken. After receiving the larger promissory note from Hunter, Elliott then requested from the corporate office a copy of the promissory note for the transaction and was provided the earlier smaller dollar promissory note. Hrg. Trans. 60/2-13. Fax receipt printing information revealed that Hunter had previously sent to Michigan the larger second promissory note. Hrg. Trans. 60/9-25; 61/1-3.

17. Elliott compared the two Rodriguez promissory notes and found a resemblance with the signature lines. Hrg. Trans. 61/17-20; Exhibits C & E.

18. Elliott after examining the promissory notes began further investigation into the Rodriguez file and requested information including the agent deposit log from the corporate office. Hrg. Trans. 61/21-25; Exhibit D.

19. The deposit log, Exhibit D, reviewed by Elliott revealed a Five Hundred Dollar (\$500.00) deposit made on behalf of Rodriguez for the bond posted.

20. Elliott then discussed the situation with the corporate office and Mr. Walling the head of the company.

21. Two phone conversations occurred on September the 30th between Hunter and Elliott. Testimony contradicted what exact topics were discussed and in turn what was stated in each call. One was between Hunter and Elliott. The second added Walling from the corporate office in Michigan. Elliott contends that during the phone conversations with Hunter she advanced more than one story explaining the shortage of funds on the Rodriguez file. One explanation was that Hunter believed her granddaughter took the money and the second where Hunter acknowledged that the money was missing. Hrg. Trans. 195/20-25; 196/1-23.

22. Hunter asserts that she denied stealing any money after being accused by Elliott and Walling. Hrg. Trans. 320/7-25.

23. Hunter was ultimately terminated from her employment by Hometown based upon a belief by Elliott and Walling that Hunter had improperly withheld funds in the Rodriguez matter. Hrg. Trans. 64/13-25.

24. Elliott asserts that during the discussion with Hunter on the telephone she authorized Hometown to withhold Four Hundred Dollars (\$400.00) from her check. Hrg. Trans. 65/5-7. Hunter denies this. Hrg. Trans. 273/14-19.

25. Hunter presented testimony from a third party Raymundo Pena regarding the two telephone conversations between Elliott and Hunter which occurred on September 30, 2010. Mr. Pena was asked by Hunter to listen in on the two calls. Hrg. Trans. 221/24-25; 222/1-12. Pena testified that Hunter was terminated during one of the conversations. Hrg. Trans. 223/7-9. Mr. Pena denied that Hunter indicated to Elliott that he could take Four Hundred Dollars (\$400.00) from her paycheck. Hrg. Trans. 223/13-21.

26. Elliott subsequently went to Burley and collected Hunter's files. Hrg. Trans. 65/17-21.

27. Elliott contended that he fired Hunter from her position with Hometown when he visited her in Burley. Hrg. Trans. 200/4-13.

28. Elliott contends that he did not alter the contents of Hunter's files after he collected them from her office. Hrg. Trans. 66/3-5.

29. The Department's allegations against Hunter concerning the Rodriguez transaction allege that Hunter is in violation of Idaho Code § 41-1016(1)(d) and IDAPA 18.01.10.014.03.a and assert that Hunter misappropriated or converted, or improperly withheld funds received. The Department, however, has not satisfied the burden of proof to establish that Hunter violated these provisions. Evidence was presented regarding the two promissory note versions found in Hunter's files along with the corresponding documentation generated for the Rodriguez bond.

30. While not conclusive this hearing officer agrees that the form of signatures found on the two promissory notes raises suspicion regarding the authenticity of one of the documents. An examination, even to a layman reveals notable and distinct similarities beyond what an individual would customarily expect from two separately executed documents. Additionally other aspects in the second promissory note (Exhibit E) exist such as what appears to be copy lines adjacent to the signature section which give the appearance of being the result of what commonly occurs when a cut and paste operation is performed on a photocopy.

31. There is also the absence of an original version of this second promissory note.

32. This is tempered though by the existence of other signed materials, Exhibit T, p. 5 which are admittedly separate documents and not contended by the Department to have been forged. These contain signatures which also have a notable similarity to the subject signatures on Exhibit E.

33. The Department has relied upon lay testimony regarding the creation of this alleged forged document. This, however, is at best conjecture. The similarity of the signatures and speculation by the lay witnesses is not itself sufficient to establish here, the allegation by the Department that the second promissory note was in fact a forged document.

