STATE OF CONNECTICUT

INSURANCE DEPARTMENT

In the Matter of:	:	
	:	Docket No. LI 09-96
Craig L. McCarthy	:	

ORDER

I, Thomas B. Leonardi, Insurance Commissioner of the State of Connecticut, having read the record in the captioned matter, including the attached Hearing Officer's Memorandum of Findings and Proposed Final Decision ("Memorandum"), do accept and thereby adopt the Findings of Fact and Conclusions or Law of said Hearing Officer, but reject in part his recommendation.

In reviewing the evidence and arguments of counsel for the Department and Respondent, I note that while the violations found by the Hearing Officer are significant, they related to nine bonds written for four clients out of 10,482 bonds Respondent or his affiliated agents had written, and that the Respondent had no previous regulatory history in his 12 years as a bail bond agent. These violations also occurred at a time of financial distress for the Respondent caused by a civil dispute with Turner Media LLC followed shortly thereafter by apparently difficult divorce proceedings. Moreover, Respondent violated no Connecticut law when he did not set up his collateral account as a separate trust account.

It appears that the penalty recommended by the Hearing Officer is disproportionate in that he did not give sufficient weight to the mitigating factors in the record. Thus, the record does not support the imposition of an order of revocation. The record does, however, reveal significant violations that support serious sanctions

including suspension of Respondent's license, a fine and monitoring by the Department during a period of probation.

Therefore, I hereby order:

1. All current licenses in force and as issued by the Connecticut Insurance Department to Respondent Craig L. McCarthy are suspended pursuant to Conn. Gen. Stat. §38a-774(a) for a period of 90 days commencing 45 days from the date of this order.

2. A fine of $4,000 is imposed, payable to "Treasurer, State of Connecticut," no later than 45 days from the date of this order.

3. Respondent shall be placed on probation for a period of two years following the end of his period of suspension. As conditions of probation, Respondent shall:
   a. Comply with all insurance laws and all laws regulating the business of bail bond agents;
   b. Affirmatively, and without delay, research all requests for return of collateral made by his clients and notify clients of the results of such research;
   c. Return any collateral without delay to clients lawfully entitled to such return; and
   d. Comply with all Insurance Department requests for information regarding his activities as a bail bond agent.

4. Failure to comply with any condition of probation shall constitute "cause" for revocation of Respondent's insurance licenses as contemplated by Conn. Gen. Stat. §38a-774(a).

Dated this 19th day of April 2011.

Thomas B. Leonardi
Insurance Commissioner

STATE OF CONNECTICUT

INSURANCE DEPARTMENT

In the Matter of:	:	
	:	Docket No. LI 09-96
Craig L. McCarthy	:	

MEMORANDUM OF FINDINGS AND PROPOSED FINAL DECISION

I. STATEMENT OF THE CASE

The undersigned was duly appointed as hearing officer by the Honorable Thomas R. Sullivan ("Commissioner Sullivan"), former Insurance Commissioner of the State of Connecticut, in the captioned matter. (Hearing Off. Ex. D)

After notice, a hearing was convened on October 4, 2010; and further evidence and arguments were heard on October 5, 2010; October 19, 2010 and November 29, 2010. The purpose of the hearing was to determine whether all current insurance licenses in force and issued by the Insurance Commissioner of the State of Connecticut to Craig L. McCarthy ("McCarthy" or "the Respondent") should be suspended or revoked and/or whether a fine should be imposed. Approximately 15 hours of testimony and arguments were heard over the course of four days. While neither the Insurance Department ("Department") nor McCarthy requested to file briefs and none were required, counsel for McCarthy filed a written closing argument on the day of closing arguments. At the conclusion of evidence, the record was held open pending receipt of the transcript, which was received and the record was closed December 13, 2010. Glenn Coe ("Coe"), Esq., of

Rome, McGuigan, P.C., represented the Respondent at the hearing. Anthony Caporale, Esq., represented the Department.

Previously, Respondent had been represented by Wayne R. Keeney, Esq., ("Keeney") who ceased representing Respondent due to seriously deteriorating health during the period when this matter was pending, ultimately requiring a liver transplant. Attorney Keeney's license was subsequently placed on inactive status, although he has since recovered his health and his license has been reinstated. Through no fault of Respondent, the consequences of this unfortunate situation significantly delayed the proceedings and made the procedural history of the captioned matter quite complex. Specifically, the procedural history of this case is:

- The first complaint was issued by the Department November 5, 2009
- An Order for Default Judgment and Order of Revocation was entered November 30, 2009.
- Attorney Keeney requested the default judgment and order of revocation be set aside in a request dated December 14, 2009
- Commissioner Sullivan vacated the November 30 order on December 28, 2010 and ordered a hearing on the merits.
- On January 28, 2010, an amended complaint was filed.
- Another order for default judgment and order of revocation was issued February 17, 2010.
- On February 22, 2010, Attorney Keeney submitted a motion to set aside the default judgment and order of revocation, citing his health issues.

