**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**
**DEPARTMENT OF BUSINESS REGULATION**
**JOHN O. PASTORE COMPLEX**
**1511 PONTIAC AVENUE**
**CRANSTON, RI 02920**

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| **IN THE MATTER OF:** | : | |
| **GREAT NORTHERN BONDING COMPANY** | : | **DBR No. 10-I-0055** |
| **RESPONDENT.** | : | |

# ORDER TO RESPONDENT TO CEASE AND DESIST FROM ENGAGING IN UNLICENSED INSURANCE ACTIVITIES

## I. INTRODUCTION

The above-entitled matter came before the Department of Business Regulation ("Department") pursuant to an Order to Show Cause Re Cease and Desist for Unlicensed Activities, Notice of Hearing and Appointment of Hearing Officer ("Order to Show Cause") issued to Great Northern Bonding Company Ltd. ("Respondent") on May 11, 2010. Pursuant to *Central Management Regulation 2 Rules of Procedure for Administrative Hearings* ("CMR2"), a prehearing conference was scheduled for June 29, 2010 at which time the parties waived the prehearing conference and a full hearing was held. The Department was represented by counsel and the Respondent was *pro se*. The parties rested on the record.

## II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 27-1-1 *et seq*., R.I. Gen. Laws § 42-14-1 *et seq*., and R.I. Gen. Laws § 42-35-1 *et seq*.

## III. ISSUE

Whether the Respondent engaged in unlicensed insurance activity[1] in violation of R.I. Gen. Laws § 27-16-1.2 and if so, should a cease and desist order pursuant to R.I. Gen. Laws § 42-14-16.1 enter.

## IV. MATERIAL FACTS AND TESTIMONY

Included as part of the Order to Show Cause is a cease and desist order issued against Eastern Shores Casualty. See *In the Matter of Eastern Shores Casualty*, DBR No. 07-I-0166 (3/12/08). At hearing, the Department entered in evidence a "Payment and Performance Bond" issued by Respondent regarding "Cobalt Construction" ("Cobalt Bond"). See Department's Exhibit One (1) (Cobalt Bond). Also entered into evidence was a cover letter dated March 19, 2010 from an attorney to the Department regarding a claim on the Cobalt Bond. See Department's Exhibit Two (2).

Leo Rush ("Rush"), the Respondent's Administrator, testified on the Respondent's behalf. He testified that based on his conversations with the Department in the Eastern Shores' matter, changes were made in how the Respondent structured its business. He testified that when the principal of the bond contract procures the contract, the client becomes part of Respondent's company which allows the Respondent under Rhode Island law to enter into a contract similar to insurance. He testified that the Respondent only guarantees the contract will be performed pursuant to the contract and the bills will be paid. He testified that the Respondent acts as a facilitator between associates that obtain contracts and owners. He testified that Respondent is a captive company and the only guarantee for the bond is collateral provided by the associate. See Respondent's Exhibit One (1) (written summary of Respondent's business plan) and Two

[1] There is no dispute that the Respondent is not licensed as a surety bond company in Rhode Island.

(2) (Respondent's answer to Order to Show Cause). In the Respondent's Exhibit One (1), the Respondent states it sets up a relationship between an owner and a contractor that guarantees the project will be completed and the contractor pledges assets equal to the penal sum of the contract and becomes a part-owner in the Respondent when the contractor procures the contract from the Respondent.

On cross-examination, Rush testified that Cobalt (of the Cobalt Bond) signed general indemnities and gave the Respondent a $750,000 promissory note for the completion of the job. He testified that the Cobalt Bond is not insurance because it is reassurance that the contract will be performed. He testified that if there is a claim against a bond, the claimant would go to Respondent. He testified that if Cobalt doesn't perform then its claimant would call Respondent who would get the second bidder on the contract to finish the job. He testified that the Respondent's website states that the Respondent provides performance and payment bonds as a foreign captive for companies that have been unable to obtain access to licensed insurance companies. Rush testified that companies might not be able to obtain access to licensed insurance companies because of financial difficulties or being a new company. He testified that the Respondent is not acting as an insurance company since when a company buys a bond from the Respondent that company buys into the Respondent so Respondent is exempt under R.I. Gen. Laws § 27-16-1.2(b)(2). Rush testified that the Respondent has paid claims. He testified that the claim referenced in Department's Exhibit Two (2) was settled by the parties talking and insurance companies work things out the same way.

On questioning from the undersigned, Rush testified that a client doesn't receive shares in the Respondent when it procures a bond but the understanding is that by buying a bond a client becomes a partner in Respondent.

The Department argued the Cobalt Bond is a performance bond of the type that is required to have an insurance license and that Rush is well aware of that requirement from the Eastern Shores' matter. The Department further argued that this type of unlicensed activity is an extreme risk to Rhode Island consumers since when a contractor requests a performance bond from a subcontractor, the contractor is asking an insurance company to back up the subcontractor's work and the Respondent does not fall under its claimed exemption from insurance licensing requirements.

Rush argued that there hasn't ever been a loss to Rhode Island consumers and all claims have been settled. He argued that Respondent is exempt from licensing in Rhode Island since when a principal (contractor) buys a bond, the principal become part of the Respondent so the performance contracts are incident to the principal's primary business. See Respondent's Exhibit Two (2).