34. As a matter of law the evidence is insufficient to conclusively determine that the second promissory note was a forgery.

35. Further, to some degree the question surrounding the possible forgery or fabrication of Exhibit E is itself somewhat of a side issue as the Department's allegations concern misappropriation of funds and the claimed forgery is instead the tool of this misappropriation and does not represent the actual alleged underlying offense. In other words the Department in the Verified Complaint did not present an allegation of falsifying records in the Rodriguez bond transaction. Instead the Department contends that Ms. Rodriguez misappropriated Four Hundred (\$400.00) of the Nine Hundred Dollars (\$900.00) received. The Department does note in briefing that a forgery could constitute a violation of Idaho Code Sections 41-293(a) and (c) but focuses their charges on the claimed misappropriation. In turn, though, what has not been proven is that Hunter in fact received Nine Hundred Dollars (\$900.00).

36. Hunter contends that only Five Hundred Dollars (\$500.00) was in fact received from Rodriguez. This dollar amount has remained consistent with the exception of the initial receipt generated. Hunter also provided a plausible explanation regarding the change in the dollar amount from that listed on the receipt, what was originally believed to be available and that ultimately received. While certainly it must be acknowledged that Hunter did not provide a clear reason why the initial bond receipt, one filled out to show that Nine Hundred Dollars (\$900.00)

was paid, was not voided; the remaining/resulting activity and corresponding explanations given have remained consistent.

37. The Department has presented at best, a set of inconsistent documents and suspicions regarding the generation of the second promissory note. Hometown and in turn the Department used this document to point to Hunter's actions and then contend that it establishes Hunter's receipt of Nine Hundred Dollars (\$900.00) with a corresponding attempt to cover her tracks. This claim though takes a convoluted path involving later payment notations and further alleged cover up attempts. What it ignores is the simplest path towards resolution of this matter, namely the testimony or statement of the party who in fact paid Hunter for the bond. No direct evidence was submitted to establish that in fact Hunter received Nine Hundred Dollars (\$900.00). Rodriguez, the party who would best be able to clearly answer the question of what was actually paid and whether a promissory note was forged using her name was absent.

38. Prior to the filing of the Complaint limited investigations undertaken failed to contact Rodriguez in order to obtain an explanation. The investigator on behalf of the Department also did not speak directly to Rodriguez. Hrg. Trans. 23/24-25; 24/1.

39. While Elliott on behalf of Hometown testified that he undertook efforts to obtain copies of the original documents from Rodriguez his requests went unanswered. Hrg. Trans. 198/1-6. Further, Elliott did not speak directly to Rodriguez regarding the promissory note. Hrg. Trans. 197/22-24.

40. What is present is conjecture based upon allegations from a former employer openly antagonistic to their now discharged employee. Of further note in this regard was the apparent level of discord between the parties surrounding the accusations and events associated with her firing. The subsequent animosity also rose to the level where a harassment complaint was filed

by Hunter against her former employer following a series of telephone messages alleged to have been left by Walling on Hunter's phone. Exhibit X.

41. The Department argues that Hometown would have no reason to report the events inaccurately or somehow misrepresent what occurred. Point is also raised regarding the absence of any original version of the second (alleged forged) promissory note. These points, however, do not satisfy the proof necessary to establish the alleged violations. Further, given the level of resulting animosity present, the motivations and likely actions of the parties can not be so simply assumed.

42. It has not been established that Hunter violated Idaho Code Section 41-1016(1)(d) or IDAPA18.01.10.014.03.a.

43. Nevertheless the analysis with this matter does not end here. The actions of Hunter are not without consequence. Hunter's act in failing to change the bond receipt, or to generate a new one which would have accurately reflected the amount asserted to have been paid by Rodriguez was clearly a precipitating event in this matter. It also falls below the standard required. No explanation was given by Hunter why she did not modify the receipt to accurately reflect the payment made compared to the incorrect amount entered, other than she "didn't think to change it." Hrg. Trans. 293/8-9.

44. This event alone represents an improper act and in part given the nature of the corresponding result is worthy of sanction. While not a violation directly alleged by the Department in this matter, under the authority granted as Hearing Officer, notice is made of the requirements and restrictions imposed under Idaho Code Section 41-1041 pertaining to record keeping requirements which provides:

Records. (1) The bail agent shall provide copies of the bail contract, premium receipts, collateral receipts, and any related documents to the defendant and any cosigner at the time of the bail transaction.