- The motion to reopen the default was denied by Commissioner Sullivan March 18, 2010 for failure to demonstrate good cause.
- Attorney Michael E. Skiber ("Skiber"), acting as co-counsel due to Attorney Keeney's illness, submitted a request for a hearing related to the denial of the request to reopen the default.
- Attorney Skiber's request was denied by Commissioner Sullivan April 28, 2010.
- On June 7, 2010, Commissioner Sullivan advised Attorneys Coe and Skiber that he had reconsidered the denial to reopen the default and set a hearing for the sole purpose of determining whether the February denial should be affirmed, reversed or modified.
- The hearing was conducted by Hearing Officer N. Beth Cook ("Cook") on June 16, 2010, and Respondent was represented by Attorney Coe at that hearing.
- Following Hearing Officer Cook's recommendation, Sullivan reversed the March 18, 2010 Order denying the Motion to Reopen the Order for Default Judgment and vacated the Order for Default Judgment; and ordered that a hearing proceed on the merits.
- The Department issued a Second Amended Complaint against Respondent dated August 4, 2010, although the complaint was captioned "Amended Complaint."
- The Department filed a Motion for Default Judgment and Order of Revocation dated August 23, 2010.

- Attorney Coe filed a Motion to Deny the Motion for Default Judgment by a pleading dated August 24, 2010, indicating that the Second Amended Complaint did not appear to be a new pleading when it was received by his office because of the way it was captioned.
- The undersigned denied the Motion for Default on August 25, 2010.
- Attorney Coe filed an Answer to the Second Amended Complaint August 31, 2010.

Subsequently, after a continuance, a hearing on the merits was convened October 4, 2010.

The hearing was conducted in accordance with the Uniform Administrative Procedures Act, Conn. Gen. Stat. §4-166, et seq., and the Insurance Department Rules of Practice, Conn. Agencies Regs. §38a-8-1, et seq. As indicated, the charges in this case were initially set forth in a complaint of the Insurance Department dated November 5, 2009 (Hearing Off. Ex. A); an amended complaint dated January 28, 2010 (Hearing Off. Ex. B) and a second amended complaint dated August 4, 2010 ("the Second Amended Complaint")(Hearing Off. Ex. C). The charges at issue in these proceedings are those contained in the Second Amended Complaint. Said complaint alleged violations of Conn. Gen. Stat. §§38a-660, 38a-769 and 38a-818, and alleged that cause exists for the revocation or suspension of Respondents' licenses and/or the imposition of fines pursuant to Conn. Gen. Stat. §§38a-774 and 38a-817.

II. FACTS

Facts Related to all Counts

1. Respondent is licensed as a surety bail bond agent and has been licensed for approximately 12 years as of October 2010. (10-19-10 Tr. 85)
2. Respondent is also principal for Bail Busters, Inc., ("Bail Busters") an entity licensed in 2008 as a surety bail bond agency. (Hear. Off. Ex. C, H) Prior thereto, Respondent was the sole member of Aladdin Balk Bonds, LLC, an entity licensed as a surety bail bond agency. (Hear. Off Ex. H) Respondent, or his affiliated agents at Bail Busters had executed 10,482 bonds with Safety National Casualty Corporation through October 2010. (10-4-10 Tr. 180)
3. All bonds at issue in the captioned matter had an Indemnitor / Guarantor Checklist, signed by the guarantor, that contained 15 clauses, including the following:

> I understand that it is my responsibility to request return of any collateral provided. There may be a delay of return of collateral until the bail agency has researched the exoneration date and verified the bail bond status with the appropriate courts. This process may be done faster if I obtain written verification of the bond exoneration from the court and provide it to the bail agency.
> Stip. Ex. 25

Respondent testified that he or subagents working for him instructed guarantors that in order to get their collateral back, they needed a disposition document certified by the court. (10-19-10 Tr. 193-194) Counsel for the Department and Respondent stipulated that court records concerning the disposition of cases are generally available to the public, including bail bond agents under risk, unless the disposition is sealed by the court. (10-19-10 Tr. 3) Respondent testified he or someone in his office could go the courts every time a case was disposed of, but it was not feasible to do so. (10-19-10 Tr. 191)

Respondent testified that most co-signers understand they are to obtain disposition documents and in fact obtain them, and that most of the issues that have occurred "are language barrier issues." (10-19-10 Tr. 198-199) It is concluded that there is no obligation on the part of indemnitors or co-signers to obtain written verification from the applicable court that a bond has been exonerated.

