

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL)
SERVICES,)
)
Petitioner,)
)
vs.) Case No. 03-1957
)
PAMELA JEAN COLEMAN,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice and in accordance with Sections 120.569 and 120.57(1), Florida Statutes, a formal hearing was held in this case, on August 12, 2003, in Bartow, Florida, before Fred L. Buckine, the designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

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

For Respondent: James R. Franklin, Esquire
The Franklin & Carmichael Law Firm, P.A.
301 East Main Street
Post Office Box 50
Bartow, Florida 33806

STATEMENT OF THE ISSUE

The issue for determination is whether Respondent violated Subsections 648.44(8)(a), 648.44(8)(b), 648.45(2), 648.45(2)(e), 648.45(2)(j), 648.45(2)(k), 648.45(3), 648.45(3)(c), 648.45(3)(e), 648.30(1), 648.30(2), 648.30(3), and 648.30(4), Florida Statutes.

PRELIMINARY STATEMENT

On May 27, 2003, the Department of Financial Services (Department) referred, to the Division of Administrative Hearings (DOAH), its letter dated April 1, 2003, informing Respondent of its First Amended Notice of Intent to Issue Cease and Desist Order (Notice of Intent) against Respondent. Respondent denied the allegations and elected for a formal adversarial proceeding to be heard before DOAH pursuant to Subsection 120.57(1), Florida Statutes.

The parties filed a joint Pre-Hearing Stipulation with DOAH on August 4, 2003.

On June 10, 2003, a Notice of Hearing, scheduling the final hearing for August 12, 2003, and an Order of Pre-Hearing Instructions were entered.

At the final hearing on August 12, 2003, six witnesses testified on behalf of the Department: Special Investigator Constance Castor; Drug Enforcement Agency Special Agent

Michael P. Kreis (by deposition); Frances Ann Parish; Luis Rivera; Noel Elizabeth "Nikki" Collier; and Clarence Luther Cephas, Sr. On the advice and consent of counsel, Respondent asserted her Fifth Amendment privilege and did not testify. Respondent called no witnesses and presented no testimony.

The Department offered ten exhibits (P-1 through P-10), including the deposition of Michael P. Kreis, which were accepted in evidence. Respondent offered four exhibits (R-1 through R-4), which were accepted in evidence.

The Department, in its final order rendered on July 30, 2003, adopted in toto the Findings of Fact and Conclusions of Law of the Administrative Law Judge in a related case, Department of Financial Services v. Clarence Luther Cephas, Sr., DOAH Case No. 03-0798PL, of which the undersigned took official recognition.

On August 12, 2003, the 30-day appeal period had not expired, and counsel for Respondent, who was also counsel for Respondent, Clarence Luther Cephas, Sr., in DOAH Case No. 03-0798PL, represented that an appeal on behalf of Clarence Luther Cephas, Sr., would be timely filed in DOAH Case No. 03-0798PL.

Counsel for Respondent was counsel of record for both Respondent and Clarence Luther Cephas, Sr., in their joint criminal trial by jury in Case No. CF02-00597A-XX, State of

Florida vs. Pamela Jean Coleman, W/F, 9/17/58, XXX-XX-9751, in the Tenth Judicial Circuit in and for Polk County, Florida. In that proceeding, the jury found Clarence Luther Cephas, Sr., not guilty as charged and found Respondent guilty of violating Subsection 648.44(8), Florida Statutes. The allegations contained in Case No. CF02-00597A-XX were identical to the allegations contained in count one of Petitioner's Notice of Intent. Respondent's counsel stipulated for the record that Respondent, Pamela Jean Coleman, W/F, DOB September 17, 1958, XXX-XX-9751, also known as Deborah Lee Diehl, Pamela Jean Jones, Pamela Jones, Pamela Coleman, Pam Jones, and Pamela J. Coleman, was the person he represented and the person who was convicted in Case No. CF02-00597A-XX and entered into evidence, as Respondent's Exhibit R-3, a certified copy of the Notice of Appeal filed on behalf of Respondent in the Second District Court of Appeal.

On August 27, 2003, the Transcript was filed. An order dated September 5, 2003, granting Respondent's Motion for Extension of Time to File Proposed Recommended Order and extending the filing deadline was entered. Petitioner's Proposed Recommended Order was filed on September 2, 2003. Respondent's Proposed Recommended Order was filed on September 22, 2003. All Proposed Recommended Orders have been considered.

Official Recognition was taken of Chapters 624 through 632, 634, 635, 641, 648, and 651, Florida Statutes, which constitute the "Florida Insurance Code." See Section 624.01, Florida Statutes. All statutory citations are to Florida Statutes (2003), unless otherwise indicated.

FINDINGS OF FACT

1. Pursuant to Chapter 648, the Department has jurisdiction over bail bond licensure, appointments, and related activities.

2. Respondent, Pamela Jean Coleman, appeared before the undersigned in this proceeding, identified herself as Pamela Jean Coleman, and admitted that she is the Respondent in this matter and that the Department has jurisdiction over her and the subject matter involved in the Notice of Intent.