(2) In addition to the records set forth in section, 41-1036 Idaho Code, a bail agent shall also maintain complete records pertaining to any collateral received and any charges collected for any bail bond transaction for at least five (5) years after the liability of the surety has been terminated.

45. Hunter in failing to change the receipt or execute a new accurate one evidencing the Five Hundred Dollars (\$ 500.00) received was in violation of this provision.

46. Additionally, notice is made of the requirements and restrictions imposed under Idaho Code Section 41-1016(h) which provides for a finding of a violation if one of the following practices has occurred :

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;

47. Further, the provisions of IDAPA 18.01.10.014.04 state:

Document the Receipt of Fiduciary Funds. A producer who receives fiduciary funds shall document the receipt of those funds in sufficient detail to determine, at a minimum, the date received, the name of the payee, and the amount received. If the producer receives cash, the producer shall give the payer a detailed receipt at the time of payment. The receipt shall include an indication that cash was received, the date received, the amount received, the payer's name, the payee's name, the purpose of payment, and any other information important to the transaction. The producer shall maintain the receipt records as records of a transaction, and keep those records for a period of at least five (5) years.

48. Hunter by her own admission failed to properly document the accurate amount received from Rodriguez. She also failed to provide any exculpatory explanation for failing to do so other than as a result of being busy and in turn that her work was "sloppy". Hrg. Trans. 294/4-13. This along with the failure to void the smaller promissory note demonstrates financial irresponsibility and a violation of Idaho Code Section 41-1016(h) and IDAPA 18.01.10.014.04.

49. Additionally Hunter in failing to void the contended inaccurate smaller promissory note allowed an invalid legal document to remain in potential circulation. This at a minimum caused a misunderstanding with her employer as to the exact nature of the obligation owed by Rodriguez and potentially could have created liability for Hometown under the provisions of Idaho Code Section 41-1045 which provide:

Responsibility for actions of others. For purposes of licensing and regulation under title 41 Idaho Code, a bail agent is responsible for the actions of the bail agent's employees, contractors and agents acting on the bail agent's behalf in relation to bail transactions and matters arising out of bail transactions.

B.) ARELLANO

FINDINGS OF FACT

30. Three bonds were posted on behalf of Thomas Arellano totaling an amount of Four Thousand Five Hundred Dollars (\$4,500.00). These bonds were posted on June 9, 2010. Exhibit J.

31. The surety bond application and contract signed by Hunter indicates that no collateral was received for the posted bond. Hrg. Trans. 17/11-23; 18/2-7; 68/5-11; Exhibits J & K.

32. Hunter was provided as collateral a certificate of title to a motor vehicle owned by Arellano. Exhibit I.

33. Following receipt of the title, Hunter placed the title into her file. Hrg. Trans. 259/6-7

CONCLUSIONS OF LAW

50. In the matter concerning Thomas Arellano (hereinafter Arellano) the Department has alleged that Hunter violated Idaho Code § 41-1041(2) for failing to maintain a record of

collateral received (title to a vehicle) and Idaho Code § 41-1043(2)(b) by failing to undertake appropriate measures regarding maintenance of the collateral.

51. Hunter after being requested accepted title to a motor vehicle owned by Arellano for bonds posted on his behalf.

52. Hunter contended that with Arellano she specifically discussed with Elliott the issue of accepting a vehicle as collateral. Hrg. Trans. 254/2-25; 255/1-12. Hunter asserts that Elliott authorized this prior to accepting the title to the vehicle. Hrg. Trans. 255/3-12.

53. Elliott denies having discussions with Hunter regarding the acceptance of a vehicle as collateral. Hrg. Trans. 69/20-23.

54. Hunter also asserts that she was not aware that Hometown, as contended by Elliott in his testimony, did not allow taking vehicle titles as collateral. Hrg. Trans. 259/16-19.

