

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF INSURANCE,            )  
  )  
      Petitioner,                        )  
  )  
vs.                                        )     Case No. 00-3711PL  
  )  
RAMONA LEE BOLDING,                 )  
  )  
      Respondent.                      )  
\_\_\_\_\_                                  )

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Tampa, Florida, on March 1, 2001.

APPEARANCES

For Petitioner: Anoush A. Arakalian  
Division of Legal Services  
Department of Insurance  
612 Larson Building  
200 East Gaines Street  
Tallahassee, Florida 32399-0333

For Respondent: Joseph R. Fritz  
Joseph R. Fritz, P.A.  
4204 North Nebraska Avenue  
Tampa, Florida 33602

STATEMENT OF THE ISSUE

The issue is whether Respondent is guilty of unlawfully employing a felon in the conduct of the bail bond business, in violation of Sections 648.44(8)(b) and 648.45(3), Florida

Statutes, and Rule 4-221.001, Florida Administrative Code. If so, an additional issue is what penalty should be imposed.

PRELIMINARY STATEMENT

By Administrative Complaint dated August 16, 2000, Petitioner alleged that Respondent was licensed as a limited surety agent and acted as president of Dolly Bolding Bail Bonds, Inc. Petitioner twice amended the Administrative Complaint.

Count II of the Second Amended Administrative Complaint alleges that Respondent unlawfully employed Frank Cueto, Sr., a felon, in the bail bond business. Count II alleges that Carver Taitt met Mr. Cueto at Respondent's office, completed the necessary paperwork, accepted the premium, and issued a receipt in connection with a bail bond that Mr. Taitt sought for his son, who had been arrested on drug charges. Count II alleges that Mr. Taitt spoke with Mr. Cueto on the telephone about a balance due on the premium and continuing to honor the bond after his son failed to appear in court.

Counts I and III of the Second Amended Administrative Complaint allege that Respondent unlawfully employed Donald Raymond Davis, a felon, in the bail bond business. Mr. Davis failed to appear at the final hearing. After hearing argument of counsel, the Administrative Law Judge determined that the circumstances surrounding service would not likely support an

effort by Petitioner to have a circuit court judge hold Mr. Davis in contempt or otherwise enforce the subpoena. The Administrative Law Judge thus denied Petitioner's request to continue the hearing to another date, at which Petitioner would again try to obtain the attendance of Mr. Davis. Lacking an indispensable witness, Petitioner dismissed Counts I and III.

At the hearing, Petitioner called two witnesses and offered into evidence seven exhibits: Petitioner Exhibits 1, 3, and 10-14, which were all admitted. Respondent called two witnesses and offered into evidence no exhibits.

The court reporter filed the transcript on March 16, 2001.

#### FINDINGS OF FACT

1. At all material times, Respondent has been a licensed limited surety agent, holding license number A025071. At all material times, Respondent has been the president and owner of Dolly Bolding Bail Bonds, Inc. (Dolly Bolding), which is located at 108 South Armenia Avenue in Tampa.

2. In July 1999, Carver Taitt visited the office of Dolly Bolding to obtain a bail bond for his son, who had been arrested on drug charges. The judge had set bond at \$20,000, so the bail bond premium was \$2000.

3. Mr. Taitt spoke with Respondent and said that he did not have the entire \$2000; he had only \$1000. Respondent declined to extend Mr. Taitt credit for the \$1000 balance. Mr. Taitt then offered \$1500, and Respondent agreed to allow Mr. Taitt to owe Dolly Bolding the remaining \$500.

4. At this time, Mr. Taitt saw Frank Cueto, Sr., also known as "Paunch," in the office of Dolly Bolding. Mr. Taitt also told Mr. Cueto that Mr. Taitt would pay the remaining \$500.

5. Mr. Taitt had obtained bonds in the past five years from Dolly Bolding. During this time, he had often seen Respondent and Mr. Cueto in the office, and Mr. Taitt was acquainted with both of them from these past purchases of bonds.

