

BEFORE THE INSURANCE COMMISSIONER OF THE
STATE OF OKLAHOMA

FILED
APR 13 2017
INSURANCE COMMISSIONER
OKLAHOMA

STATE OF OKLAHOMA, ex rel., JOHN D.)
DOAK, Insurance Commissioner,)
)
Petitioner,)
)
vs.)
)
APRIL ECHOLS, a licensed Bail Bondsman)
in the State of Oklahoma,)
)
and)
)
INDIANA LUMBERMENS MUTUAL)
INSURANCE COMPANY, an insurance)
company licensed to act as bail surety in)
the State of Oklahoma,)
)
Respondents.)

Case No. 16-1073-DIS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on for a Show Cause hearing on February 24, 2017. Petitioner, State of Oklahoma, ex rel. John D. Doak, Insurance Commissioner, appeared by counsel, Sandra G. LaVenue, Senior Counsel and Respondent, April Echols and Respondent, Indiana Lumbermens Mutual Insurance Company appeared by counsel, Stephen R. Money. After hearing the testimony of the witnesses and examining exhibits and stipulations of the parties, the hearing examiner finds as follows:

JURISDICTION

1. Petitioner is the Insurance Commissioner of the State of Oklahoma who is charged with the responsibility to administer and enforce the insurance laws of the State as well as regulations lawfully promulgated by the Insurance Commissioner's office.
2. Respondent, April Echols, is a licensed Bail Bondsman in the State of Oklahoma

holding license number 100218408.

3. Respondent, Indiana Lumbermens Mutual Insurance Company is an insurance company licensed to act as bail surety in the State of Oklahoma holding NAIC No. 14265.

4. The Oklahoma Insurance Department has jurisdiction of the parties and subject matter hereof pursuant to 36 O.S., 2011, Section 101-7301. The undersigned, having been appointed by the Insurance Commissioner to hear this matter, has jurisdiction under the authority conferred by 36 O.S., 2011, Section 319.

FINDINGS OF FACT

1. Respondent, Echols, executed an appearance bond on February 24, 2016, for Noel Franco-Peralta in the District Court of Beaver County, Oklahoma, under Case No. CF-2016-7.

2. Respondent, Lumbermens, was the bail surety company insuring the bond executed on said date for Noel Franco-Peralta in the Beaver County case.

3. On August 5, 2016, Noel Franco-Peralta failed to appear in the District Court of Beaver County as ordered by the court in Case No. CF-2016-7. Accordingly, the District Court forfeited the bail bond and issued a bench warrant.

4. An Order and Judgment of Forfeiture was issued by the District Court of Beaver County on August 5, 2016.

5. The Order and Judgment of Forfeiture directed that Respondent Echols and Respondent Lumbermens deposit the face amount of the forfeited bond in the sum of \$20,000.00 within ninety-one (91) days from receipt of the Order and Judgment of Forfeiture.

6. Within thirty (30) days after filing the Order and Judgment of Forfeiture, the Beaver County Court Clerk mailed a true and correct copy of the same to Respondent Echols and

Respondent Lumbermens with return receipt requested.

7. Respondent Echols received a copy of the Order and Judgment of Forfeiture and the return receipt is dated August 9, 2016.

8. Respondent, Lumbermens, received a copy of the Order and Judgment of Forfeiture with the date not noted on the return receipt.

9. Respondent Echols and Respondent Lumbermens both stipulated that they received proper and timely notice of Order and Judgment of Forfeiture from the Court Clerk's office and that neither returned the defendant to custody within ninety (90) days nor paid the bail bond forfeiture by the ninety-first (91st) day. Respondent submitted no testimony from witnesses and no exhibits in its defense.

10. Pursuant to OAC 365:25-5-40, the ninety-first (91st) day after receipt of the Order and Judgment of Forfeiture was November 8, 2016.

11. On November 22, 2016, the Beaver County Court Clerk sent notice to the Oklahoma Insurance Department that neither Respondent Echols nor Respondent Lumbermens returned defendant Noel Franco-Peralta to custody in Beaver county by the ninetieth (90th) day or pay the amount of the bond forfeiture by the ninety-first (91st) day after the Order and Judgment of Forfeiture.

12. Petitioner's Exhibit C, together with the testimony of Carol Ryan of the Oklahoma Insurance Department Bail Bond Division provides clear and convincing evidence of a substantial administrative history for Respondent, Lumbermens, and that the Oklahoma Insurance Department has received approximately twenty-two (22) referrals in 2016 alone for failure to return the defendant to custody or pay the bond forfeiture by the ninety-first (91st) day after receipt of notice.

13. The same testimony and exhibit established that of the twenty-two (22) referrals in 2016, six were dismissed without prejudice because the District Court exonerated the bond after the ninety-first (91st) day even though the bond had not been paid or the defendant returned to custody in accordance with 59 O.S., 2011, Section 1332. Six of the referrals resulted in a finding that Respondent Lumbermens violated the provision of Titles 36 and 59 and fines were assessed against Lumbermens as well as the individual bondsman. The remaining ten cases are currently pending administrative action.

14. Petitioner's Exhibit D and the testimony of Carol Ryan evidences an administrative history of Respondent Echols which establishes that since she was licensed in March of 2015, there have been nine referrals for administrative action. Of these referrals, two resulted in no action; two resulted in fines which were ultimately dismissed because the District Court exonerated the bonds after non-payment beyond the ninety-first (91st) day; three resulted in fines and two cases are currently pending.