55. The evidence regarding Mr. Arellano's case presented different versions of the underlying facts, namely whether Hunter in fact obtained the consent or agreement from her supervisor Elliott regarding acceptance of the vehicle as collateral for the bond. Notwithstanding this disagreement, on obtaining authority it is the responsibility of Hunter to comply with the two referenced Code sections. Documentary materials, Exhibit K, are inaccurate in the statements regarding collateral. Title to the vehicle was in fact given as collateral and the form should have indicated this. Hunter alone was responsible for the accuracy of this form. Additionally, undisputed testimony establishes that the title received as collateral was not treated in a manner which followed the provisions of Idaho Code § 41-1043(2)(b) having instead simply been placed in Hunter's files. Hrg. Trans. 259/6-7.

56. The actions of Hunter constitute a violation of Idaho Code § 41-1041(2) for failing to maintain a record of collateral received (title to a vehicle) and Idaho Code § 41-1043(2)(b) by failing to undertake appropriate measures regarding maintenance of the collateral.

C.) CORDOVA

FINDINGS OF FACT.

34. On July 28, 2010, Hunter wrote two bonds for Arturo Cordova. (hereinafter Cordova) Hrg. Trans. 261/25; 262/1-2. The bonds were in the amounts of Twenty-five Thousand Dollars (\$25,000.00) and Ten Thousand Dollars (\$10,000.00). Hrg. Trans. 21/1; 22/1-10; Exhibits H, I, L, N.

35. The amount charged by Hometown for these bonds was a total of Three Thousand Five Hundred Ninety Dollars. (\$3,590.00). Hrg. Trans. 79/1-4

36. The amount listed on the promissory note for these bonds, as endorsed by Cordova was Two Thousand Five Hundred Ninety Dollars (\$ 2590.00). Exhibit U.

37. A request was initially made by Mr. Cordova's friend to post a Ten Thousand Dollar (\$10,000.00) bond to release him from jail. Hrg. Trans. 260/22-24. Hunter subsequently learned that an additional Twenty-five Thousand Dollar (\$25,000.00) bond would be necessary to obtain Mr. Cordova's release in light of an existing probation violation. Hrg. Trans. 261/10-12.

38. Bail agents for Hometown were required to maintain a log noting information such as the date of issuance of bonds and the party to whom bonds are issued on behalf of. Hrg. Trans. 142/2-24.

39. The record keeping system in place at the time of Hunter's employment by Hometown was based in part on the bond receipts generated when a bond was written along with periodic audits of the documents. Hrg. Trans. 143/19-22; 144/2-24.

40. The Cordova bonds were written without a payment premium being made. Hrg. Trans. 314/4-8.

41. Partial payment for the total due on the bonds, the amount of One Thousand Dollars (\$1,000.00) was to be made by a friend of Mr. Cordova. Hrg. Trans. 260/25; 261/1-2; 313/17-23.

42. The One Thousand Dollar (\$1,000.00) payment was never received in the Boise office. Hometown records revealed that no payment in the amount of One Thousand Dollars (\$1,000.00) was ever credited in the account of Mr. Cordova. Exhibits BB, through FF.

43. Hunter did not verify directly that the payment on the bond had in fact been made. Hrg. Trans. 317/1-5.

44. Hunter held off entering the data on the Hometown computer system, Captira, regarding the issuance of the bonds from the date they were issued until on August 8, 2010. Hrg. Trans. 269/10-15

45. A Four Hundred Forty Dollar (\$440.00) payment was recorded on the account for Mr. Cordova on September 30, 2010. Hrg. Trans. 76/22-23; 80/4-7; Exhibit R.

46. No bond receipts were produced in evidence for the bonds issued on behalf of Mr. Cordova.

47. Two payments were recorded on Cordova's file on the computer system, Captira, the first on August 29, 2010 in the amount of Three Hundred (\$300.00) and the second of September 8, 2010 in the amount of Five Hundred Dollars (\$500.00). Exhibits BB & CC.

CONCLUSIONS OF LAW

57. The issues in this matter concern the failure of the Hometown records to show the initial receipts for the subject bonds issued to Cordova. Unlike the matter concerning Rodriguez the Department does not contend that Hunter misappropriated funds but instead asserts that Hunter failed to maintain proper records regarding the Cordova transaction.

58. The evidence established that when Hunter was requested to write the subject bonds an issue arose over payment. This concerned both the amount available for payment and where the payment could be made. Questions arose over the capability of the payor to make the initial payment and in turn what payment plan could be arranged. Hrg. Trans. 260/22-25; 261/1-24. Additionally, the bonds were to be paid for by a friend of Cordova's. That friend, however, was restricted from having contact with Cordova due to the existence of a no contact order. Hrg. Trans. Id.; 313/19-21. This payment as a result, was to be made to the Boise office for Hometown. *Id.* Hunter acknowledged that with the no contact order against Cordova's friend that the Cassia County Court/Jail would have taken issue with the posting of a bond paid for by this individual. Hrg. Trans. 315/2-20.

