

NOV 19 2013

DEPT OF INSURANCE
BY 

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

DANO'S BAIL BONDS, LLC
(Arizona License Number 959227)
WALLACE, NATHAN FREDERICK
(Arizona License Number 957660)
(National Producer Number 15478140),

No. 12A-140-INS

ORDER

Respondents.

On November 13, 2013, the Office of Administrative Hearings, through Administrative Law Judge ("ALJ") Sondra J. Vanella, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on November 14, 2013, a copy of which is attached and incorporated by this reference. The Director of the Department of Insurance has reviewed the Recommended Decision and enters the following Order:

1. The Director adopts the Recommended Findings of Fact and Conclusions of Law.
2. The Director adopts the Recommended Order and, in addition, orders that within sixty (60) days of the effective date of the Order entered in this matter, Respondents shall provide evidence of payment of restitution to Anne Greiner in the amount of \$615.00. Respondents are jointly and severally responsible for payment of the restitution.

The Director modifies the Recommended Decision to provide restitution to any party injured by the licensee's action which is a permissible remedy under A.R.S. § 20-295(F)(3).

1 **NOTIFICATION OF RIGHTS**

2 Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09, Petitioner may
3 request a rehearing with respect to this order by filling a written motion with the Director of
4 the Department of Insurance within 30 days of the date of this Order, setting forth the basis
5 for relief under A.A.C. R20-6-114(B). Pursuant to A.R.S. § 41-1092.09, it is not necessary
6 to request a rehearing before filing an appeal to Superior Court.

7 Petitioner may appeal the final decision of the Director to the Superior Court of
8 Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal
9 must notify the Office of Administrative Hearings of the appeal within ten days after filing
10 the complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).

11 DATED this 19th day of November, 2013.

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13 
14 GERMAINE L. MARKS, Director
15 Arizona Department of Insurance

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17 COPY of the foregoing mailed this
18 19th day of November, 2013 to:

19 Mary Kosinski, Executive Assistant for Regulatory Affairs
20 Catherine O'Neil, Consumer Legal Affairs Officer
21 Charles Gregory, Special Agent Supervisor
22 Dan Ray, Investigator
23 Arizona Department of Insurance
24 2910 North 44th Street, Suite 210
25 Phoenix, Arizona 85018

26 Lynette Evans
Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926

Office of Administrative Hearings
1400 West Washington, Suite 101
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1 Tamra S. Facciola
TS Facciola PLLC
2 P.O. Box 26758
Tempe, Arizona 85285-6758
3 Attorney for Petitioner

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Curvey Burton

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NOV 14 2013

DIRECTOR'S OFFICE
INSURANCE DEPT.

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In The Matter Of:

No. 12A-140-INS

DANO'S BAIL BONDS, LLC
(Arizona License Number 959227)
WALLACE, NATHAN FREDRICK,
(Arizona License Number 957660)
(National Producer Number 15478140)

ADMINISTRATIVE LAW JUDGE

DECISION

Respondents.

HEARING: October 28, 2013

APPEARANCES: Assistant Attorney General Lynette Evans represented the Arizona Department of Insurance. Tamra Facciola, Esq. represented Respondents Dano's Bail Bonds, L.L.C. and Nathan Fredrick Wallace.

ADMINISTRATIVE LAW JUDGE: Sondra J. Vanella

FINDINGS OF FACT

1. Dano's Bail Bonds, L.L.C. ("Dano's") is, and at all times material to this matter was, licensed by the Arizona Department of Insurance ("Department") as a resident bail bond agent, Arizona license number 959227, which expires on January 31, 2014.

2. Nathan Fredrick Wallace ("Mr. Wallace") is, and at all times material to this matter was, licensed by the Department as a resident bail bond agent, Arizona license number 957660, which expires on November 30, 2013. Mr. Wallace is a Member and the Designated Responsible Licensed Producer for Dano's. Dano's and Mr. Wallace will be referred to herein collectively as "Respondents."

Grenier Complaint

3. On or about April 25, 2011, Ryan Baker ("Mr. Baker") paid Respondents \$450.00 premium for two bonds posted by Respondents for Ashley Lynn Holt ("Defendant"): a \$2,880.00 secured bail bond and a \$1,000.00 cash bail bond.

