

STATE OF NORTH DAKOTA
BEFORE THE INSURANCE COMMISSIONER

In the Matter of)	
)	
Derle Marchus,)	CONSENT ORDER
NPN 5739456,)	
)	Case No. AG-12-381
Respondent.)	

Commissioner of Insurance, Adam Hamm (“Commissioner”) has determined as follows:

1. Derle Marchus, NPN 5739456 (“Respondent”), is presently and has been at all relevant times a licensed resident North Dakota bail bond agent pursuant to N.D.C.C. Chapter 26.1-26.6.
2. N.D.C.C. chapter 26.1-26.6 governs the qualifications and procedures for the licensing of bail bond agents in the State of North Dakota.
3. N.D.C.C. § 26.1-26.6-05(1) provides that the Commissioner may suspend any license issued under N.D.C.C. ch. 26.1-26.6 if, after notice to the licensee and hearing, the Commissioner finds as to the licensee any of the following conditions:
 - f. Accepting anything of value from a principal other than a premium. Provided, the bail bond agent may accept collateral security or other indemnity from the principal which must be returned immediately upon final termination of liability on the bond....
 - g. Willfully failing to return collateral security to the principal when the principal is entitled to the security.
4. N.D.C.C. § 26.1-26.6-05(4) provides that a bail bond agent must keep

records of bail bond transactions.

When a bail bond agent accepts collateral, the bail bond agent shall give a written receipt for the collateral and this receipt must contain a full description of the collateral received in the terms of redemption. The bail bond agent shall keep copies of all receipts of the bonds to be placed in business to be available to the commissioner for the commissioner's review.

(emphasis added).

5. N.D.C.C. § 26.1-26.6-02 provides that the licensing requirements of N.D.C.C. ch. 26.1-26 apply to bail bond agents. N.D.C.C. § 26.1-26-42 provides that the Commissioner may suspend any license issued under N.D.C.C. Chapter 26.1-26 if, after notice to the licensee and hearing, the Commissioner finds as to the licensee any of the following conditions:

6. In the conduct of affairs under the license, the licensee has used fraudulent, coercive, or dishonest practices, or has shown oneself to be incompetent, untrustworthy, or financially irresponsible. . . .

6. N.D.C.C. § 26.1-26-48 authorizes the Commissioner to examine the books, records, and papers of a bail bond agent.

Whenever the commissioner believes that this chapter has been violated, the commissioner, at the expense of the insurer involved, may examine, at the offices of the insurer or insurance producer, whether located within or without this state, all books, records, and papers of the insurer or insurance producer and any books, records, and papers of any insured within this state, and may examine under oath, the officers, managers, and insurance producers of the insurer, or the insured, as to the violation.

7. On or about September 10, 2004, Respondent wrote an appearance bond in the amount of \$5,000 for defendant B.P. in Burleigh County District Court Case No. 08-04-K-1739 ("B.P. bond"). B.P. gave Respondent collateral consisting of jewelry as

security for the bail bond. B.P. was entitled to the return of the collateral when the bail bond was exonerated on April 28, 2005.

8. Respondent's method of returning the collateral by mail without recipient signature did not result in the collateral reaching B.P. Respondent failed to create and maintain records showing how and when he took action to return B.P.'s collateral to B.P.

9. Respondent's handling of B.P.'s collateral and means of attempted return was incompetent, in violation of N.D.C.C. § 26.1-26-42(6).

10. Respondent's failure to create and keep records of B.P.'s bail bond transaction is a violation of N.D.C.C. § 26.1-26.6-05(4).

11. N.D.C.C. § 26.1-26-25.1 requires a bail bond agent to notify the Commissioner before doing business under an assumed name.

12. Respondent has done business under the assumed names "AAA Bail Bonds" or "AAA Bail Bond" or "AAA Bond" or "AAA Bonds" or all of them since at least 2004.