15. The evidence establishes that the Department became concerned when Lumbermens refused to return telephone calls and emails from the Insurance Department regarding bond forfeitures that were not timely paid.

16. Because of the high number of unpaid forfeitures, a conference call was conducted between representatives of the Oklahoma Insurance Department Legal Division and Respondent, Lumbermens. During this telephone call Respondent Lumbermens did not agree that it owed the forfeitures and did not believe it was required to pay the forfeitures by the ninety-first (91st) day after receipt of notice of the forfeiture.

CONCLUSIONS OF LAW

1. The hearing examiner finds, by clear and convincing evidence, that Respondent Echols violated 59 O.S., 2011, Section 1310(A)(2) and (28) by failing to return the defendant Peralta to custody within ninety (90) days or remit payment in the face amount of the bond forfeiture within ninety-one (91) days from receipt of the Order and Judgment of Forfeiture in accordance with the provisions of 59 O.S., 2011, Section 1332 and OAC 365:25-5-40 and 365:25-5-41.

2. The hearing examiner finds, by clear and convincing evidence, that Respondent Echols violated 59 O.S., 2011, Section 1310(A)(6) and (9) by demonstrating both financial irresponsibility and irresponsibility in the conduct of business by failing to return the defendant to custody and/or timely pay the bail bond forfeiture in question in accordance with 59 O.S., 2011, Section 1332.

3. The hearing examiner further finds, by clear and convincing evidence, that Respondent, Echols, repeatedly failed to either return the defendant to custody after receiving notice of an Order and Judgment of Forfeiture or pay the amount of bail bond forfeiture by the ninety-first (91st) day, and that such conduct of affairs under her license, demonstrates incompetency and untrustworthiness.

4. The hearing examiner finds, by clear and convincing evidence, that Respondent Echols violated 59 O.S., 2011, Section 1310(A)(28) by failing to pay any fees to a Court Clerk as required by the Oklahoma Bail Bond Code.

5. Petitioner has shown by clear and convincing evidence, that Respondent Lumbermens has repeatedly and knowingly violated 36 O.S., 2011, Section 619 by failing to return the defendant to custody within ninety (90) days of receipt of the Order and Judgment of Forfeiture as provided

herein or remit payment in the face amount of the bond forfeiture within ninety-one (91) days from receipt of the Order and Judgment of Forfeiture in accordance with the provisions of 59 O.S., 2011, Section 1332, as well as OAC 365:25-5-40 and 365:25-5-41.

6. The hearing examiner finds, by clear and convincing evidence that Respondent, Lumbermens' repeated failures to pay lawful bond forfeitures or even acknowledge the debts has demonstrated an indifference to legal obligation and was intentional.

CONCLUSION

A fine is assessed against each of the Respondents for their respective violations of the Insurance Code. The Respondent, April Echols, is fined the sum of \$1,000.00. Respondent, Indiana Lumbermens Mutual Insurance Company is fined the sum of \$5,000.00. It is further ordered that license number NAIC 14265 which authorizes Respondent, Indiana Lumbermens Mutual Insurance Company to act as bail surety in the State of Oklahoma is hereby suspended for a period of ninety (90) days from the date of this Order. Costs of this proceeding in the sum of \$1,225.00 are assessed against Respondent Lumbermens which shall be paid no later than thirty (30) days from the date of this Order.

Dated this 13 day of April, 2017.

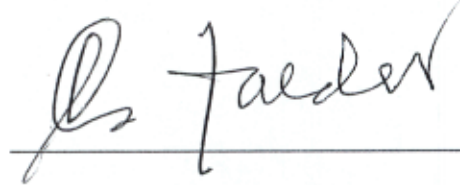
Charles F. Alden, III, OBA #0187
Charles F. Alden, III, Inc., P.C.
309 N.W. 9th Street
Oklahoma City, OK 73102
(405) 235-5255
(405) 235-8130 fax


ADMINISTRATIVE LAW JUDGE

CERTIFICATE OF MAILING

I hereby certify that on the 13th day of April, 2017, a true and correct copy of the above and foregoing document was sent via U.S. Mail, with postage prepaid thereon, to:

April Echols
Indiana Lumbersmens Mutual Insurance Company
c/o Stephen R. Money, Esq.
430 Court Street
Muskogee, OK 74401
Attorney for Respondents



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April Echols
 Indiana Lumbermens Mutual IC
 c/o Stephen R. Money, Esq.
 430 Court Street
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 sms/16-1073-DIS/FOF&COL 4-13-17

PS Form 3800, April 2015 PSN 7530-02-000-9053

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<p>1. Article Addressed to:</p> <div style="border: 1px solid black; padding: 5px; width: fit-content;"> April Echols Indiana Lumbermens Mutual IC c/o Stephen R. Money, Esq. 430 Court Street Muskogee, OK 74401 sms/16-1073-DIS/FOF&COL 4-13-17 </div>		<p>B. Received by (Printed Name) <i>[Signature]</i> C. Date of Delivery <i>4-17-17</i></p>																	
<p>2. Article Number (Transfer from service label) 7016 0910 0000 8401 1761</p>		<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table>		<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Insured Mail		<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
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