

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL)
SERVICES,)
)
Petitioner,)
)
vs.) Case No. 03-0798PL
)
CLARENCE LUTHER CEPHAS, SR.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, this matter was held before Daniel M. Kilbride, Administrative Law Judge, Division of Administrative Hearings, on May 15, 2003, in Bartow, Florida.

APPEARANCES

For Petitioner: Dickson E. Kesler, Esquire
Department of Financial Services
401 Northwest 2nd Avenue, Suite N-321
Miami, Florida 33128

For Respondent: James R. Franklin, Esquire
The Franklin & Carmichael Law Firm, P.A.
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Post Office Box 50
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STATEMENT OF THE ISSUES

Whether Respondent violated provision of the Florida Insurance Code by employing a convicted felon in the bail bond business.

Whether Respondent violated the provisions of the Florida Insurance Code by failing to report a change of address to Petitioner.

PRELIMINARY STATEMENT

On March 20, 2003, Petitioner filed a two-count Second Amended Administrative Complaint against Respondent. Respondent denied the allegations and elected for a formal adversarial proceeding to be heard before the Division of Administrative Hearings (DOAH) pursuant to Section 120.57(1), Florida Statutes. This matter was referred to DOAH on March 5, 2003, and discovery ensued.

The parties filed a joint Pre-Hearing Stipulation with the DOAH on May 5, 2003, and the matter was heard on May 15, 2003, in Bartow, Florida.

At the hearing, Petitioner introduced nine exhibits, which were entered into evidence. Respondent presented four exhibits, which were entered into evidence. Petitioner called six witnesses: Special Agent Michael Kreis, Drug Enforcement Agency; Luis Rivera; Constance Castro; Pamela Jean Coleman; Noel Elizabeth "Nikki" Collier; and Respondent. Respondent testified in his own behalf.

The Transcript of the proceedings was filed on May 27, 2003. Respondent filed a motion for extension of time to file proposed recommended orders, which was granted. Petitioner

filed its proposals on June 9, 2003. Respondent filed his proposals on June 24, 2003. Both proposals have been give careful consideration in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times relevant to the dates and occurrences referred to in this matter, Respondent Clarence Luther Cephas, Sr., was licensed in the State of Florida as a bail bond agent.

2. Pursuant to Florida law, Petitioner has jurisdiction over the bail bond licensure and appointments of Respondent.

3. Records of the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (Criminal Division), show that Pamela Jean Coleman, a/k/a Deborah Lee Diehl, a/k/a Pamela Jean Jones, a/k/a Pamela Jones, a/k/a Pamela Coleman, pleaded guilty and was adjudicated guilty on March 28, 1975, in case number 75-239 CF, of buying or receiving or aiding in concealment of stolen property, a felony.

4. Records of the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (Criminal Division), show that Pamela Jean Coleman, a/k/a Deborah Lee Diehl, a/k/a Pamela Jean Jones, a/k/a Pamela Jones, a/k/a Pamela Coleman, pleaded guilty and was adjudicated guilty on October 22, 1975, in case number 75-2390 CF, of violation of drug abuse law, a felony.

5. Records of the State of Florida Department of Law Enforcement (FDLE) show that the conviction set forth in paragraph 4 above included convictions on March 28, 1975, and July 17, 1975, for parole violations.

6. On or about March 7, 1980, the State of Florida Office of Executive Clemency restored the civil rights of Pamela Jean Coleman, relative to Coleman's criminal convictions in Palm Beach County, Florida, in 1975.

7. Records of the FDLE show that on or about November 25, 1991, Pamela Jean Coleman, a/k/a Deborah Lee Diehl, a/k/a Pamela Jean Jones, a/k/a Pamela Jones, a/k/a Pamela Coleman, plead nolo contendere, was adjudicated guilty, and convicted of retail theft in Polk County, Florida, a misdemeanor of the first degree, which constituted a crime of moral turpitude.