Facts Related to First Count (Ronquillo / Gonzalez)

4. Subagents working for Respondent issued bonds totaling $212,000 for Pablo Ronquillo ("Ronquilo") between February 2, 2007 and August 9, 2007 and collected approximately $83,000 from Maria Gonzalez ("Gonzalez"). The subagents turned the money, collateral and paperwork relating to the bonds in to Respondent. (Hear. Off Ex. C, H; Stip. Ex. 1)
5. Ronquillo's cases were disposed of on March 10, 2009 and April 6, 2009. (Stip. Ex. 1)
6. On or about May 13, 2009, Respondent and Bail Busters, owed $82,700 in collateral to Gonzalez and entered into an agreement with Gonzalez to satisfy the debt, with interest at 7%, within six months at the rate of $1,000 per week. (Stip. Ex. 1, 24) Gonzalez testified that Respondent did not always pay the agreed amount, and it would either be late or not the full amount. (10-4-10 Tr. 145) Receipts indicate Bail Buster paid: $4,000 on May 13, 2009; $4,000 on June 2, 2009; $500 on July 1, 2009; $3,500 on July 7, 2009; $4,000 on August 3, 2009; $1,000 on August 11, 2009; $2,000 on Sept. 6, 2009; $2,000 on Sept. 12, 2009; $4,000 on Oct. 6, 2009; $2,000 on November 9, 2009 and $2,000 on Jan. 6, 2010. (Stip. Ex. 24) Regarding that record of

payment, Respondent testified, ". . . [I]f you go by those dates – you know, I think my assumption or what I tried . . . to do was give her x amount of dollars a month. You know, I guess there again that's why I would run up and give her the money if I had it. You know, I did the best I could with what I had." (10-19-10 Tr. 167)

7. Safety National Casualty Corporation ("Safety National") issued a check for $59,489 as return of the outstanding collateral that Respondent owed to Ms. Gonzalez. (Stip. Ex. 1) As of Jan. 15, 2010, Respondent had not paid $59,489 of the debt and such amount was still outstanding. (Stip. Ex. 1)

8. Gonzalez testified that at the time Respondent owed her the returned collateral, she was late on her mortgage while her husband was in jail, the bank started foreclosure proceedings and as of October, she had lost her house and was to vacate in January 2011. (10-4-10 Tr. 131, 141-142) During that same period, she testified she wasn't able to pay all her bills, and at one point had to go without heat for days because she couldn't pay her oil bill. (1-4-10 Tr. 132) Gonzalez filed a complaint with the Insurance Department received April 20, 2009 against Aladdin and McCarthy, supplemented by further correspondence sent by faxes on May 5, 2009 and Sept. 2, 2009. (Dept. Ex 5, 6, 7)

9. A judgment in the amount of $112,794 was entered in the California Superior Court, County of San Diego on Aug. 9, 2007 against McCarthy in an action brought by Turner Media LLC. (Stip. Ex. 23) The debt to Turner Media related to a dispute over advertising expenses. (10-19-10 Tr. 151-152) As a result of that judgment, which was filed in Connecticut, McCarthy and Laurie Tomanio ("Tomanio"), general office manager for Aladdin, testified that his personal and business accounts were seized in

late 2008 to satisfy the judgment. (10-19-10 Tr. 106; 10-5-10 Tr. 14) McCarthy also testified that records regarding the levy were destroyed when a water main broke in front of his office, and the bank that had those records refused to provide replacement copies. (10-19-10 Tr. 107-108) Andre Pomerleau ("Pomerleau"), associate examiner at the Insurance Department, testified he had no recollection of any discussions by Department staff of issuing a subpoena for bank records related to Respondent's claims that his accounts were levied. (10-19-10 Tr. 55) Pomerleau also testified that he had not been informed until the hearing in the captioned proceeding was underway that Respondent's bank refused to turn over documents to Respondent. (10-19-10 Tr. 35) In the absence of any evidence to the contrary, including bank records that could have been obtained through the issuance of an administrative subpoena, the undersigned finds that the levy was indeed executed and accounts seized as Respondent and Tomanio testified.