1 4. On April 25, 2011, Anne Greiner ("Ms. Greiner") and Mr. Baker signed a pre-
2 numbered premium receipt (Exhibit 4) and Collateral Ownership Declaration (Exhibit 5)
3 that contains a Security Agreement and Promissory Note, wherein Ms. Greiner pledged
4 her 2003 Toyota half-ton pick up truck as collateral for the bonds.

5 5. Respondents provided a Bail Bond Terms and Conditions ("Terms and
6 Conditions") that was signed by Mr. Baker and Defendant. See Exhibit 6. The Terms
7 and Conditions required Defendant to call Dano's twice per week (Monday through
8 Saturday) and advised that failure to so do would result in a \$25.00 charge per
9 occurrence and that Defendant would be surrendered back to jail. *Id.*

10 6. Ms. Greiner complained to the Department that she did not receive a copy of the
11 Terms and Conditions. Department Investigator Dan Ray testified that Ms. Greiner did
12 not sign the Terms and Conditions document that specified the charges for missed
13 check-ins. Mr. Ray opined that if an indemnitor refuses to sign documents, a bail bond
14 agent should not write the bond or should note on the document that the indemnitor
15 refused to sign the document.

16 7. Between April 28, 2011, and June 6, 2011, Defendant failed to call Dano's ten
17 times. See Exhibit 7.

18 8. On June 9, 2011, Respondent surrendered Defendant back to jail for failure to
19 comply with the Terms and Conditions due to her repeated failure to call in. See
20 Exhibit 8.

21 9. On August 29, 2011, Dano's prepared and mailed to Ms. Greiner a demand for
22 payment of \$1,685.00, which included the following charges:

- 23 a. Missed Check-ins \$250.00 (10 missed @ \$25.00 each);
- 24 b. Bond Revocation \$300.00;
- 25 c. Surrender Fee \$100.00;
- 26 d. Agent Hourly \$500.00 (10 hours @ \$50.00 per hour to locate collateral
27 vehicle);
- 28 e. Skip Tracing Services \$250.00;
- 29 f. Vehicle Repossession \$250.00; and
- 30 g. Impound Fee \$35.00

1 Respondents gave Ms. Greiner ten days to make arrangements to pay the outstanding
2 fees and retrieve her collateral.

3 10. Mr. Ray testified that the Department does not consider check-in fees to be
4 reasonable because there is no action taken by the bonding company in order to justify
5 charging a fee. Mr. Ray testified about Regulatory Bulletin 2012-03 dated November
6 16, 2012. The Bulletin is advisory in nature, and was issued after the allegations
7 surrounding the instant matter. The Bulletin states the following in pertinent part:

8 III. Charges and Fees – ACC R20-6-601(E)(2)(c)

9 This regulation details the permitted charges in a bail transaction.
10 Specifically, it states a bail bond agent shall not, in any bail transaction or
11 in connection therewith, directly or indirectly, charge or collect money or
12 other valuable consideration from any person except to 1) pay the
13 premium at the rates established by the surety insurer; 2) to provide
14 collateral; and 3) to reimburse the agent for actual and reasonable
15 expenses incurred in connection with the individual bail transaction.
16 “Actual and reasonable expenses” include i) guard fees, ii) notary and
17 recording fees, necessary long distance telephone calls and non-local
18 travel, and iii) any other actual expenditure necessary to the bail
19 transaction not usually and customarily incurred in the ordinary operation
20 and conduct of bail transactions.

21 The ADOI has received complaints that charges levied by bail bond
22 agents are excessive. The rule requires that charges be both “actual and
23 reasonable.” This means that a bail bond agent cannot charge for an
24 expense that is not actually incurred. Any charges or collections that do
25 not meet these criteria may be a violation of the law, including, but not
26 limited to, charging more that \$2.00 for a notary signature (see AAC R2-
27 12-1102) and charging for missed call-ins. Please review your charges
28 and collections to ensure compliance with Arizona law.