8. Records of the Circuit Court of the Tenth Judicial Circuit, in and for Polk County, State of Florida, show that on or about November 25, 1991, Pamela Jean Coleman, a/k/a Deborah Lee Diehl, a/k/a Pamela Jean Jones, a/k/a Pamela Jones, a/k/a Pamela Coleman, in case number CF91-1923, pled nolo contendere, was adjudicated guilty and convicted of petit theft, a misdemeanor of the first degree, which constituted a crime of moral turpitude.

9. Records of the Circuit Court of the Tenth Judicial Circuit, in and for Polk County, State of Florida, show that on

or about December 16, 2002, an Amended Information was filed against Pamela Jean Coleman (a/k/a Deborah Lee Diehl, a/k/a Pamela Jean Jones, a/k/a Pamela Jones, a/k/a Pamela Coleman) in case number CFO2-00597A-XX, charging that between November 27, 2000, and January 25, 2002, in the County of Polk and State of Florida, having been convicted of or pled guilty or no contest to a felony or a crime involving moral turpitude or a crime punishable by imprisonment of one year or more under the law of any state, territory, or county, regardless of whether adjudication of guilt was withheld, did participate as a director, officer, manager, or employee of a bail bond agency or office thereof or exercise direct or indirect control in any manner in such agency or office or own shares in a closely held corporation which had an interest in a bail bond business contrary to Section 648.44, Florida Statutes.

10. Further, the records of said court show that on or about January 31, 2002, Pamela Jean Coleman (a/k/a Deborah Lee Diehl, a/k/a Pamela Jean Jones, a/k/a Pamela Jones, a/k/a Pamela Coleman) in case number CFO2-00597A-XX, was tried, found guilty and adjudicated guilty of a violation of Section 648.44(8), Florida Statutes, acting as a bail bondsman while being a convicted felon, a felony of the third degree, as charged in the aforesaid Amended Information. Said conviction is presently on appeal before the Florida Second District Court of Appeal.

11. Respondent knew or should have known the foregoing information.

12. Documents under Seal from the Florida Department of State, Division of Corporations, pertaining to Clarence Luther Cephas, Sr., Bailbonds, Ltd., Inc., show that Pamela Jean Coleman filed original documents on behalf of Respondent's corporation and corresponded with the Department of State, Division of Corporations, on behalf of the said corporation. She was listed as both the registered agent of the corporation and also a vice-president and director of the said corporation as set forth on a document filed over the signature of Respondent. Other filed documentation show Pamela Jean Coleman as the president, secretary, and as director of said corporation. These documents are accurate and valid.

13. The original license application form, Florida Insurance Temporary License Application, under Section 11, Screening Question Information, contains the following language: "If you were adjudged guilty or convicted of a felony crime and your civil rights were lost, provide evidence that your civil rights have been restored." There is no evidence in the record that Coleman provided that information to Petitioner at the time the original application was filed or at any time subsequent to that period, and Coleman signed the application.

14. Respondent gave a statement, under oath, before Luis Rivera, Special Investigator for Petitioner's predecessor (Department of Insurance), on November 27, 2000, wherein he stated:

I have known Pamela Coleman/Jones for approximately four years and she has been affiliated with me for most of the time that I have been in the bail bond business. I had asked her if she had ever been convicted of a felony and she said that she had been convicted as a teenager. She had a Certificate of Restoration of Civil Rights from the Office of Executive Clemency that is dated March 7, 1980. I was under the impression that if her rights had been restored, that it would not be a problem with her working for me. I named Pamela as an officer in my corporation because I did not have any family that I could list as an officer except for my daughter, who is a deputy sheriff and could not be an officer of the corporation.

15. Respondent had a business address-of-record with Petitioner of B & B Bail Bonds, 580 North Broadway Avenue, Bartow, Florida 33830-3918, when in fact his business address was 2095 East Georgia Street, Bartow, Florida 33830-6710. Respondent did not notify Petitioner of a change of address for his corporation as required by law.