10. McCarthy testified he was unable to return Gonzalez's collateral and instead made arrangements to pay it over time as a result of the seizure of those funds. (10-19-10 Tr. 111-112) He also testified he did not satisfy the outstanding debt owed to Gonzalez and did not have the assets to do so. (10-19-10 Tr. 112-115) McCarthy testified his collateral account was set up no differently than other bank accounts, and no bank officer advised him to set it up differently as an escrow account. (10-19-10 Tr. 100-101) He testified he tried to raise money by asking his mother to use her home in Florida as collateral, but that did not work out. (10-19-10 Tr. 168) McCarthy testified he had been going through divorce proceedings from Lissa McCarthy, who

had previously handled the administrative responsibilities of his agency, for approximately one and one-half years as of October 2010. (10-19-10 Tr. 87-88)

11. Based on the above subordinate findings of fact related to the first count, Respondent's conduct falls below the requirement of Conn. Gen. Stat. §38a-769(c) and (d) that a person be of good moral character, financially responsible and trustworthy in order to maintain their license in that he failed to return $59,489 of the collateral due to Gonzalez, and did not honor an agreement drafted by him setting forth a schedule for return of the collateral. Such failure caused substantial harm to Gonzalez in that she was left without money to pay her mortgage or bills such as her oil bill, resulting in foreclosure proceedings to proceed against her and she had to go without heat because she could not pay her oil bill.

Facts Related to Second Count (Ochoa / Ruiz)

12. On or about December 23, 2007, a subagent working for Respondent executed a $7,500 bond for defendant Ivan Ochoa ("Ochoa"), and collected $3,750 in collateral from co-signer Veronica Ruiz ("Ruiz"), on behalf of Respondent's bail bond agency. The subagent turned the money, collateral and paperwork relating to the bonds in to Respondent. (Hear. Off. Ex C, H, Stip. Ex. 1)

13. Ochoa was sentenced in a disposition that did not involve imprisonment, his case was disposed of and the bond was terminated on March 31, 2008. (Hear. Off. Ex. C, H; Stip. Ex. 14)

14. Ruiz testified she repeatedly went to the offices of Bail Busters over the course of a year to request the return of the collateral and it was not returned. (10-4-10 Tr. 11-12)

She testified she brought "papers" she received from the court when she sought the return of the collateral from Bail Busters. (10-4-10 Tr. 13) At variance from Ruiz's testimony, Dana Palmeri, an employee of Bail Busters, testified that her only contact with Ruiz was when she picked up the check, and that return of the collateral had been requested by Ochoa. (10-5-10 Tr. 86) After complaining to the Department, Ruiz testified she was given a check, but upon attempting to cash the check, she testified the first check was dishonored by the bank. A second check in the amount of $3,750 was issued Feb. 10, 2010 and that check was honored by her bank. (10-14-10 Tr. 15, 28, 34) Respondent testified there was not a question as to whether or not the collateral was owed to Ruiz, but that the question had to do with supporting documents. (10-19-10 Tr. 188)

15. Based on the above subordinate findings of fact related to the second count, Respondent's conduct falls below the requirement of Conn. Gen. Stat. §38a-769(c) and (d) that a person be of good moral character, financially responsible and trustworthy in order to maintain their license in that Respondent did not return $3,750 in collateral in a timely manner although Ruiz requested such return repeatedly over the course of a year; and the first check of $3,750 issued to Ruiz was dishonored, although a second check in the same amount was honored.

Facts Related to Third Count (Hu / Lau)

16. A subagent working for Respondent issued a bond for $10,000 from Ying Hu ("Hu") and collected $5,000 as collateral from Peter Lau ("Lau"). The subagent turned the

money, the collateral and the paperwork relating to the bonds in to Respondent. (Stip. Ex. 1)

17. Hu's case was disposed of on April 10, 2008. (Stip. Ex. 1)

18. Respondent never returned the collateral to Lau. Respondent testified Lau asked for return of the collateral, and "stormed out" of his office when Respondent told him he needed a disposition from the court with a signed seal. (10-19-10 Tr. 123) Lau did not deliver to Respondent the required documents establishing that the case was disposed of by the court. The request for a refund dated April 23, 2008 was made by Konstant Morell, Esq. ("Morell"), Lau's attorney, but it could not be established on the basis of Attorney Morell's testimony and the documentary exhibits whether the disposition documents were actually sent to Respondent and whether the letter was received. (Stip. Ex. 1; Dept. Ex. 1; 10-14-10 Tr. 59, 78; 10-15-10 Tr. 36) A follow-up letter dated September 2, 2008 was sent because the collateral had not been returned following the April 23 letter, and that letter was received. (Dept. Ex. 2; 10-14-10 Tr. 60; 10-15-10 Tr. 36) By fax dated Sept. 17, 2008, Tomanio informed Attorney Morell at the paperwork supporting the return of collateral had not been received. (Resp. Ex. A) Tomanio testified the supporting documentation from Attorney Morell was never received. (10-15-10 Tr. 37)

19. Morell filed a complaint against Bail Busters with the Insurance Department by letter dated June 18, 2009 and received by the Department June 19, 2009. (Dept. Ex. 3)

20. On January 15, 2010, Safety National issued a check for $5,000 as return of the outstanding collateral that Respondent owed to Lau on the bond written for Hu. (Stip. Ex. 1; 10-14-10 Tr. 67)

21. Based on the above subordinate findings of fact related to the third count, Respondent's conduct falls below the requirement of Conn. Gen. Stat. §38a-769(c) and (d) that a person be of good moral character, financially responsible and trustworthy in order to maintain their license in that Respondent did not return $5,000 in collateral due to Lau in connection with the Hu case from September 2, 2008 (when it is undisputed such a request had been submitted and received although the record can not establish that an earlier request had been received) through Jan. 15, 2010, when SNCC issued a check for return of the collateral.