29 Exhibit 17.

30 11. Mr. Wallace testified that Dano’s has an automated check-in system whereby
Defendants call in and leave a message which is listened to and marked down the
following day. For those Defendants that fail to call in, their file must be pulled in order
to ascertain a valid phone number, they are called, and questioned as to why they
failed to call in. If the Defendant cannot be reached, the indemnitor is called. If the
indemnitor cannot be reached, references are contacted, Defendant’s attorney of

1 record is contacted, and sometimes personnel will travel to a Defendant's residence.
2 Mr. Wallace testified that the \$25.00 missed check-in fee is charged to cover these
3 expenses. Notwithstanding Mr. Wallace's testimony and the Event Description
4 document provided to the Department during its investigation, Respondents'
5 documentation did not show "actually incurred" charges for missed check-ins because
6 actual time and expenses were not delineated on the Event Description document and
7 a flat fee of \$25.00 was charged for each missed check-in. See Exhibit 10.

8 12. On or about August 29, 2011, Respondents repossessed Ms. Greiner's 2003
9 Toyota truck with her personal possessions still inside.

10 13. On or about September 30, 2011, Respondents sold Ms. Greiner's 2003 Toyota
11 truck for \$2,300.00 and applied the proceeds to the outstanding charges and fees
12 resulting in an excess of cash collateral in the amount of \$615.00.

13 14. Respondents did not return the excess collateral from the sale of the truck to Ms.
14 Greiner. Mr. Ray testified that excess collateral should be refunded to the indemnitor
15 with five to ten days of exoneration of the bond. The evidence of record established
16 that the bond was exonerated on February 23, 2012 (Exhibit D1-2), and therefore, the
17 collateral was not eligible for release until this date. Mr. Wallace testified that the
18 excess collateral was not due to be released until after exoneration of the bond on
19 February 23, 2012. However, because Ms. Greiner filed her complaint with the
20 Department, Mr. Wallace testified that such action caused Respondents to retain
21 counsel and incur additional costs, in excess of the \$615.00, and that pursuant to the
22 parties' agreement, Respondents are permitted to charge the indemnitor those legal
23 fees. See Exhibit A-A15. Although the portion of the agreement provided by
24 Respondents addresses legal fees, it is unsigned. *Id.* at 6-7.

25 15. Mr. Ray acknowledged that there were two indemnitors on the bond and there
26 was no evidence that Mr. Baker did not receive copies of the documentation. Mr.
27 Wallace testified that Mr. Baker received all of the paperwork and that Ms. Greiner did
28 not. Mr. Wallace testified that Ms. Greiner was more interested in playing with her
29 grandson at the time than signing or obtaining paperwork, and that she declined
30 signing and receiving the paperwork with the exception of pledging her vehicle.

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Cetta Complaint

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2 16. On or about October 27, 2011, Angie Avila ("Ms. Avila") secured a bond from
3 Respondents for Lorena Cetta ("Defendant") in the amount of \$14,000.00.

4 17. On October 27, 2011, Michael Lynn Waddle pledged a 1989 Ford pick up truck
5 as collateral for the \$14,000.00 bond. See Exhibit 13.

6 18. Upon the Department's investigation, Respondents provided to the Department a
7 Bail Bond Agreement, Terms and Conditions of Bond ("Terms and Conditions"), and
8 Bail Bond Fees which were signed by Ms. Avila and Defendant. See Exhibits 14a, 14b,
9 and 14c. The Terms and Conditions required Defendant to "sign-in in person at the
10 office before 4pm 7 days per week." See Exhibit 14b. Mr. Ray opined that such
11 condition was excessive and not an industry standard. Mr. Ray further testified that
12 fees charged must be actual and reasonable and that missed check-in fees are not
13 actual and reasonable. However, when questioned by Respondent's attorney, Mr. Ray
14 acknowledged that it is possible to justify such a fee if Respondent took an action
15 based on the missed check-in, such as making phone calls, going to Defendant's home
16 to track her whereabouts, or scheduling a meeting with Defendant. Mr. Wallace
17 testified that Dano's had to schedule two meetings with Defendant regarding her
18 missed check-ins. See *also* Exhibit F3.