16. In November 2000 during an interview, Luis Rivera and another Special Investigator from his office advised Respondent that Petitioner (then the Department of Insurance) considered him to be in violation of Section 648.44(8), Florida Statutes,

notwithstanding any restoration of civil rights granted to Pamela Jean Coleman.

17. Luis Rivera visited the home office of Respondent, on March 7 and 21, 2000, at 2095 East Georgia Street, Bartow, Florida 33830-6710, and knew of no other office location for that agent after that date.

18. Constance Castro, a Special Investigator with the Tampa Office, Petitioner (then the Department of Insurance), Bureau of Agent and Agency Investigations, during September 2001, made an undercover visit to the bail bond office of Respondent, and pretended to be in need of a bail bond for a fictitious relative. She dealt directly with Pamela Jean Coleman who proceeded from the home living area of the house where Respondent was also located, to the office area of the home where Coleman conducted bail bond business with Castro.

19. Special Agent Michael Kreis, Drug Enforcement Agency, in early 2001, had business with Cephias Bail Bonds. He went to the office thereof where he observed Pamela Jean Coleman sitting behind the desk. Coleman told him that she had posted bond the night before for the people he was asking about, and was very familiar with the street names of the people that were being sought. Coleman helped to arrange what was supposed to be a meeting between her and one of the suspects using the ruse that she needed the suspect to sign some bail bond paperwork. Kreis

observed Respondent in the office but Coleman seemed to be in charge. Kreis observed her on the phone and dealing with people who came into the Cephas' bail bond office, and noted that by her actions and conduct, she was acting as a bail bond agent.

20. On or about June 19, 2001, Noel Elizabeth "Nikki" Collier was working as a paralegal in her husband's law office when Pamela Jean Coleman visited their office with paperwork for one of their mutual clients to fill out. Coleman left her business card which read "Pamela J. Coleman, President, Clarence L. Cephas, Sr. Bail Bonds." Coleman was dressed in a black outfit with a badge attached to her belt. Coleman told her that if the mutual client did not sign the paperwork then the bail bonds would be revoked. When in the law office, Coleman identified herself as an agent for Clarence Cephas Bail Bonds.

21. Respondent acknowledged that Petitioner's Exhibit numbered 8 was indeed a sworn statement made by him during a visit to Petitioner (then Department of Insurance), Bureau of Agent and Agency Investigations, at its offices in Tampa, Florida, in November 2000, and that he was indeed warned by Petitioner's personnel that he was in violation of Section 648.44(8), Florida Statutes. He was subsequently warned by the filing of an Administrative Complaint in June 2001, an Amended Administrative Complaint in December 2001, and a Second Amended Complaint in March 2003. Respondent acknowledged that Pamela

Jean Coleman was indeed listed as an officer and as a registered agent as well as the filer of various corporation documents, regarding his corporation and on file with the Department of State, Division of Corporations, and that he did sign the paperwork indicating that she was a corporate officer.

Respondent further acknowledged that Coleman did participate in his bail bond business and that he did make payments to her as an employee, which included filing of a W-2 Form indicating said payments.

22. During the pendency of this action, the State of Florida, by and through Jerry Hill, State Attorney for the Tenth Judicial Circuit, prosecuted Respondent for criminal violations of Chapter 648, Florida Statutes (2003), in the case styled State of Florida v Clarence Luther Cephas, Florida Tenth Circuit Court, Case Number CF02-00598A-XX (the "criminal case"). The Circuit Court of the Tenth Judicial Circuit conducted a jury trial in the criminal case. On December 17, 2003, the jury rendered a verdict of "not guilty," and the Circuit Court of the Tenth Judicial Circuit rendered a judgment of not guilty in the criminal case. The allegations contained in the criminal case were identical to the allegation contained in Count one of Petitioner's Second Amended Administrative Complaint.