13. In September 2004, August 2011, March 2012 and April 2012, Respondent wrote appearance bonds that were filed with the district court. Each appearance bond recited that "AAA Bond" or "AAA Bonds" or "AAA Bail Bond" was the entity posting bond. Respondent's name also appeared on the appearance bond. For some bonds, Respondent also recited elsewhere in the bond documents that the bonding entity was "AAA Bond" or "AAA Bail Bond".

14. On some bond documents filed with the district court, Respondent stated "250 9929" was the telephone number for "AAA Bond" or "AAA Bail Bond" or both.

15. The telephone number “250 9929” and the business entity name “AAA Bail Bonds” appear as a listing in white pages and yellow pages in telephone directories for the Bismarck-Mandan, North Dakota, area dated October 2011, December 2011, and October 2012. The telephone number “250 9929” and the business entity name “AAA Bails Bonds” also appear in an internet telephone directory website and in a Google search website as of October 30, 2012.

16. Respondent did not notify the Commissioner before doing business under the assumed names “AAA Bail Bonds” or “AAA Bail Bond” or “AAA Bond” or “AAA Bonds”. Respondent’s failure to notify the Commissioner before doing business under the assumed names “AAA Bail Bonds” or “AAA Bail Bond” or “AAA Bond” or “AAA Bonds” or all of them violates N.D.C.C. § 26.1-26-25.1.

17. North Dakota requires a business entity acting as an insurance producer to hold a business entity insurance producer license. None of the entities “AAA Bail Bonds” or “AAA Bail Bond” or “AAA Bond” or “AAA Bonds” holds a North Dakota business entity insurance producer license. Respondent’s use of the business names “AAA Bail Bonds” or “AAA Bail Bond” or “AAA Bond” or “AAA Bonds” or all of them constitutes the holding out of an unlicensed entity as an insurance producer, in violation of N.D.C.C. § 26.1-26-03.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Respondent’s license is **MADE CONDITIONAL** for six (6) months effective upon the Commissioner’s execution of this Order. Respondent agrees that his license will be immediately revoked if he fails to cooperate with the Department, fails to act in a trustworthy or financially responsible manner, violates any insurance laws, or

violates any condition of this Consent Order, which includes:

- a. Failure to return collateral in a timely manner upon termination of Respondent's liability on a bail bond; and
- b. Failure to maintain client bail bond documents and records.

Respondent agrees that if his license is revoked pursuant to this Consent Order, he will not be entitled to a hearing or to require that the Commissioner's decision contain a statement of findings of fact or conclusions of law.

2. Respondent agrees to pay a fine in the amount of \$1,000 payable by credit card, cashier's check, or money order to the North Dakota Insurance Department within five business days of the effective date of this Order.

3. Respondent agrees he will permanently maintain any written record associated with a bail bond written by Respondent, starting immediately.

4. Respondent agrees he will return collateral by means that ensure it is received by the rightful recipient. Respondent agrees he will create and permanently maintain records showing how and when he returns collateral and that it is received by the rightful recipient.

5. The use of this Consent Order for competitive purposes by an insurance producer or agency holding a license in the State of North Dakota, or by any company holding a Certificate of Authority, or by anyone on their behalf, may be deemed unfair competition and be grounds for suspension or revocation of said license or authority.

DATED at Bismarck, North Dakota, this 20th day of December, 2012.



Adam Hamm
Insurance Commissioner
State of North Dakota

CONSENT TO ENTRY OF ORDER

The undersigned, **Derle Marchus**, states that he has read the foregoing Consent Order, that he knows and fully understands its contents and effect; that he has been advised of his right to a hearing in this matter, his right to be represented by legal counsel, his right to present evidence and arguments to the Commissioner, and his right to appeal from an adverse determination after hearing; and that by the signing of this Consent to Entry of Order he waives those rights in their entirety, and consents to entry of this Order by the Commissioner of Insurance. It is further expressly understood that this Order constitutes the entire settlement agreement between the parties hereto, there being no other promises or agreements, either expressed or implied.

DATED this 17 day of Dec, 2012.

Derle Marchus
Derle Marchus

Subscribed and sworn to before me this 17th day of December, 2012.

Notary Public

State of _____
County of _____

My commission expires _____