Facts Related to Fourth Count (Chan / Lau)

22. A subagent working for Respondent issued a bond for $10,000 to Yanwen Chan ("Chan") and collected $5,000 in collateral from Lau. The subagent turned the money, the collateral and the paperwork relating to the bonds in to Respondent. (Stip. Ex. 1)
23. Chan's case was disposed of on April 10, 2008. (Stip. Ex. 1)
24. Respondent testified Lau asked for return of the collateral, and "stormed out" of his office when Respondent told him he needed a disposition from the court, although the record does not indicate when this occurred. (10-19-10 Tr. 123)
25. On June 17, 2010, Safety National issued a check for $5,000 as return of the outstanding collateral that Respondent owed to Lau on the bond written for Chan. (Stip. Ex. 1)

26. Based on the above subordinate findings of fact related to the fourth count, the record does not support a finding that a violation occurred because there is no clear indication when Lau or his attorney requested return of the collateral related to Chan.

Facts Related to Fifth Count (Failure to Produce Records)

27. There was a meeting between Respondent and Department staff on June 29, 2009, and Respondent appeared at the Department to answer allegations against him. (Hear. Off. Ex. C, H) Prior to that meeting, Department staff requested that Respondent bring documentation on several matters with him, and further requests for documents were made orally at the meeting and subsequent voice mails, which requests were followed up by a written request Sept. 5, 2009. (Dept, Ex. 8, 9; 10-19-10 Tr. 17-18)
28. Pomerleau testified he had no recollection of any discussions by Department staff of issuing a subpoena for bank records related to Respondent's claims that his accounts were levied. (10-19-10 Tr. 55) Pomerleau also testified that he had not been informed until the hearing in the captioned proceeding was underway that Respondent's bank refused to turn over documents to Respondent. (10-19-10 Tr. 35)
29. Attorney Keeney was not able to attend the June 29 meeting because of a serious illness. Attorney Keeney's health deteriorated as the proceedings in the captioned matter moved forward, he became seriously ill and ultimately required a liver transplant. Subsequently, Attorney Keeney's license to practice law was placed on inactive status although he has since recovered his health and his license has been reinstated. (10-19-10 Tr. 133-139; Stip. Ex. 29) Hearing Officer Cook noted:

> It is clear . . . that Keeney's growing medical disability, and his apparent refusal to acknowledge the severity of his impairment to his client, impacted his ability to provide effective counsel to the Respondent. It appears, based on the testimony of the Respondent, that based on his interactions with Keeney and Keeney's behavior, the Respondent did inquire as to the ability of his attorney to provide effective representation and that he received repeated assurances that Keeney was able to do so. Indeed, in looking at the communications from Keeney, it is apparent that while he consistently missed filing dates, he did produce work product on behalf of the Respondent which appeared to reflect competency in performing his duties. . .
> (Stip. Ex. 29)

30. Based on the above subordinate findings of fact related to the fifth count, the record does not support a finding that a violation occurred related to failing to provide records because documents were requested from Respondent at a time when he was represented by an attorney in failing health, who was ineffective in representing him.

Facts Related to Sixth Count (Gutierrez / Batista)

31. Andre Romero, ("Romero"), a subagent working for Respondent executed a $10,000 bond for defendant Daniel Gutierrez ("Gutierrez") and collected $5,000 in collateral from co-signer Jose Batista ("Batista") on behalf of Respondent's bail bond agency. (Stip. Ex. C, H)

32. Gutierrez's bond was disposed of on March 18, 2009 and the collateral in question was not returned to Batista despite attempts by him at contacting Romero, Bailbusters and Respondent. (Stip. Ex C, H; Dept. Ex. 4; 10-4-10 Tr. 100) An associate in Attorney Cohane's office submitted a complaint to the Department dated February 18, 2010 related to the difficulties in obtaining release of the collateral after having made repeated telephone requests from October 26, 2009 through February 18, 2010.