## V. DISCUSSION

### A. Legislative Intent

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.,* 637 A.2d 1047 (R.I. 1994). See *Parkway Towers Associates v. Godfrey*, 688 A.2d 1289 (R.I. 1997). If a statute is clear and unambiguous, "the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Oliveira v. Lombardi*, 794 A.2d 453,

457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. Dept. of Environmental Management,* 553 A.2d 541 (R.I. 1989) (internal citation omitted). In cases where a statute may contain ambiguous language, the Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers,* 711 A.2d 1131 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

**B. Relevant Statutes**

R.I. Gen. Laws § 27-16-1.2 states in part as follows:

> Certificate of compliance – Exceptions. – (a) It shall be unlawful for any insurer to transact insurance business in this state as set forth in subsection (b) of this section without a certificate of compliance from the commissioner . . .
>
> (b) Any of the following acts in this state effected by mail or otherwise, by or on behalf of an insurer, is deemed to constitute the transaction of an insurance business in this state. The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect. Unless indicated, "insurer," as used in this section, includes all corporations, associations, partnerships, and individuals engaged as principals in the business of insurance and also includes interinsurance exchanges and mutual benefit societies:
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> (2) The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety;

**C. Whether the Respondent is Violating R.I. Gen. Laws § 27-16-1.2(b)**

During his testimony, Rush admitted that the Respondent guarantees the performance of work being performed under contract by issuing bonds guaranteeing such performance. See also Respondent's Exhibit One (1). The Respondent does not dispute

it issued the Cobalt Bond which guarantees the performance of work under contract. It is clear that such bonds fall under R.I. Gen. Laws § 27-16-1.2 which requires that anyone making any contract of guaranty be licensed by the State of Rhode Island.

The exemption in R.I. Gen. Laws § 27-16-1.2(b) requires that a company issue bonds "incidental to any other legitimate business or activity of the guarantor or surety."[2] In other words, a contractor who is in the business of contracting might issue a bond to cover its own work and that would be incidental to "any other legitimate business" which would be the contractor's primary work of contracting.

Based on the Rush's testimony and evidence, the Respondent's business is the issuing of performance bonds. Rush argued that the Respondent's clients become part-owners of Respondent by purchasing a bond so that the issuance of the bond becomes incidental to a contractor's business. Rush did not produce any evidence that Respondent's clients become part-owners of Respondent by purchasing bonds. He claimed that such a purchase was an understanding between the parties. Respondent's Exhibit Two (2) states that the so-called ownership is only for the duration of the contract. But even if Respondent's clients do become part-owners of the Respondent when purchasing bonds that does not convert the Respondent's issuance of such bonds into being incidental to the Respondent's clients' legitimate business activities. The Respondent's clients are not issuing the bonds even with alleged temporary ownership interest in Respondent. If the Respondent's clients were issuing the bonds and

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[2] In *Roadway Express, Inc. v. Rhode Island Commission for Human Rights*, 416 A.2d 673 (R.I. 1980), the Court relied on a dictionary definition in applying the "ordinary meaning" of "must." *Id*., at 674. As the Court has found, "[i]n a situation in which a statute does not define a word, courts often apply the common meaning given, as given by a recognized dictionary." *Defenders of Animals, Inc*., at 543.

*Random House Webster's Unabridged Dictionary*, 2nd Edition (1987) defines "incidental" as "incurred casually and in addition to the regular or main amount." *Black's Law Dictionary* (8th ed. 2004) defines incidental as "[s]ubordinate to something of greater importance; having a minor role."

guaranteeing their performance, they would not need the Respondent. The Respondent's clients might pledge collateral to Respondent to guarantee the bond but the Respondent issues and guarantees the bond. This argument is without merit.

In the Eastern Shores's matter, Rush agreed that Eastern Shores would cease and desist from the guaranty or surety of any risk sited in Rhode Island and any other activity requiring licensure in Rhode Island. At this hearing, Rush testified that based on the Eastern Shores' matter, Respondent changed its business structure. However, the Respondent is still issuing "Payment and Performance Bonds" guaranteeing performance of work and of risks sited in Rhode Island. The Respondent is engaging in unlicensed insurance activity in Rhode Island. In future, such actions could be subject to a restraining order from the attorney general pursuant to R.I. Gen. Laws § 27-16-1.3 and/or the penalties set forth in R.I. Gen. Laws § 27-16-2.2.

Based on the forgoing, the Respondent violated R.I. Gen. Laws § 27-16-1.2(b)(2).

## VI. FINDING OF FACTS

1. On or about May 11, 2010, an Order to Show Cause Re Cease and Desist for Unlicensed Activities, Notice of Hearing and Appointment of Hearing Officer was issued by the Department to the Respondent.

2. Pursuant to CMR2, a prehearing conference was scheduled for June 29, 2010 at which time the parties waived the prehearing conference and a full hearing was held. The parties rested on the record.

3. The Respondent guarantees the performance of work under contract by issuing bonds guaranteeing such performance. The Respondent issues such guarantees on behalf of its clients.

4. The facts contained in Section IV and V are reincorporated by reference herein.

## VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 27-1-1 *et seq*., R.I. Gen. Laws § 42-14-1 *et seq*., and R.I. Gen. Laws § 42-35-1 *et seq*.

2. The Respondent is violating R.I. Gen. Laws § 27-16-1.2(b)(2) by issuing such bonds.

3. The Respondent is not exempt from R.I. Gen. Laws § 27-16-1.2(b)(2).

## VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that pursuant to a R.I. Gen. Laws § 42-14-16.1, a cease and desist order shall be issued against the Respondent ordering the Respondent to cease and desist from engaging in any insurance activity requiring licensing in the State of Rhode Island.

Dated: August 25, 2010 signature on file
Catherine R. Warren
Hearing Officer

I have read the Hearing Officer's recommendation in this matter and I hereby ADOPT/REJECT the findings of facts, the conclusions of law, and the recommendation of the hearing officer in the above-entitled Final Order.

Dated: August 27, 2010 signature on file
A. Michael Marques
Director

Entered as Administrative Order No.10- 125 on the 27th day of August, 2010.

## NOTICE OF APPELLATE RIGHTS

**THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.**