6. Mr. Cueto contacted Mr. Taitt several times and asked him to pay the remaining \$500. At one point, Mr. Cueto threatened that Dolly Bolding would revoke the bond if Mr. Taitt did not immediately pay the remaining \$500, especially because he was about to take a trip whose cost would approximate the outstanding balance. Mr. Taitt paid the \$500 on the day prior to his son's court appearance. When he complained to Mr. Cueto that he should have trusted Mr. Taitt based on their past relationship, Mr. Cueto replied that money is money.

7. Mr. Taitt's son missed his court appearance, and the judge ordered the forfeiture of the bond. The judge later entered an order reinstating bail, but this order did not reinstate the obligation previously undertaken under the bond by Dolly Bonding or its principal.

8. Consequently, Mr. Taitt telephoned Dolly Bonding and requested a reissuance of the bond. Told that Respondent was unavailable, Mr. Taitt spoke with Mr. Cueto. Mr. Cueto told Mr. Taitt that no surety company would agree to reissue the bond.

9. In the meantime, the assistant public defender obtained an order from the judge for the administrative release of Mr. Taitt's son. By this means, the jail released Mr. Taitt's son immediately without posting any bond.

10. The facts contained in paragraphs 4-8 above are derived from Mr. Taitt's testimony. This constitutes some, but not all, of Mr. Taitt's testimony. The Administrative Law Judge has not credited much of the remainder of the testimony, including, most significantly, Mr. Taitt's testimony that Mr. Cueto was always in the office of Dolly Bolding and that he seemed to run the bonding business.

11. Mr. Taitt was angered by Mr. Cueto's involvement in this transaction. Much of his uncredited testimony lacked the detail of his credited testimony. As for the credited

testimony, Respondent, who was not always present in the office, was not able to rebut the more-detailed portion of Mr. Taitt's description of Mr. Cueto's handling of the transaction. Mr. Cueto did not testify, although he is engaged to be married to Respondent and lives with her.

12. However, Respondent's testimony is credited over Mr. Taitt's vague, conclusory testimony as to the business relationship between Respondent and Mr. Cueto. Thus, consistent with Respondent's testimony, the Administrative Law Judge finds that Mr. Cueto has not exercised any dominion over Dolly Bolding or Respondent. Respondent is an articulate, intelligent individual, who is a college graduate. She makes all bonding decisions for Dolly Bolding.

13. Mr. Cueto is not an employee, officer, or shareholder of Dolly Bolding, and Respondent is not an employee, officer, or shareholder in any company owned by Mr. Cueto. He maintains an office in the same building as Dolly Bolding's office, and he is present in the Dolly Bolding office on a frequent basis. At least in the case of the bond for Mr. Taitt's son, Mr. Cueto has involved himself to some extent in Respondent's bonding business. It is entirely possible that Mr. Cueto's involvement in this bonding transaction is isolated, as he may have been inclined to involve himself to an unusual degree in a bonding matter due

to the number of years that Mr. Cueto has known Mr. Taitt. It is even more likely that Mr. Cueto's involvement in this bonding transaction was without the knowledge of Respondent.

14. Mr. Cueto is a felon. He was convicted in 1994 of unlawful engaging in the bail bond business and misleading advertising. Mr. Cueto was formerly a licensed limited surety agent, but Petitioner suspended his license sometime ago. Respondent was at all times aware of these aspects of Mr. Cueto's background.

15. In November 1991, Petitioner commenced an administrative proceeding against Respondent, as a licensed limited surety agent, for allowing an unlicensed person to participate in the bail bond business. By Settlement Stipulation for Consent Order and Consent Order, both signed in April 1992, Respondent agreed, and was ordered, to pay an administrative fine of \$2000.

#### CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the subject matter. Section 120.57(1), Florida Statutes. (All references to Sections are to Florida Statutes. All references to Rules are to the Florida Administrative Code.)

17. Section 648.45(2) provides in relevant part:

(2) The department shall deny, suspend, revoke, or refuse to renew any license or

appointment issued under this chapter or the insurance code, and it shall suspend or revoke the eligibility of any person to hold a license or appointment under this chapter or the insurance code, for any violation of the laws of this state relating to bail or any violation of the insurance code or for any of the following causes:

(d) Willful use, or intended use, of the license or appointment to circumvent any of the requirements or prohibitions of this chapter or the insurance code.

(e) Demonstrated lack of fitness or trustworthiness to engage in the bail bond business.

(j) Willful failure to comply with or willful violation of any proper order or rule of the department or willful violation of any provision of this chapter or the insurance code.

18. Section 648.45(3)(c) provides:

The department may deny, suspend, revoke, or refuse to renew any license or appointment issued under this chapter or the insurance code, or it may suspend or revoke the eligibility of any person to hold a license or appointment under this chapter or the insurance code, for any violation of the laws of this state relating to bail or any violation of the insurance code or for any of the following causes:

(c) Violation of any law relating to the business of bail bond insurance or violation of any provision of the insurance code.

19. Section 648.30 provides:

(1) A person may not act in the capacity of a bail bond agent, temporary bail bond



agent, or runner or perform any of the functions, duties, or powers prescribed for bail bond agents or runners under this chapter unless that person is qualified, licensed, and appointed as provided in this chapter.

(2) No person shall represent himself or herself to be a bail enforcement agent, bounty hunter, or other similar title in this state.

(3) No person, other than a certified law enforcement officer, shall be authorized to apprehend, detain, or arrest a principal on a bond, wherever issued, unless that person is qualified, licensed, and appointed as provided in this chapter or licensed as a bail bond agent by the state where the bond was written.

(4) Any person who violates any provision of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

20. Section 648.44(8) provides in relevant part:

(8)(a) A person who has been convicted of or who has pleaded guilty or no contest to a felony or a crime involving moral turpitude or a crime punishable by imprisonment of 1 year or more under the law of any state, territory, or country, regardless of whether adjudication of guilt was withheld, may not participate as a director, officer, manager, or employee of any bail bond agency or office thereof or exercise direct or indirect control in any manner in such agency or office or own shares in any closely held corporation which has any interest in any bail bond business. Such restrictions on engaging in the bail bond business shall continue to apply during a pending appeal.

(b) Any person who violates the provisions of paragraph (a) or any person who

knowingly permits a person who has been convicted of or who has pleaded guilty or no contest to a crime as described in paragraph (a) to engage in the bail bond business as prohibited in paragraph (a) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any law enforcement agency, state attorney's office, court clerk, or insurer that is aware that a bail bond agent, temporary bail bond agent, or runner has been convicted of or who has pleaded guilty or no contest to a crime as described in paragraph (a) shall notify the department of this fact.

(d) Upon the filing of an information or indictment against a bail bond agent, temporary bail bond agent, or runner, the state attorney or clerk of the circuit court shall immediately furnish the department a certified copy of the information or indictment.

21. Rule 4-221.001 provides:

Any licensed bail bond agent, temporary bail bond agent, or managing general agent engaged in the bail bond business, who permits any person not licensed, as required under Chapter 648, Florida Statutes, to solicit or engage in the bail bond business in his behalf shall be deemed in violation of Section 648.30, Florida Statutes. A bail bond agent or duly licensed person from another state may apprehend, detain, or arrest a principal on a bond, as provided by law.