(Dept. Ex. 4) A representative from Bail Busters returned the collateral on March 3, 2010. (Stip. Ex. 22)

33. Attorney Cohane testified he did not have any documentation as to whether he provided a copy of the court disposition with respect to Gutierrez. (10-4-10 Tr. 105)

34. Based on the above subordinate findings of fact related to the sixth count, Respondent's conduct falls below the requirement of Conn. Gen. Stat. §38a-769(c) and (d) that a person be of good moral character, financially responsible and trustworthy in order to maintain their license in that Respondent did not return $5,000 in collateral to guarantor Batista despite repeated requests for return of the collateral to Batista by defendant Gutierrez following the disposition of the cased and up to October 2009, and by Cohane from October 26, 2009 until Respondent ultimately returned the collateral March 3, 2010, after a complaint was filed with the Insurance Department.

III. DISCUSSION

A. Applicable statutes

The Insurance Commissioner of the State of Connecticut pursuant to Conn. Gen. Stat. §§38a-660 and 38a-769 licensed Respondent as a surety bail bond agent.

Conn. Gen. Stat. §38a-660(i) provides with respect to bail bond agents:

> Upon satisfying himself that an applicant meets the licensing requirements of this state and is in all respects properly qualified and trustworthy and that the granting of such [bail bond agent] license is not against the public interest, the commissioner may issue to such applicant the license applied for, in such form as he may adopt, to act within this state to the extent therein specified.

Conn. Gen. Stat. §38a-769 provides with respect to all insurance producers:

(c) Each applicant for a license shall furnish satisfactory evidence to the commissioner that the applicant is a person of good moral character and that the applicant is financially responsible. . .

(d) Upon finding that an applicant meets the licensing requirements of this title and is in all respects properly qualified and trustworthy and that the granting of such license is not against the public interest, the commissioner may issue to such applicant the license applied for, in such forms as the commissioner may adopt, to act within this state to the extent therein specified.

Conn. Gen. Stat. §38a-774(a) also states in pertinent part:

The commissioner, after reasonable notice to and hearing of any holder of a license issued by the commissioner, may suspend or revoke the license for cause shown. In addition to or in lieu of suspension or revocation, the commissioner may impose a fine not exceeding one thousand dollars. . .

There are also allegations of violations of Conn. Gen. Stat. §39a-818. That statute provides:

Whenever the commissioner has reason to believe that any person engaged in the business of insurance is engaging in this state in any method of competition or in any act or practice in the conduct of such business which is not defined in section 38a-816, that such method of competition is unfair or that such act or practice is unfair or deceptive and that a proceeding by him in respect thereto would be to the interest of the public, he may issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than thirty days after the date of the service thereof. Each such hearing shall be conducted in the same manner as the hearings provided for in section 38a-817. The commissioner shall, after such hearing, make a report in writing in which he shall state his findings as to the facts, and he shall serve a copy thereof upon such person. If such report charges a violation of sections 38a-815 to 38a-819, inclusive, and if such method of competition, act or practice has not been discontinued, the commissioner may, through the Attorney General, at any time after ten days after the service of such report, cause a petition to be filed in the superior court for the judicial district wherein the person resides or has his principal place of business, to enjoin and restrain such person from engaging in such method, act or practice. The court shall have jurisdiction of the proceeding and shall have power to make and enter appropriate orders in connection therewith and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public

> pendente lite. If the court finds that the method of competition complained of is unfair or that the act or practice complained of is unfair or deceptive, that the proceeding by the commissioner with respect thereto is to the interest of the public and that the findings of the commissioner are supported by the weight of the evidence, it shall issue its order enjoining and restraining the continuance of such method of competition, act or practice.

Admitted into evidence was a complaint containing a notice of hearing which clearly establishes that Respondent was apprised of the time, place and nature of the hearing held before the undersigned; a statement as to the legal authority and jurisdiction under which the hearing was held; a reference to the statutes involved and a statement of the matters asserted.

Regrettably, Respondent was not initially represented in an effective manner by his first attorney because of that attorney's deteriorating health. Respondent's replacement counsel, Attorney Coe, ably and zealously represented Respondent.

B. Failure to Return Collateral Counts (First, Second, Third, Fourth and Sixth)

In three of the counts where violations were found, Respondent relies on the following language in the Indemnitor / Guarantor Checklist to require co-signors to obtain certified copies of court dispositions and justify long delays in returning collateral when the did not:

> I understand that it is my responsibility to request return of any collateral provided. There may be a delay of return of collateral until the bail agency has researched the exoneration date and verified the bail bond status with the appropriate courts. This process may be done faster if I obtain written verification of the bond exoneration from the court and provide it to the bail agency.

This language does not, as Respondent argues, create a condition precedent requiring co-signers to obtain certified copies of court dispositions from the courts. The

plain language of that clause requires the co-signer to request return of the collateral. The record establishes this was done by Gonzalez (first count) and Ruiz (second count) directly, by Attorney Morell on behalf of Lau with respect to the Hu case (third count) and by Attorney Cohane on behalf of Batista (sixth count). The record is not clear, however, that Lau or Attorney Morrell requested return of the collateral with respect to the Chan case (fourth count).