59. Hunter asserts that she contacted her supervisor Mr. Elliott regarding the matter before writing the bonds. After allegedly discussing the matter, it is also contended by Hunter that Elliott authorized posting of the bonds. Hrg. Trans. 261/1-24; 331/20-21; 316/3-5. Hunter further testified that she was given authority to write the bonds but was instructed to not post them to the Captira system until payment had been made. Hrg. Trans. 261/22-24; 269/7-21. The bonds were written on July 28, 2010 but not entered on the Hometown computer system until August 8, 2010. Exhibits G & H; Hrg. Trans. 167/2-19; 269/10-12.

60. Hunter testified that she believed payment of One Thousand Dollars (\$1,000.00) of the premium amount due had been made to the Boise office. Hrg. Trans. 316/1-7. Hunter claims that she was informed by the friend of Cordova that the bond was paid for in the Boise office. Hrg. Trans. 316/3-7. Hunter did not verify directly with the Boise office that the cost of the bond had been in fact paid. Hrg. Trans. 317/1-5.

61. Hunter ultimately did enter the issuance of the bond on the Captira computer system even though the money had not been paid. She did so approximately eleven days after the bonds had been issued. Hrg. Trans. 269/10-24. Hunter contended that she entered the information on the computer system after she felt uncomfortable withholding it. Hrg. Trans. 269/25; 270/1-5.

62. Hunter asserts that she sent her daily email to her supervisor which reported the bonds and sent copies of the documents to the Boise office. Hrg. Trans. 269/7-9; 266/22-25. Additionally Hunter contends that she faxed copies of relevant materials to the Michigan office of Hometown. Hrg. Trans. 269/11-18.

63. Elliott contends that he did not discuss the matter of issuance of the bonds with Hunter. Hrg. Trans. 199/21-23. He further asserts that he had no knowledge that the bonds were written until approximately two months after the time that they were originally issued when he was informed of the Four Hundred Forty Dollar (\$440.00) payment entered on September 30, 2010. Hrg. Trans. 73/5-8; 199/21-23; 80/4-7. A review by Elliott of the other deposit logs from Hunter's office operations failed to reveal any additional deposits made on behalf of Cordova. Hrg. Trans. 73-76; 79/7-8.

64. Further clouding the water are two payments recorded on the Captira system, the first on August 29, 2010 in the amount of Three Hundred (\$300.00) and the second of September 8, 2010 in the amount of Five Hundred Dollars (\$500.00). Exhibits BB & CC.

65. Hunter asserts that she did not receive these payments or make the computer entries. Hrg. Trans. 283/20-25; 284/1-14. No entry on Hunter's written deposit logs were made regarding these two payments. Hunter asserts that a single payment in the amount of Four Hundred Forty Dollars (\$440.00) was received by her on September 30, 2011 for this account which she recorded on her deposit log and entered on the Captira system. Hrg. Trans. 284/15-17 Exhibit R p. 3; Exhibit DD.

66. Hometown contends that no record exists that the initial premium charge for the bond was ever paid. Additionally no original document evidencing the promissory note was shown to exist. Hrg. Trans. 81/7-15. There is, however, a copy of a promissory note. Exhibit U.

67. The individual investigating on behalf of the Department, Mr. Freeman, reviewed documentation provided by Hometown regarding Cordova and found only the application and promissory notes associated with the two subject bonds. Hrg. Trans. 19/7-24.

68. The original files reviewed by Mr. Freeman were returned to Hometown. Hrg. Trans. 36/11-25. Elliott was unable subsequently to locate the original documents comprising the Cordova file materials after they were returned to him from the investigator Mr. Freeman. Hrg. Trans. 81/10-15.

69. Mr. Freeman testified that at the time he inspected the files obtained from Elliott that the initial receipts generated for the bonds were not present in the file. Elliott's testimony was that the file contained only the application and promissory note. (Hrg. Trans. 79/22-25; 80/1-7).