22. Petitioner must prove the material allegations by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Company, Inc., 670 So. 2d 932

(Fla. 1996) and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

23. As a condition for discipline, Section 648.45(2)(d), (e), and (j) requires either willfulness or a demonstrated lack of fitness or trustworthiness by Respondent. Lacking clear and convincing evidence of any knowledge by Respondent of Mr. Cueto's role in the Taitt bond transaction, Petitioner is unable to establish a violation of Section 648.45(2)(d) and (j). Lacking clear and convincing evidence of ongoing, substantial involvement of Mr. Cueto in Respondent's bail bond business, even without her knowledge, Petitioner is unable to establish a violation of Section 648.45(2)(e).

24. As a condition for discipline, Section 648.45(3)(c) requires a violation of law, willful or otherwise, by Respondent relating to the bail bond business or the insurance code. Obviously, Mr. Cueto's criminal conviction and license suspension, of which Respondent was aware, prevented him from performing bail bond activities requiring a license.

25. However, under Section 648.44(8)(b), Respondent's liability for any unlawful participation by an unlicensed person in the bail bond business requires that Respondent knowingly permitted a felon to serve as a director, officer, manager, or employee of her bail bond business; directly or

indirectly control her bail bond business; or own shares in a closely held corporation holding an interest in her bail bond business. Lacking clear and convincing evidence of any knowledge by Respondent of Mr. Cueto's role in the Taitt bond transaction, as well as clear and convincing evidence that Mr. Cueto has unlawfully participated in Respondent's bail bond business as a director, officer, manager, employee, controlling person, or shareholder, Petitioner is unable to establish a violation of Section 648.44(8)(b).

26. Similarly, under Rule 4-221.001, Respondent's liability for any unlawful participation by an unlicensed person in the bail bond business requires that Respondent permitted an unlicensed person to solicit or engage in the bail bond business. Although the rule does not explicitly require an intentional or knowing act by a licensee, "permission" requires knowledge of the unlawful act by the person giving the permission. As already noted, clear and convincing evidence fails to establish this knowledge on the part of Respondent.

27. Unless it were redundant, the concept of "solicit" would extend the coverage of Rule 4-221.001. As described in Section 648.44(8)(a), "engaging in the bail bond business" is limited to the activity described in paragraph 25 above. However, the evidence also falls short of clear and convincing

that Mr. Cueto solicited Mr. Taitt's bond business in this transaction.

28. Respondent has requested attorneys' fees and costs as a prevailing party under Section 57.111. Section 57.111(4)(a) precludes an award of fees and costs if an agency action was "substantially justified." Section 57.111(3)(e) defines "substantially justified" as having a "reasonable basis in law and fact." After careful consideration of the entire record, including the demeanor of Mr. Taitt and Respondent, the Administrative Law Judge chose not to infer sufficient control by Mr. Cueto, sufficient knowledge by Respondent, or any careless or reckless disregard of Mr. Cueto's activities by Respondent to establish a basis for discipline. This decision was close in certain respects, and Petitioner clearly had substantial justification, under the law and facts, to bring this case against Respondent. The Administrative Law Judge therefore dismisses Respondent's claim for attorneys' fees and costs.

#### RECOMMENDATION

It is

RECOMMENDED that the Department of Insurance dismiss the Second Amended Administrative Complaint against Respondent.

DONE AND ENTERED this 6th day of April, 2001, in  
Tallahassee, Leon County, Florida.

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ROBERT E. MEALE  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 6th day of April, 2001.

COPIES FURNISHED:

Honorable Tom Gallagher  
Commissioner of Insurance and Treasurer  
The Capitol, Plaza Level 02  
Tallahassee, Florida 32399-0300

Mark Casteel, General Counsel  
Department of Insurance  
The Capitol, Lower Level 26  
Tallahassee, Florida 32399-0307

Anoush A. Arakalian  
Division of Legal Services  
Department of Insurance  
612 Larson Building  
200 East Gaines Street  
Tallahassee, Florida 32399-0333

Joseph R. Fritz  
Joseph R. Fritz, P.A.  
4204 North Nebraska Avenue  
Tampa, Florida 33602

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order must be filed with the agency that will issue the final order in this case.