As far as obtaining the court disposition, the clause states, "There may be a delay of return of collateral until the bail agency has researched the exoneration date and verified the bond status with the appropriate courts. This process may be done faster if I obtain written verification of the bond exoneration and provide it to the bail agency." That language clearly indicates that the bail agency will research the exoneration date and verify the bail status, and that a co-signer providing the verification may speed up the process, but is not a condition precedent to research of the exoneration and return of the collateral.

Respondent stated that it was possible but not feasible for him or his staff to research bond exonerations at the courts. But, the amounts at issue are significant, ranging from $3,750 to $5,000 in the second, third and sixth counts. His statement that those situations where co-signers did not obtain the documentation from the courts in accordance with his staff's instructions, although not required by the Guarantor / Indemnitor Checklist, typically related to "language barrier issues" is problematic for a licensed insurance professional handling significant amounts of money for unsophisticated clients. In addition, the record indicates that information on the disposition of criminal cases is available to the public, including bail bond agents.

Thus, the record establishes that co-signers, or those working on their behalf, did request return of the collateral with respect to the first, second, third and sixth counts, and that Respondent failed to return the collateral that was due.

The first count had aggravating circumstances, and had especially serious repercussions. Respondent was unable to repay the $82,700 in returned collateral due to Gonzalez when defendant Ronquillo's case was disposed of, and instead entered into an agreement for repayment within six months at the rate of $1,000 per week, however, the repayments were not always for the agreed amount, and were frequently late or not in the full amount. Respondent testified he did not have the assets to repay the debt, and tried unsuccessfully to use his mother's house as collateral to raise the amount due. In testimony, when questioned about the manner in which repayment was made, he testified, ". . . You know, I guess there again that's why I would run up and give her the money if I had it. You know, I did the best I could with what I had." Ultimately, Safety National issued a check for $59,489 as return of the outstanding collateral that Respondent had not paid. However, Gonzalez testified credibly and clearly of the harm done to her: a home in foreclosure and living without heat because she couldn't pay her oil bill.

Thus, in the first count, Respondent clearly fell below the requisite requirement of licensees that they be financially responsible and trustworthy. That is not diminished by the financial problems caused by the Turner Communications litigation, judgment, levy and seizure of his bank accounts.

With respect to the second, third and sixth counts, the record establishes that Respondent enforced a nonexistent requirement that co-signers obtain documentation

from the courts regarding disposition of the case, although the plain wording of the Indemnitor / Guarantor Checklist had no such requirement and instead simply stated that obtaining such documentation would expedite the return of collateral.

Regarding the second count, he did not return $3,750 in collateral to Ruiz until after she had complained to the Department. Moreover, the first check issued by Bail Busters to Ruiz was dishonored by her bank, and subsequently the second check issued on February 10, 2010 was honored.

Regarding the third count, it can not be established from the record if a request for return of the collateral was made and received prior to September 2, 2008, but a request for return of the $5,000 collateral to Lau was made by Attorney Morell no later than that day and was received by Bail busters. A check was issued to Lau for the $5,000 in unreturned collateral more than 16 months later, not by Respondent but by Safety National, after Morell complained to the Insurance Department.

Regarding the sixth count, it can not be established from the record if a request for return of $5,000 in collateral was made and received prior to October 26, 2009, but requests were made by Attorney Cohane's law office no later than that day, and repeated telephone requests were made for return of the collateral through February 18, 2010 when a complaint was filed with the Insurance Department. The collateral was returned March 3, 2010, more than four months after Attorney Cohane commenced making telephone requests.

Regarding the fifth count, the record does not reveal when Lau or anyone on his behalf requested return of the collateral related to the Chan case.

Conn. Gen. Stat. §38a-774(a) provides for revocation of suspension of any Insurance Department license or imposition of a fine "for cause shown." "Cause" implies a reasonable ground for action as distinguished from a frivolous or incompetent ground. Obeda v. Board of Selectmen, 180 Conn. 521, 522, 429 A.2d 956, 958 (1980).

"Since those purchasing insurance must rely on the advice of the agent and purchase insurance from or through him, the legislature sought to protect the public by a licensing procedure which insurance that those engaged in the business are qualified. Statutes requiring a license or certification to act as an agent are adopted as a matter of public policy to further the public interest." Rizzo v. Price, 162 Conn. 504, 508, 294 A.2d 541, 543 (1972).

