



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

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

In Re: 23530801

Date: NOV. 28, 2022

Appeal of U.S. Immigration and Customs Enforcement Decision

ICE Form I-352, Immigration Bond

The Co-Obligor seeks to reinstate a delivery bond. *See* Immigration and Nationality Act section 103(a)(3), 8 U.S.C. § 1103(a)(3). An obligor posts an immigration bond as security for a bonded noncitizen'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 El Paso, Texas ICE Field Office declared the bond breached, concluding that the obligors did not deliver the bonded noncitizen upon written request, as required by the terms of the delivery bond. On appeal, the Co-Obligor submits a brief and asserts that the notice to deliver the bonded noncitizen was deficient because it did not contain a "Questionnaire and Worksheet."

In these proceedings, it is the Co-Obligor's burden to establish substantial performance of a bond's conditions. *Matter of Allied Fid. Ins. Co.*, 19 I&N Dec. 124, 129 (BIA 1984). Upon *de novo* review, we will dismiss the appeal.

I. LAW

A delivery bond creates a contract between the U.S. Government and an obligor. *United States v. Minn. Tr. Co.*, 59 F.3d 87, 90 (8th Cir. 1995); *Matter of Allied Fid. Ins. Co.*, 19 I&N Dec. at 125. An obligor secures its promise to deliver a noncitizen by paying a designated amount in cash or its equivalent. 8 C.F.R. § 103.6(d). 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. § 103.6(c)(3). Several factors inform whether a bond violation is substantial: 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) (citing *Int'l Fidelity Ins. Co. v. Crosland*, 490 F. Supp. 446 (S.D.N.Y. 1980)); *see also Aguilar v. United States*, 124 Fed. Cl. 9, 16 (2015).

II. ANALYSIS

The El Paso, Texas ICE Field Office declared the bond breached, concluding that the Obligor and Co-Obligor did not deliver the bonded noncitizen to ICE upon written request. The Co-Obligor does not

contest ICE's conclusion. Instead, the Co-Obligor asserts that the ICE Form I-340, Notice to Obligor to Deliver Alien, sent to the Obligor and Co-Obligor was deficient because it did not include a "Questionnaire and Worksheet" created pursuant to the *Amwest Surety Ins. Co., et al. v. Reno, et al.*, Civil No. 93-3256 JSL(SHx) (C.D. Cal. June 22, 1995), settlement agreement (*Amwest Settlement Agreement*).¹ We disagree.

A. Non-Parties to the *Amwest Settlement Agreement* are Not Entitled to a "Questionnaire and Worksheet"

The Co-Obligor asserts that "Enforcement and Removal Operations Bond Management Handbook, Document Number 16051730, Appendices 12, [p]age 11, and 13 page 45," (Bond Management Handbook) requires ICE to include a "Questionnaire and Worksheet" when serving an obligor with Form I-340. Appendix 13 of the cited Bond Management Handbook provides general guidance for ICE employees for completing and sending Form I-340. U.S. Dep't of Homeland Security, *Enforcement and Removal Operations Bond Management Handbook*, 1, 44 (Aug. 19, 2014). ICE's policy of sending a "Questionnaire and Worksheet," to which the Co-Obligor refers, is only implicated "for bonds posted by G&G when it serves as the agent for American Surety Company" or the related sureties, Amwest Surety and FarWest Surety. *Id.* at 45, 52. This policy applies only to the parties to the *Amwest Settlement Agreement*.

The Bond Management Handbook expressly does not create a right that an obligor may use as a defense to a bond breach determination:

The procedures detailed in this Handbook are intended for the internal management of ICE and do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against ICE or any agency of the Federal Government. Any failure of ICE to comply with any provisions in this document shall not be available to any person or entity as a defense, except as otherwise required by law.

Id. at 1. The Bond Management Handbook clarifies that, instead of creating rights, it "provides general guidance on immigration bonds" for ICE employees' reference. *Id.* Thus, the express language of the Bond Management Handbook prevents the Co-Obligor from relying on the Handbook's general, internal guidance as a defense to a bond breach determination.

The Co-Obligor is neither Gonzales & Gonzales Immigration Bonds nor serving as the agent for American Surety Company, Amwest Surety, or FarWest Surety for the disputed bond breach determination. Therefore, even if the Bond Management Handbook created a right upon which the Co-Obligor may rely as a defense, which it does not, the provision the Co-Obligor references does not apply to it. *Id.* at 1, 45, 52.

¹ In 1995, the former Immigration and Naturalization Service entered into the *Amwest Settlement Agreement* with Gonzales and Gonzales Immigration Bonds (G&G) and certain surety companies to settle an underlying lawsuit. The *Amwest Settlement Agreement* sets forth terms and conditions that apply only to the parties to the settlement. *Safety National Casualty Corp., et al. v. U.S. Dep't of Homeland Security*, 711 F. Supp. 2d 697, 711 (S.D. Tex. Mar. 24, 2008).

Moreover, even if the *Amwest* Settlement Agreement and ICE's implementing policy applied to the Co-Obligor, which it does not, a district court observed that ICE's failure to send a "Questionnaire and Worksheet" does not necessarily render a bond breach determination void:

Even if the Court were to conclude that the Agency had a policy of extending the provisions of the *Amwest* I Settlement to all sureties as a matter of policy and fairness, the text of the *Amwest* I Settlement does not make clear that failure to send a questionnaire with a demand to produce the alien necessarily renders a bond breach unenforceable.

Safety National Casualty Corp., et al. v. U.S. Dep't of Homeland Security, 711 F. Supp. 2d at 727. We agree. For the foregoing reasons, we are unpersuaded by the Co-Obligor's assertion that ICE was required to include a "Questionnaire and Worksheet" when serving the Obligor with Form I-340.

B. The Co-Obligor Substantially Violated the Delivery Bond's Conditions

The Co-Obligor does not contest ICE's conclusion that the Obligor and Co-Obligor did not deliver the bonded noncitizen to the El Paso, Texas Field Office on [] 2018, upon written request. By failing to deliver the bonded noncitizen upon written request, the Co-Obligor violated the main condition of the delivery bond. There is no indication that this violation was accidental or made in good faith, or that the Co-Obligor has attempted to comply with the terms of the immigration bond. *See Matter of Kubacki*, 18 I&N Dec. at 44. Because the Co-Obligor has not demonstrated that the Obligor and Co-Obligor otherwise substantially performed the bond's conditions, we conclude that the Obligor and Co-Obligor substantially violated the bond's conditions when they did not deliver the bonded noncitizen as requested. 8 C.F.R. § 103.6(e); *see also Matter of Kubacki*, 18 I&N Dec. at 44.

III. CONCLUSION

The Bond Management Handbook does not create rights that obligors may raise as defenses to bond breach determinations. Non-parties to the *Amwest* Settlement Agreement are not entitled to receive a "Questionnaire and Worksheet" with Form I-340. The Co-Obligor substantially violated the delivery bond's conditions when it did not deliver the bonded noncitizen in accordance with the ICE's written request.

ORDER: The appeal is dismissed.