19 19. Between October 28, 2011 and December 10, 2011, Defendant failed to check-
20 in in person seven times for which Respondent prepared a statement for charges in the
21 amount of \$175.00. See Exhibit 15. However, missed check-in fees were not actually
22 charged to Ms. Avila. A missed check-in fee charge was also not shown to have been
23 specified in any of the documents provided by Respondents to the Department.

24 20. On December 10, 2011, Respondents arrested Defendant at their office when
25 she came in for her daily check-in. Respondents surrendered Defendant back to jail for
26 failure to comply with the terms and conditions of her release.

27 21. On or about December 10, 2011, Respondents repossessed a 1989 Ford truck.
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1 22. Thereafter, Respondents prepared and mailed to Ms. Avila a demand for
2 payment of \$2,900.00 which included the following charges:¹

- 3 a. Premiums \$1,500.00;
4 b. Revocation \$1,400.00; and
5 c. Case Management Fee \$50.00 (paid).

6 Respondents gave Ms. Avila ten days to make arrangements to pay the outstanding
7 fees and retrieve her collateral. See Exhibit 16.

8 **CONCLUSIONS OF LAW**

9 1. The Department has jurisdiction over Respondents and the subject matter in this
10 case. A.R.S. § 20-340 *et seq.*

11 2. The Department bears the burden of proof and must establish cause to penalize
12 Respondents' resident bail bond agent licenses by a preponderance of the evidence.
13 See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazanno v.*
14 *Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

15 3. "A preponderance of the evidence is such proof as convinces the trier of fact that
16 the contention is more probably true than not." MORRIS K. UDALL, ARIZONA LAW OF
17 EVIDENCE § 5 (1960). A preponderance of the evidence is "evidence which is of greater
18 weight or more convincing than evidence which is offered in opposition to it; that is,
19 evidence which as a whole shows that the fact sought to be proved is more probable
20 than not." BLACK'S LAW DICTIONARY 1120 (8th ed. 2004).

21 4. The Department alleged Respondents' conduct constituted a violation of A.A.C.
22 R20-6-601(A)(1)(b), which states that "[n]o surety insurer shall furnish for use and no
23 bail bond agent shall use any forms or documents which contain any provisions
24 contrary to these regulations on or after the effective date hereof." The Department
25 alleges that the provision imposing a missed check-in fee contained in Respondent's
26 documents is contrary to the Department's statutes and rules, specifically within the
27 meaning of A.R.S. § 20-340.03(D) (a bail bond agent shall not directly or indirectly
28 charge or collect monies or other valuable consideration from any person except to pay

29 _____
30 ¹ The Demand for Payment is erroneously dated October 21, 2011. The evidence of record established
that Respondents sent the letter on December 12, 2011.

1 the premium at the rates that are established by the surety insurer and that are
2 approved by the director, to provide collateral, and to be reimbursed for actual and
3 reasonable expenses incurred in connection with the individual bail transaction) and
4 A.A.C. R20-6-601(E)(2), which states "[n]o bail bond agent shall, in any bail transaction
5 or in connection therewith, directly or indirectly, charge or collect money or other
6 valuable consideration from any person except for the following purposes:

- 7 c. To reimburse himself for actual and reasonable expenses incurred in
8 connection with the individual bail transaction, including:
9 i. Guard fees after the first 12 hours following release of an arrestee on bail;
10 ii. Notary fees, recording fees, necessary long distance telephone expenses,
11 telegram charges, and travel expenses for other than local community
12 travel.
13 iii. Any other actual expenditure necessary to the bail transaction which is not
14 usually and customarily incurred in connection with the ordinary operation
15 and conduct of bail transactions.