Contrary to closing oral argument by Respondent's counsel, it has been held that failure to maintain the standards under which a license is issued constitutes cause for its revocation or suspension. Colucci v. Insurance Department, 1996 WL 601984 (Conn. Super. 1996), aff'd, 45 Conn. App. 368, 694 A.2d 421 (1997). Conn. Gen. Stat. §38a-769(c) and (d) requires, in part, that insurance licensees be of good moral character, trustworthy and financially responsible. Related to bail bond agents specifically, Conn. Gen. Stat. §38a-660(i) requires that a bail bond agent be properly qualified and trustworthy. Therefore, proof of a lack of good moral character, financial responsibility or trustworthiness is reasonable grounds for the revocation or suspension of a license as it relates to and affects the rights and interests of the public.

To support the findings of an administrative agency in proceedings under the Uniform Administrative Procedures Act, there must be "substantial evidence in the administrative record to support the agency's findings of basic fact and . . . the

conclusions drawn from the facts must be reasonable." Cadlerock Properties Joint Venture v. Commissioner of Environmental Protection, 253 Conn. 661, 676, 757 A.2d 1, 11 (2000). See also Dolgner v. Alander, 237 Conn. 279, 676 A. 2nd 865 (1996).

On the basis of all of the foregoing, it appears to the undersigned that there is substantial evidence on the record to support the Department's complaint with respect to failing to maintain the standards of licensure pursuant to Conn. Gen. Stat. §§38a-660(i) and 38a-769 in the first (Ronquillo / Gonzalez), second (Ochoa / Ruiz), third (Hu / Lau) and sixth (Gutierrez / Batista) counts. There is not substantial evidence on the record to support the Department's complaint with respect to the fourth (Hu / Chan) count.

The undersigned does not find the elements of the complaint relating to violations of Conn. Gen. Stat. §38a-818 to be applicable.

B. Failure to Cooperate (fifth count)

The Department alleges that Respondent failed to supply requested documentation in a timely manner.

There was a substantial intervening factor which causes the undersigned to conclude that the record does not support the allegations of that count.

It is clear that Respondent's first attorney was seriously ill and his health was rapidly declining during the investigation and the early stages of the proceedings. His illness was so grave that he required a liver transplant, and fortunately appears to have recovered. However, he was unable to render effective legal assistance to McCarthy in that stage. McCarthy met with Department staff at a critical time in the investigation without the assistance of the attorney he had retained, but who was too ill to attend. It is

possible, and even likely, that requests to provide documents and information would have been handled differently if his attorney was rendering effective legal assistance in that crucial period.

The undersigned gives no weight whatsoever to arguments asserted by Department counsel attempting to cast doubt on whether McCarthy's bank accounts were actually seized. There is oral testimony by McCarthy and Tomanio that his accounts were levied and seized, and no evidence was offered by the Department that they were not. Thus, the undersigned concludes as a finding of fact they were indeed levied and seized as the testimony by McCarthy and Tomanio indicated. Pomerleau testified he is not aware of any discussion of whether to issue an administrative subpoena pursuant to Conn. Gen. Stat. §38a-16 for McCarthy's bank records, and that he did not learn until the hearing was underway that the bank refused to release the records to McCarthy.

Therefore, there is not substantial evidence in the record to support the fifth count.

C. Penalty

There are some mitigating issues that must be weighed in connection with the imposition of a penalty.

First, McCarthy was involved in a civil dispute with Turner Media followed shortly thereafter by apparently difficult divorce proceedings.

Second, through no fault of his, McCarthy's first attorney was seriously ill and unable to render him effective legal assistance. This added considerable procedural complexity and time to this matter. That was exacerbated when the Department declined

to vacate a default order issued when McCarthy's attorney was ailing and McCarthy had to go through the time and expense of a special preliminary hearing before that order was vacated.

This must be weighed against problematic behavior including:

- failure to return more than $59,000 of Gonzalez's collateral, leaving her with a foreclosed home she was unable to heat because she couldn't make her mortgage payments or pay her oil bill;
- entering into a repayment agreement with Gonzalez that he could not keep;
- imposing a requirement on three different individuals to obtain documentation related to return of collateral held by McCarthy when such a requirement did not exist in the Indemnitor / Guarantor Agreement; and
- Issuing a check to Ruiz that was dishonored.

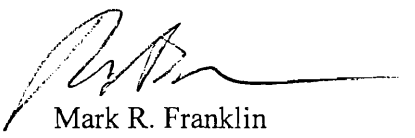
Based on the serious nature of the proven charges involving four separate bonds, it appears to the undersigned that revocation of Respondent's licenses is the appropriate remedy.

IV. RECOMMENDATION

Based on the foregoing, the undersigned recommends that the following order be issued:

> All insurance licenses issued to respondent Craig L. McCarthy are hereby revoked thirty (30) days from the date of the Commissioner's Order.

Dated this 18th day of March, 2011.



Mark R. Franklin
Hearing Officer