70. As regards the Department's allegations concerning the Cordova file the Department alleges that Hunter is in violation of Idaho Code § 41-1041(2) by failing to maintain any records of the subject bail transaction including that of the collateral received or the charges collected. In particular the Department references the absence of the Bond receipts which should have been

issued with the two bonds and kept in the file. Additionally it is alleged that Hunter violated Idaho Code § 41-1324 by failing to report the consideration charged and received for the subject transaction. Cutting through the various allegations and somewhat convoluted testimony regarding the course of events the crux of this matter can be viewed as what should be done in light of the fact that the current file does not contain complete copies of all relevant documents, namely the bond receipts, and what are the consequences of the inaccurate accounting information in the file.

71. To some extent the evidence presented alludes to improprieties in this file resulting from either favoritism or familiarity which Hunter had with Cordova. It is acknowledged that Cordova was a repeat customer of Hometown and used the services of Hunter in the past for posting bonds. There are also the questionable events in connection with the manner in which payment was to be made for the bonds, that payment being done outside of the county where the bond was being posted in an effort to surpass the scrutiny which the Cassia County Court/Jail would undertake based upon the relationship which the payor had to the bond recipient. Both of these items, while raising suspicions regarding the circumstances under which the bonds were executed, do not directly address the charges made and do not amount to a showing that the claimed violations occurred.

72. Further, the issue of whether Hunter had authority to write the bonds is not determinative in light of the allegations made by the Department. Also the question of potential favoritism by Hunter due to the previous business which Cordova had conducted with Hometown is also not directly relevant. No contention is made that Hunter did not have the authority to write the bonds or misappropriated monies received in connection with them.

73. While Idaho Code § 41-1041(2) requires Hunter to maintain accurate records of bond transactions it is difficult to find that Hunter violated this duty as regards the missing bond receipts, when the subject integrity of the file itself was at issue. In the verified complaint the Department alleges that Hunter failed to maintain any records regarding the Cordova transaction. The record, however, reveals that a number of records were, at least at one point in time, present in the file, including the bond application, surety information sheet, and promissory note. Hrg. Trans. 37/17-24. In sum the actual missing items are the bond receipts.

74. The allegations and evidence must be viewed in light of the fact that testimony established the original files maintained by Hunter were taken from her possession by and at the insistence of her supervisor. These files were removed from her possession in connection with her discharge. Portions of the materials taken from Hunter were ultimately forwarded to the Department of Insurance following claims by the Company against Hunter. Hunter alleges that the entirety of the file, including the required receipts and other documents existed prior to the time that Hometown removed the materials from her office. Hometown in turn contends that the integrity of the materials received was in fact preserved.

75. In light of this removal of the subject file from her possession by Hometown it cannot under these facts be concluded that the integrity of the file was in fact maintained. The sole evidence of this was the testimony of Elliott. Disputed testimony otherwise was advanced by Hunter. The state or condition of the file when it reached the Department of Insurance does not resolve this concern over the file integrity.

76. Note is made that Hunter advanced no evidence regarding the bond receipts other than testimony that they were in fact generated. While Hunter could have advanced related information to substantiate her claims such as e-mails, fax records, or even copies from Cordova

such evidence was not presented. Even so the showing made still weighs in favor of Hunter. Little rationale for the receipts not being initially generated can be ascertained. The bonds were in fact written as evidenced by other records.

77. Conceptually there is also some difficulty in reaching a finding and legal conclusion regarding the absence of file materials, when the very materials underlying the allegations, cannot ultimately be located and instead statements that the integrity of the file was maintained must be relied upon. During discovery, upon request by Hunter's counsel for examination of the documents the originals could not be located. The file is alleged to have been misplaced after it was returned to Hometown by the Department's investigator. Photocopies of a number of the documents were ultimately produced. The location of the originals as of the time of hearing had not been ascertained. Hrg. Trans. 33/4-10; 81/7-15.

78. The Department notes that Hometown would have no logical rationale to remove materials from a file when those documents would allow collection of an outstanding obligation and as a result it would be against Hometown's financial interest to claim that the file was deficient. Nevertheless, while the maintenance of the file initially was the responsibility of Hunter, the removal of the materials from her possession, subsequent time lapse and successive transfers with corresponding misplacement of the originals, make a definitive conclusion that a statutory violation occurred as a result of the missing documents inappropriate. Custody and integrity concerns weigh in favor of Hunter.

