



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF RLII-C-

DATE: NOV. 13, 2017

APPEAL OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT LAS VEGAS SUB
OFFICE DECISION

FORM: ICE FORM I-352, IMMIGRATION BOND

The Obligor, a surety company, seeks to reinstate a delivery bond. *See* Immigration and Nationality Act (the Act) section 103(a)(3), 8 U.S.C. § 1103(a)(3) (authorizing the Secretary of Homeland Security to prescribe forms of bond). An obligor posts an immigration bond as security for a bonded foreign national's compliance with bond conditions, and U.S. Immigration and Customs Enforcement (ICE) may issue a bond breach notice upon substantial violation of these conditions.

The Obligor executed a delivery bond on behalf of the Foreign National. ICE issued a demand notice to the Obligor to deliver the Foreign National at a specific location, date, and time. When the Obligor did not deliver the Foreign National as instructed, the Director of the ICE Las Vegas Sub-Office declared the bond breached.

On appeal, the Obligor claims that ICE did not comply with its *Bond Management Handbook* in its issuance of the Form I-340, Notice to Obligor to Deliver Alien. The Obligor requests reinstatement of the bond.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

A delivery bond creates a contract between the United States and an obligor. *Matter of Smith*, 16 I&N Dec. 146, 151 (Reg'l Comm'r 1977). An obligor secures his or her promise to deliver a foreign national by paying a designated amount in cash or its equivalent. *Id.* A breach occurs upon substantial violation of a bond's conditions. 8 C.F.R. § 103.6(e). Conversely, substantial performance of a bond's conditions releases an obligor from liability. 8 C.F.R. § 106(c)(3).

II. ANALYSIS

In October 2016, the Obligor signed Form I-352, Immigration Bond, agreeing to deliver the Foreign National to ICE upon demand. In December 2016, ICE issued a Form I-340, demanding the delivery of the Foreign National to its Enforcement and Removal Operations (ERO) Las Vegas Sub Office on [REDACTED] 2017. The Obligor acknowledged receipt of the notice, but the Foreign

National did not appear on the designated date. ICE subsequently declared the bond breached in [REDACTED] 2017.

A delivery bond is violated if the obligor does not cause the foreign national to be produced to an immigration officer upon each and every request until proceedings are finally terminated, or until the foreign national is actually accepted by the immigration officer for detention or removal. *See Matter of Smith*, 16 I&N Dec. at 146. The record reflects that the demand notice was delivered to the Obligor and that the Obligor received such notice. Therefore, the Obligor was properly notified that the Foreign National must be delivered to the designated ICE ERO office on a certain date and time. The record indicates that the Obligor violated the bond's terms when, upon written request, he did not produce the Foreign National at the ERO Las Vegas Sub Office on [REDACTED] 2017.

As stated, we will determine that a bond is breached only if there is a substantial violation of the bond conditions. Determining whether a bond violation is "substantial" under 8 C.F.R. § 103.6(e) requires consideration of a variety of factors. They include: the extent of the violation; whether it was intentional or accidental; whether it was in good faith; and whether the obligor took steps to comply with the terms of the bond. *Matter of Kubacki*, 18 I&N Dec. 43, 44 (Reg'l Comm'r 1981); *see also Aguilar v. United States*, 124 Fed. Cl. 9, 16 (2015). Substantial performance of a bond's conditions releases an obligor from liability. *See* 8 C.F.R. § 106.6(c)(3).

In this case, the extent of the breach was significant as the Obligor did not deliver the Foreign National to the ICE ERO office as directed. We conclude that the bond violation was not accidental, as the demand notice was received by the Obligor and the Obligor provided no evidence that the Foreign National could not be delivered to the ICE ERO office. There is no indication that the Obligor took steps to comply with the terms of the bond, even after the issuance of the breach notice, or that the violation occurred in good faith. As such, we conclude that, by not delivering the Foreign National upon written demand, the Obligor breached the terms of the bond.

On appeal, the Obligor states that questionnaires and worksheets did not accompany ICE's Form I-340. The Obligor asserts that ICE was required to send questionnaires and worksheets with the notices, stating that it is settled practice that the sending of a defective I-340 requires rescission of the corresponding bond breach.

The Obligor's assertion of the questionnaires and worksheets requirement stems from a settlement agreement, Amwest II, binding the U.S. government, Gonzales & Gonzales Bonds and Insurance Agency (G&G), and certain surety companies. Under Amwest II, the government agreed to provide G&G with questionnaires and worksheets containing information about bonded foreign nationals, including their addresses, when issuing written requests. *See Gonzales & Gonzales*, 103 F. Supp. 3d 1121 (N.D. Cal. 2015).

However, the Obligor in this case is not G&G or otherwise a party to the Amwest II settlement. Therefore, ICE is not bound by the terms of the settlement in this matter. Moreover, contrary to the Obligor's assertion, it is not ICE policy to rescind breaches where questionnaires and worksheets do

Matter of RLII-C-

not accompany written requests. *See Safety Nat. Cas. Corp. v. U.S. DHS*, 711 F. Supp. 2d 697, 727 (S.D. Tex. 2008) (finding that the record did not establish a consistent ICE policy to cancel bond breaches where questionnaires did not accompany Forms I-340).

Thus, for the foregoing reasons, the Obligor is not entitled to reinstatement of the bond.

III. CONCLUSION

As the Obligor substantially violated the conditions of the bond, we conclude that the bond has been breached, and the Obligor is not entitled to reinstatement of the bond.

ORDER: The appeal is dismissed.

Cite as *Matter of RLII-C-*, ID# 595228 (AAO Nov. 13, 2017)