23. During the approximate period of time March 1997 to at least December 2001, Respondent did employ and/or did otherwise

allow Pamela Jean Coleman to participate in the bail bond business.

24. Respondent did fail to notify the Department of Financial Services of a change of address as required by law.

CONCLUSIONS OF LAW

25. DOAH has jurisdiction of the parties to and the subject matter of these proceedings pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

26. Petitioner, Department of Financial Services, has jurisdiction over the insurance licensure of Respondent, pursuant to Chapter 648, Florida Statutes.

27. Any written instrument purporting to be a copy of any action, proceeding, or finding of fact by the Florida Department of Financial Services or any record of the Florida Department of Financial Services or copy of any document on file in its office when authenticated under hand of the Chief Financial Officer by the seal of his office shall be accepted by all the courts of this state as prima facie evidence of its contents pursuant to Section 624.303, Florida Statutes. The official records maintained by the State of Florida, Department of Financial Services, relating to Respondent under the seal of the Chief Financial Officer of the State of Florida, are one of the recognized exceptions to the hearsay evidence rule, pursuant to Section 90.803(8), Florida Statutes. Petitioner's exhibits are

accepted in this tribunal as prima facie evidence of their contents, pursuant to Section 624.303, Florida Statutes.

28. Respondent offered no testimony or other evidence to contradict this evidence. Witness testimony further supported the truth of the matters set forth in these documents.

29. Official government seals can be judicially noticed pursuant to Section 90.202(13), Florida Statutes. No extrinsic evidence of authenticity is required for records under an official state agency seal, pursuant to Section 90.902(1), Florida Statutes.

30. The evidence is clear and convincing that during the approximate period of time, March 1997 to at least December 2001, Respondent knew or should have known that Pamela Jones Coleman, a/k/a Deborah Lee Diehl, a/k/a Pamela Jean Jones, a/k/a Pamela Jones, a/k/a Pamela Coleman, was a convicted felon, and did employ the said Pamela Jean Coleman, a/k/a Deborah Lee Diehl, a/k/a Pamela Jean Jones, a/k/a Pamela Jones, a/k/a Pamela Coleman, in the bail bond business or otherwise allow her participation in the bail bond business in violation of Florida law.

31. The evidence is clear and convincing that Respondent had a business address-of-record with Petitioner of B & B Bail Bonds, 580 North Broadway Avenue, Bartow, Florida 33830-3918, when in fact his business address was 2095 East Georgia Street,

Bartow, Florida 33830-6710. Said business address had been at that location for more than ten working days after a change of address occurred without notification to the Department of Financial Services as required by Florida Law.

32. Section 648.30, Florida Statutes, reads as follows:

Licensure and appointment required.--

(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.

33. Section 648.34(1)(e), Florida Statutes, states, in pertinent part:

Bail bond agents; qualifications -

. . . [T]o qualify as a bail bond agent, it must affirmatively appear at the time of application and throughout the period of licensure that the applicant has complied with the provisions of s. 648.355 and has obtained a temporary license pursuant to such section and: . . .

The applicant is a person of high character and approved integrity. . . .

34. Section 648.355(1)(c), Florida Statutes, states, in pertinent part:

The department may, in its discretion, issue a temporary license as a limited surety agent or professional bail bond agent, subject to the following conditions: . . .

35. Section 648.421, Florida Statutes, reads as follows:

Notice of change of address or telephone number.--Each licensee under this chapter shall notify in writing the department, insurer, managing general agent, and the clerk of each court in which the licensee is registered within 10 working days after a change in the licensee's principal business address or telephone number. The licensee shall also notify the department within 10 working days after a change of name, address, or telephone number of each agency or firm for which he or she writes bonds and any change in the licensee's name, home address, or telephone number.