79. As with the Rodriguez matter, however, the analysis does not end here. The record does establish that Hunter did violate Idaho Code Section 41-1041(2) in that complete records were not maintained pertaining to the collateral received and/or regarding the charges collected. Namely Hunter failed at a minimum to ensure that the records regarding the transaction

accurately state the collateral received. As referenced in the promissory note, Exhibit U, the initial amount owed is by all evidence submitted wrong. Instead the amount listed on the note was based on a sum intended to be tendered to Hometown. This sum was not paid and is inaccurate. Hrg. Trans. 79/1-4; Exhibit U. Hunter was deficient in this regard.

80. The note based on the amount listed, credits a payment of One Thousand Dollars (\$1,000.00), such payment was not in fact received. Although testimony established that the note was generated in anticipation of this payment, little substantive effort was undertaken by Hunter to verify that the expected payment was made and in turn the accuracy of the corresponding records. Instead Hunter's efforts were limited to a conversation with the payor who claimed payment had been made. Hrg. Trans 316/3-7. Hunter apparently then assumed the payment had been made without verifying the information with the Boise office. Id. Such actions would have been easily accomplished by a follow up call to the Boise office and should have been done to ensure the accuracy of the records as envisioned under Idaho Code 41-1041(2). If the amount intended to be paid was not, the note should have ultimately been modified to reflect this, or in turn a new note should have been executed.

81. While acknowledging the difficulties presented in the multiple drafting of the numerous documents involved in the bonding transaction, the requirements of Idaho Code Section 41-1041(2) still mandate basic efforts to ensure proper accounting. As the facts reveal, promissory notes based on prospective payments were used by Hometown. Though perhaps difficult administratively to keep track of, it is still required that ultimately a proper accounting be made of the transaction and in turn the legal obligations/rights of the parties concerned.

82. The conclusion as to Hunter's violation would not be the same under different circumstances. Here, however, the fact that concern existed over the capability of making the

payment as well as the method required for the delivery allowed Hunter ample opportunity to follow up on the matter and make certain that all of the documents were properly drafted.

83. Next, when finally entering the bond information on the Captira system (over a week later) Hunter also made no further efforts to verify the payment. Hunter's own testimony acknowledged that she was aware that no further payments had been made on behalf of Cordova (in connection with the apparently mistaken belief that the earlier One Thousand Dollar (\$1,000.00) payment had been made). Hrg. Trans. 269/16/25. By this time she could have verified whether any payments had in fact been made. In this instance one call from the payor cannot be viewed as sufficient to satisfy the requirements of Idaho Code Section 41-1041(2).

84. Hunter's expressed concern on August the 8th when recording the bonds on the system was with time that she had held off before entering the data. Hrg. Trans. 270/1-7. If, however, as Hunter testified, the reason for delay in recording the bonds was an instruction from Elliott to wait for additional payments, then Hunter should have been obviously aware of the need to verify exactly what payments had in fact been made prior to recording the entry on the Captira system. This act would at a minimum have allowed Hunter a chance to verify the terms of the payment agreement and potentially modify the promissory note, or use other methods to protect the interest of Hometown and ensure that the records were complete and accurate. Instead Hunter took an approach that Elliott would have or should have known of the course of events simply because of a belief that the matter was being handled in the Boise office. This does not satisfy the requirements of record keeping under Idaho Code Section 41-1041.

85. The statements contained on the promissory note list an amount due which was inaccurate in light of the fact the initial payment was not made. Exhibit U. This inaccuracy could have been simply remedied by Hunter. It is obvious that she did little to check what had been

paid and in turn the ultimate accuracy of the document and facts of the transaction. The notations regarding what sums had been received and owed were not accurate nor complete.

85. The Hearing Officer acknowledges that certain record keeping regarding payments received were not always the responsibility of Hunter. Here, however, Hunter wrote the note and the unique provisions of payment were as stated by Hunter and acknowledged concern. The initial terms of the note were quickly rendered inaccurate with clear ramifications should enforcement measures later have been undertaken. Certainly when a note is drafted in anticipation of payment a significant concern exists to verify that the records are ultimately accurate. Hunter should have undertaken greater efforts to ensure the accuracy of a record pertinent to the bond and the collateral collected.