14 5. The evidence of record established that the November 16, 2012 Bulletin issued
15 by the Department was issued after the complaints giving rise to the instant matter, and
16 was advisory in nature. That being said, the evidence of record failed to establish
17 Respondents' actual expenses related to missed check-ins. The charges for missed
18 check-ins were not delineated in the Greiner paperwork and Respondents charged a
19 flat fee for all missed check-ins, thereby failing to establish actual expenses relating to
20 those missed check-ins. The charges were not delineated in the Cetta paperwork,
21 including in the Bail Bond Fees document and it appears that such fees were not
22 actually charged in the Cetta matter. See Exhibit 16. Based upon the evidence of
23 record, the Administrative Law Judge concludes that Respondents violated A.A.C. R20-
24 6-601(A)(1)(b) (no bail bond agent shall use any forms or documents which contain any
25 provisions contrary to these regulations), A.R.S. § 20-340.03(D), and A.A.C. R20-6-
26 601(E)(2).

27 6. Pursuant to A.A.C. R20-6-601(E)(4)

- 28 b. Any collateral received shall be returned to the person who deposited it with
29 the bail bond agent or any assignee as soon as the obligation, the
30 satisfaction of which was secured by the collateral, is discharged. Where

1 such collateral has been deposited to secure the obligation of a bond, it shall
2 be returned immediately upon the entry of any order by an authorized official
3 by virtue of which liability under the bond is terminated, or, if any bail bond
4 agent fails to cooperate fully with any authorized official to secure the
5 termination of such liability, immediately upon the accrual of any right to
6 secure an order of termination of liability.

- 7 d. If collateral received by a bail bond agent is in excess of the bail forfeited,
8 such excess shall be returned to the depositor immediately upon application
9 of the collateral to the forfeiture subject, however, to any claim of the bail
10 bond agent for unpaid premium or charges as provided in subparagraph (c)
11 of paragraph (4) of subsection (E), or as agreed to in writing by the bail bond
12 agent and arrestee or his indemnitor.

13 The weight of the evidence of record failed to establish that Ms. Greiner was on notice
14 that she would be responsible for legal fees incurred as a result of a complaint filed
15 against Respondents. Therefore, Respondents were obligated to return the excess
16 cash collateral in the amount of \$615.00 upon exoneration of the bond on February 23,
17 2012. Consequently, the Department established by a preponderance of the evidence
18 that Respondents' conduct constituted a violation of A.A.C. R20-6-601(E)(4).

19 7. The Department alleged Respondents' conduct as set forth above constituted a
20 violation of A.R.S. § 20-295(A)(2),² as applied to bail bond agents under A.R.S. § 20-
21 340.06. The violations identified previously may also be considered a violation of this
22 provision. Accordingly, the Department established by a preponderance of the
23 evidence that Respondents' failure to return the cash collateral when required to do so
24 by law constituted a violation of A.R.S. § 20-295(A)(2), as applied to bail bond agents
25 under A.R.S. § 20-340.06.

26 8. Pursuant to A.R.S. § 20-295(F), "[i]n addition to or instead of any suspension,
27 revocation or refusal to renew a license pursuant to this section, after a hearing the
28 director may: 1. Impose a civil penalty of not more than two hundred fifty dollars for
29 each unintentional failure or violation, up to an aggregate civil penalty of two thousand
30 five hundred dollars; 2. Impose a civil penalty of not more than two thousand five
hundred dollars for each intentional failure or violation, up to an aggregate civil penalty

² A.R.S. § 20-295(A)(2) provides the Department may discipline a license or may impose a civil penalty for "[v]iolating any provision of this title or any rule, subpoena or order of the director."

1 of fifteen thousand dollars; and 3. Order the licensee to provide restitution to any party
2 injured by the licensee's action.”

3 **RECOMMENDED ORDER**

4 Based on the foregoing, it is recommended that within sixty (60) days of the
5 effective date of the Order entered in this matter, Respondents be held jointly and
6 severally liable to pay to the Department a civil penalty in the amount of \$2,000.00, and
7 such payment shall be made by cashier's check or money order made payable to the
8 Department.

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10 *In the event of certification of the Administrative Law Judge Decision by the*
11 *Director of the Office of Administrative Hearings, the effective date of the Order will be*
12 *five days from the date of that certification.*

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16 Done this day, November 13, 2013.

17 /s/ Sondra J. Vanella
18 Administrative Law Judge

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21 Transmitted electronically to:

22 Germaine L. Marks, Director
23 Department of Insurance
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