36. Section 648.44(8)(a) and (b), Florida Statutes, reads as follows:

(a) A person who has been convicted of or who has pleaded guilty or not 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 officer 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 not 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.

37. Section 648.45, Florida Statutes, reads, in pertinent 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:

* * *

(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.

* * *

(3) 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:

(a) A cause for which issuance of the license or appointment could have been refused had it then existed and been known to the department.

* * *

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

38. Rule 4-221.001, Florida Administrative Code, reads as follows:

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.

39. Rule 4-221.060, Florida Administrative Code, reads as follows:

Each licensee under Chapter 648, Florida Statutes, shall notify in writing the Department of Insurance, Bail Bond Coordinator, Larson Building, Tallahassee, Florida 32399-0300, insurer, managing general agent and the clerks of each court in which they are registered, of a change of their principal business address, telephone number, or name of each agency or firm for which they write bonds within ten (10) working days of such change.

40. By employing and/or allowing Pamela Jean Coleman to participate in the bail bond business, and by his failure to timely notify the Department of Financial Services of a change of address, Respondent violated the provisions of Sections 648.30, 648.421, 648.44(8)(a), 648.44(8)(b), 648.45(2), 648.45(2)(e), 648.45(2)(j), 648.45(3), 648.45(3)(a), and 648.45(3)(c), Florida Statutes, and Rules 4-221.001 and 4-221.060, Florida Administrative Code.

41. In Natelson v. Department of Insurance, 454 So. 2d 31 (Fla. 1st DCA 1984) the court stated that the business of insurance is "greatly affected by the public trust" and points out that "the holder of an agent's license stands in a fiduciary relationship to both the client and the insurance company." Natelson at 31. This principle is exemplified in the provisions of Chapter 648, Florida Statutes, which impose severe licensure sanctions and/or felony criminal penalties for allowing a person who has pled guilty or no contest to a felony or a crime involving moral turpitude, regardless of whether adjudication of

guilt was withheld, to 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, and which provides that any person who violates these provisions of law or who knowingly permits a person who has been convicted of or who has pleaded guilty or no contest to such a crime, as described above, commits a felony of the third degree.

42. Respondent's conduct in knowingly employing and/or allowing Pamela Jean Coleman to participate in his bail bond business demonstrates a lack of trustworthiness. He now lacks one or more of the qualifications for the license or appointment as specified in the Florida Insurance Code. If that status had existed at the time of application for licensure as a bail bond agent, he would have been denied such licensure as lacking a necessary qualification therefore pursuant to Chapter 648, Florida Statutes, and Sections 648.34(2)(e) and 648.355(1)(c), Florida Statutes.

43. Petitioner has proven by clear and convincing evidence that a violation of Section 648.45(3)(a), Florida Statutes, has occurred and that Respondent lacks qualifications for insurance licensure. Furthermore, Respondent has demonstrated that he used his license or appointment to circumvent the requirements

of Chapter 648, Florida Statutes, and the Florida Insurance Code. Therefore, Sections 648.45(2)(j) and 648.45(3)(c), Florida Statutes, have been violated. Respondent has further demonstrated a lack of fitness or trustworthiness to engage in the business of insurance as set forth in Section 648.45(3)(e), Florida Statutes.

44. The evidence is clear and convincing that Respondent knowingly did employ and/or allow Pamela Jean Coleman to participate in his bail bond business and, therefore, violated Section 648.30, Florida Statutes, and Rule 4-221.001, Florida Administrative Code.

45. Respondent's willingness to circumvent the clearly stated requirement not to employ or allow to participate in his bail bond business a person who has Pamela Jean Coleman's felony/moral turpitude misdemeanor status clearly evinces a disregard for the regulatory authority of the Petitioner and for basic ethical principles that are a definitive indicator of Respondent's lack of fitness and trustworthiness.