86. It is not an exaggeration to surmise that had Hunter done more to follow through with the appropriate record keeping that subsequent events could have been averted. The reason to do so was also highlighted by Hunter's stated concern about not recording the issuance of the bonds in the customary timely manner. Her own worries of "holding them" before recording were not apparently linked to the requirement of maintaining proper accounting.

87. Hunter's actions constitute a violation of Idaho Code Section 41-1041(2).

88. The events surrounding the subsequent Captira entries (the disputed later ledger payments of August 29 and September 8, 2010) do not reach the level where it can be concluded that a similar violation occurred. The inadequacy of safeguards in the method by which data was entered on the system makes it too speculative to find Hunter at fault for the later entries. The evidence fails to show that Hunter caused the errant entries such that the record keeping fell below the requirements of Idaho Code Section 41-1041.

PRELIMINARY ORDER

It is hereby ordered that CATHERINE M. HUNTER pay the following administrative penalties; for one (1) in reference to the afore discussed Rodriguez bond transaction, a failure to maintain complete records of collateral received a violation of Idaho Code Section 41-1041 and a demonstration of financial irresponsibility, a violation of Idaho Code Section 41-1016(h) and a violation of IDAPA 18.01.10.014.04; the sum of Five Hundred Dollars (\$ 500.00); two (2) in reference to the afore discussed Arellano bond transactions, failing to maintain a record of collateral received a violation of Idaho Code Section 41-1041(2) and failing to maintain the collateral in a separate and secure location, a violation of Idaho Code Section 41-1043(2)(b); the sum of Two Hundred Fifty Dollars (\$ 250.00); and three (3) in reference to the afore discussed Cordova bond transactions, failing to maintain complete records pertaining to any collateral received and any charges collected a violation of Idaho Code Section 41-1041(2) the sum of Five Hundred Dollars (\$ 500.00) for a total administrative penalty in the amount of One Thousand Two Hundred Fifty Dollars (\$1,250.00).

IT IS SO ORDERED.

NOTIFICATION OF RIGHTS

This is a preliminary order of the Hearing Officer. It can and will become final without further action of the Department of Insurance unless any party petitions for reconsideration before the Hearing Officer or appeals to the Director for the Department of Insurance (or the designee of the Director). Any party may file a motion for reconsideration of this preliminary order with the Hearing Officer within fourteen (14) days of the service date of this order. The

Hearing Officer will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See* Idaho Code §67-5243(3).

Within fourteen (14) days after (a) the service date of this preliminary order, (b) the service date of the denial of a petition for reconsideration of this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration of this preliminary order, any party may in writing appeal or take exception to any part of the preliminary order and file briefs in support of the party's position on any issue in the proceeding to the Director of the Department of Insurance (or the designee of the Director.) Otherwise, this preliminary order will become a final order of the Department of Insurance.

If any party appeals or takes exception to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal within the Department of Insurance. Written briefs in support of or taking exception to the preliminary order shall be filed with the Director of the Department of Insurance (or the designee of the Director). The Director may review the preliminary order on his own motion.

If the Director of the Department of Insurance (or his designee) grants a petition to review the preliminary order, the Director (or his designee) will allow all parties an opportunity to file briefs in support of or taking exception to the preliminary order and may schedule oral argument in the matter before issuing a final order. The Director (or his designee) will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties for good cause shown. The Director (or his designee) may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

Pursuant to Idaho Code §§ 67-5270 and 67-5272, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (1) the hearing was held, (2) the final agency action was taken, (3) the party seeking review of the order resides, or operates its principal place of business in Idaho, or (4) the real property or personal property that was the subject of the Department's action is located.

This appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. *See* Idaho Code § 67-5273. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

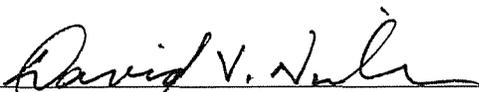
DATED this 2nd day of September, 2011.

By: David V. Nielsen
David V. Nielsen
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of September, 2011, I served a true and correct copy of the foregoing by delivering the same to each of the following party, by the method indicated below, addressed as follows:

Marty Durand Herzfeld & Piotrowski, LLP 824 W. Franklin P.O. Box 2864 Boise, ID 83701	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand-Delivered <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile
Richard B. Burleigh Deputy Attorney General for Idaho Department of Insurance 700 W. State Street, 3 rd Floor Boise, ID 83720	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Hand-Delivered <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile



David V. Nielsen