46. Although Coleman has had a limited restoration of her civil rights since March 7, 1980, Respondent's argument that this limited restoration of civil rights would negate any liability on the part of Petitioner for having violated Section 648.44(8), Florida Statutes, is clearly erroneous, for three reasons. First, Pamela Jean Coleman did not have a full

restoration of civil rights, and she continues to retain her status as a convicted felon; secondly, Respondent had a duty to ensure that Coleman's restoration of civil rights created an exemption from the statutory prohibition, and he cannot argue that because he assumed that it created an exemption, that in fact, one was created; and third, Coleman has one or more criminal offenses subsequent to the restoration of civil rights which make her a disqualified person pursuant to Section 648.44(8), Florida Statutes.

47. Pursuant to Sections 648.34(2)(e) and 648.335(1)(c), Florida Statutes, as a condition to receiving either a temporary or full bail bond agent license, an applicant must be "of higher character" and must not have been convicted of or pleaded guilty or no contest to a felony, a crime involving moral turpitude, or a crime punishable by imprisonment of one year or more. Further, Section 648.44(8), Florida Statutes, prohibits a felon (also a moral turpitude misdemeanor) from participating in the bail bond business. In Sandlin v. Criminal Justice Standards & Training Commission, 531 So. 2d 1344 (Fla. 1988), the Supreme Court considered a statutory scheme similar to that of Chapter 648, Florida Statutes, whereby, as a condition of eligibility, a law enforcement officer must be of good moral character and must not have been convicted, found guilty, or pled guilty or nolo contendere to a felony or misdemeanor involving perjury or false

statement. Sandlin had received a full pardon prior to his application to the Commission. Nevertheless, the Commission interpreted its statutory scheme as absolutely prohibiting his certification based on his prior criminal conviction, notwithstanding the Commission's admission that he was of good moral character. The Supreme Court, noting that a full pardon removes all disabilities resulting from a crime, held that the Commission's interpretation unconstitutionally infringed upon the executive branch's authority to grant pardons. Article IV, Section 8(s) of the Florida Constitution vests sole authority in the governor to grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses. The Supreme Court adopted the view that a full pardon removes the punishment resulting from the prior criminal conviction, but does not remove the moral guilt resulting from the commission of the crime. However, the Supreme Court determined that the statutory scheme could be construed in a constitutional manner, and held that although the full pardon restored Sandlin's eligibility for certification, the Commission could nevertheless refuse to certify him based on his lack of fitness or moral character. Subsequent to Sandlin, the First District Court of Appeal extended Sandlin's application to include the restoration of civil rights as well. See Padgett v. Estate of Gilbert, 676 So. 2d 440 (Fla. 1st DCA 1996), and G.W.

Liquors of Collier, Inc. v. Department of Business Regulation, Division of Alcoholic Beverages and Tobacco, 556 So. 2d 464 (Fla. 1st DCA 1990). Previously, the Third District Court determined that the right to engage in a state-licensed occupation was a civil right which could be denied to felons. Calhoun v. Department of Health and Rehabilitative Services, 500 So. 2d 674, 678 (Fla. 3rd DCA 1987). Additionally, the First District Court of Appeal held that when the governor exercises his discretionary clemency power, a person is restored to all preconviction rights except those specifically withheld. Williams v. State, 402 So. 2d 78, 79 (Fla. 1st DCA 1981). Thus, because the right to engage in a state-licensed occupation is taken away by virtue of a felony plea or conviction, when the applicant has received either a full restoration of civil rights or a full pardon, the applicant's eligibility for a license from the state is automatically restored, although pursuant to Sandlin, the agency may properly deny the applicant based on the applicant's moral unfitness.

48. The evidence clearly shows that Coleman did not receive a full restoration of civil rights, since it states that it restores her civil rights "except for the specific authority to possess or own a firearm." It therefore does not qualify as a full restoration of civil rights or full pardon and the Sandlin principle does not apply. Coleman retained her status

as a felon and as a prohibited person pursuant to Section 648.44(8), Florida Statutes. This is also exemplified in the case of State of Florida v. Pamela Jean Coleman, Case No. CF02-00597A-XX, in the Circuit Court of the Tenth Judicial Circuit in and for Polk County, State of Florida, wherein Coleman was convicted on January 31, 2003, of a third degree felony on the identical facts of the case before us involving Respondent.

49. Respondent also questions whether Pamela Jean Coleman's (Pamela Jean Jones) conviction of petit theft in Polk County, Florida, on November 25, 1991, is a misdemeanor crime involving moral turpitude. This conviction occurred approximately a decade after her restoration of civil rights in 1980 and could therefore not be an offense considered by that document. Any argument that the misdemeanor criminal offense of petit theft does not involve moral turpitude is without merit. Inquiry Concerning A Judge Re: Eugene S. Garrett No. 92-209, Supreme Court of Florida, 613 So. 2d 463 (1993). Regarding the crime of petit theft the court stated, "Most significant is the fact that Judge Garrett Knowingly committed a crime of moral turpitude"

50. In State et rel. Tullidge v. Holingsworth, 108 Fla. 607, 146 So. 660 (1933), the court gives us a definition of moral turpitude. The court tells us that: "Moral turpitude involves the idea of inherent baseness or depravity in the

private social relations or duties owned by man to man or by man to society. State v. Page, 449 So. 2d 813 (Fla. 1984). In The Florida Bar v. Davis, 361 So. 2d 159, 161 (Fla. 1978), the court discusses what constitutes a crime of moral turpitude and specifically names petit larceny as a crime which qualifies as a crime of moral turpitude.

51. Respondent violated both prohibitions of Section 648.44(8), Florida Statutes, which deny the prohibited class of persons from being an officer, manager, agent, contractor, or employee of any bail bond agency or office or exercise direct or indirect control in any manner, or permitting the prohibited class of persons to engage in the bail bond business as set forth in the statute. Simply by knowingly allowing Coleman to have immediate contact with persons seeking assistance for bail-related matters either in person or by telephone constituted engaging in the bail bond business. See Etheridge v. Department of Insurance, 688 So. 2d 966 (Fla. App. 1st Dist. 1997).

52. Respondent also argues that administrative penalties imposed by a state administrative proceeding creates a double jeopardy violation when such a sanction followed or preceded a state criminal prosecution. In order to answer this question, the issue must first be analyzed from the vantage point of United States v. Halper, 109 S.Ct. 1892 (1989). Halper solved the multiple punishment query by analyzing the penalty imposed

and the purpose that the penalty served. According to Halper, penalties that often served a deterrent or retributive function would resemble punishment, therefore subject to the double jeopardy clause of the United States (and also the Florida) Constitution. Penalties that were viewed as remedial, and done for the welfare of the public were held not to be punishment in the eyes of a double jeopardy analysis.

53. In Helvering v. Mitchell, 58 S. Ct. 630 (1938), the Supreme Court held that an administrative penalty such as revocation of a privilege voluntarily granted, i.e. disbarment, is characteristically free of punitive criminal elements. Under the analysis of Halper, the language of Helvering implies that a revocation of a professional license following a criminal prosecution could not trigger a double jeopardy challenge. Federal Circuit Courts have appeared to adopt this conclusion in cases when they have been confronted with the same issue.

54. Florida cases on the issue also adopted the rationale of the federal courts by barring double jeopardy claims on administrative penalties under the auspices of the protection of the public. The Second District Court of Appeal acknowledged the protective necessity of administrative sanctions against licensees, holding that the suspension of a driver's license for driving under the influence which followed criminal charges did not violate the double jeopardy clause. Freeman v. State of

Florida, 611 So. 2d 1260 (Fla. 2d DCA 1993) (citing Smith v. City of Gainesville, 93 So. 2d 105 (Fla. 1957)). The court stated: "In Florida, it is clear that the purpose of the statute providing for revocation of a driver's license . . . is to provide an administrative remedy for public protection and not for punishment of the offender." Freeman v. State of Florida, 611 So. 2d at 1261. See also Buchman v. State Board of Accountancy, 300 So. 2d 671 (utility of administrative penalties serves to protect the public interest). The Florida Supreme Court firmly held that Bar disciplinary proceedings are not penal in nature, but rather are remedial so as to protect the public rather than punish the lawyer. DeBock v. State, 512 So. 2d 164 (1987). "An attorney as an officer of the Court and a member of the third branch of government occupies a unique position in our society. Because attorneys are in position where members of the public must place their trust, property and liberty, and even their lives, in a member of the bar, society rightfully demands that an attorney must possess a fidelity to truth and honesty that is beyond reproach. When an attorney breaches this duty, the public is harmed. . . . For these reasons, the vast weight of judicial authority recognizes that bar discipline exists to protect the public, and not to punish the lawyer." This court noted that "many remedial statutes designed to benefit or protect the public, have 'penal' aspect;

this does not alter their basic purpose and transform them into penal measures. Id. at 167, (citing e.g., Board of Public Information of Broward County v. Doran, 224 So. 2d 693 (Fla. 1969)).

55. It is clear that revocation, suspension, or denial of a license by an administrative agency has been determined to serve a remedial purpose, and is not a violation of the double jeopardy provision of the Constitution.

56. Similar reasoning applies to the commonly understood legal principles of res judicata and collateral estoppel. Res judicata applies only to a second suit between the same parties based on the same cause of action. In this regard, it differs from collateral estoppel, which does not require the same cause of action, but requires the same parties and issues. The defense of collateral estoppel is distinguished from former jeopardy in that former jeopardy prohibits reprosecution for the crime itself, whereas collateral estoppel merely forbids the state from relitigating one or more particular facts to establish a crime. Neither of these commonly understood doctrines is applicable to a situation where there are collateral criminal and administrative licensure prosecutions as previously discussed above. This is true, notwithstanding Respondent's acquittal on related criminal charges. Taube v. Florida Keys Aqueduct Authority, 516 So. 2d 90 (Fla. 3d DCA

1987); City of Miami v. Babey, 161 So. 2d 230 (Fla. 3d DCA 1964).

57. This case is in reality a very simple one from the perspective of the factual transaction involved. Respondent in this case did, as proved by clear and convincing evidence, violate each of the provisions of the Florida Insurance Code with which he was charged in Count I and Count II of the Second Amended Administrative Complaint.

58. Respondent's culpability in the instant matter is established and has been proven by clear and convincing evidence. The conduct of Respondent is exactly what is proscribed by the provisions of Florida Statute (Chapter 648, Florida Statutes) and requires the severest sanction of a bail bond agent's license, revocation.

59. The statute states exactly what the legislature intended and that was to ensure strict accountability by bail bond agents for their conduct. Accordingly, the integrity of the bail bond insurance regulatory process which depends extensively on the public trust, and persons acting as bail bond agents in the State of Florida must comport their business behavior and demeanor to the standards of the law.

RECOMMENDATION

Based on the foregoing, it is hereby

RECOMMENDED that the Department of Financial Services enter a final order as follows:

1. Finding Respondent guilty of employing a convicted felon in the bail bond business, in violation of Sections 648.30, 348.44(8)(b), 648.45(2)(e) and (j), and 648.45(3)(a) and (c), Florida Statutes;

2. Finding Respondent guilty of failing to report a change of address; and

3. Revoking the bail bond agent license and eligibility for licensure of Respondent pursuant to Chapter 648, Florida Statutes.

DONE AND ENTERED this 1st day of July, 2003, in Tallahassee, Leon County, Florida.



DANIEL M. KILBRIDE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 1st day of June, 2003.

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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 should be filed with the agency that will issue the Final Order in this case.