3. At all times relevant to the dates and occurrences referred to in the Notice of Intent, Respondent was also known as Deborah Lee Diehl, Pamela Jean Jones, Pamela Jones, Pamela Coleman, Pam Jones, and Pamela J. Coleman.

4. At all times relevant to the dates and occurrences referred to in the Notice of Intent, Respondent was not licensed as a bail bond agent in the State of Florida.

5. On March 28, 1975, in Case Number 75-239CF, in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (Criminal Division), Respondent pled guilty and was adjudged

guilty of buying or receiving or aiding in concealment of stolen property, a felony (a crime of moral turpitude).

6. On October 22, 1975, in Case Number 75-2390CF, Fifteenth Judicial Circuit in and for Palm Beach County, Florida (Criminal Division), Respondent, a/k/a Deborah Lee Diehl, pled guilty and was adjudged guilty of the felony of violation of drug abuse law.

7. Records of the State of Florida Department of Law Enforcement (FDLE) show that the conviction set forth in paragraph 6 above included convictions on March 28, 1975, and July 17, 1975, for parole violation. At the final hearing counsel for Respondent stated:

Mr. Franklin: . . . I don't think there is any dispute as to those underlying facts about what happened in 1975 --

Ms. Coleman: Correct.

Mr. Franklin: -- and what happened subsequent. And the subsequent event was that Ms. Coleman was -- received the grace of executive clemency. She did receive a limited restoration of civil rights that granted to her the restoration of all of her civil rights with the exception of a specific statutory authority to own or possess a firearm, at least as to all of the '75 convictions. . . .

8. By Executive Order Number 80-C-0 filed with the Florida Secretary of State on March 7, 1980, Respondent was granted restoration of civil rights, except to specific authority for

possession or owning a firearm, for any and all felony convictions in the State of Florida and/or restoration of civil rights in the State of Florida for any and all felony convictions in any state other than Florida, or in any United States court or military court for which this person has been duly discharged from imprisonment and/or parole, adult community control or probation, and for which this person has not been heretofore granted clemency. This grant of clemency included, but was not limited to, Case Nos. 75-239CF and 75-2390CF, in the Fifteenth Judicial Circuit in and for Palm Beach, Florida.

9. On April 16, 1991, in Case Number CF91-1923AI-XX, Tenth Judicial Circuit in and for Polk County, Florida, Respondent, a/k/a Pamela Jean Jones, was charged with grand thief. On or about November 25, 1991, Respondent pled nolo contendere to the reduced charge of petit theft and was found guilty and convicted of petit theft.¹ Petit theft is a first-degree misdemeanor, which constitutes a crime of moral turpitude.

10. Record of the Delaware Secretary of State, dated May 5, 1997, confirmed that the Clarence Luther Cephass, Ltd., Inc. (Cephass Bail Bond Agency) was duly incorporated under the laws of the State of Delaware, was in good standing, and had a legal corporate existence as of May 5, 1997.

11. Record of the Florida Secretary of State, Application for Reinstatement, confirmed that the Cephass Bail Bond Agency

applied as a corporation qualified to do bail bond business in Florida and was reinstated to do bail bond business as of January 19, 1999. The Cephas Bail Bond Agency's application listed Pamela J. Coleman, 2353 Mammoth Grove Road, Lake Wales, Florida, as its president, secretary, director, and registered agent. The application dated October 26, 2000, bore the signature of Respondent and listed her telephone number as (863) 533-0405.

12. Two Uniform Business Reports (UBR) of the Cephas Bail Bond Agency were filed with the Florida Secretary of State on August 6, 2001, and March 29, 2002. Both reports bore the signature of Respondent as President of the Cephas Bail Bond Agency.

13. Testimony of Petitioner's witnesses conclusively established, without dispute, that Respondent participated in the bail bond business of the Cephas Bail Bond Agency during the approximate period of March 1997 to November 27, 2002. During that span of time, Respondent did on various occasions act and represent herself to the public as one having power to act in several capacities and positions with the Cephas Bail Bond Agency. Her activities included acting as a registered agent, a director, a bail bond agent, a temporary bail bond agent, a runner, a bail enforcement agent, and a bounty hunter.

14. Clarence Luther Cephas, Sr., under oath on November 27, 2002, gave the following statement:

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 has 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. Records of the Circuit Court of the Tenth Judicial Circuit in and for Polk County, Florida, show that on or about December 16, 2002, an Amended Information was filed in Case No. CF02-00597A-XX, State of Florida vs. Pamela Jean Coleman, W/F, 09/17/1958, XXX-XX-9751, charging that between November 27, 2000, and January 25, 2002, in Polk County, Florida, Respondent, 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 684.44.

16. The testimonial and documentary evidence clearly and convincingly, during the period of November 2000 through December 2001, identified Respondent as the person who, on various occasions, did act in several capacities and positions as a bail bond agent and performed functions, duties, or powers prescribed for licensed bail bond agents.

17. Undisputed evidence identified Respondent as the person who, early in 2001, presented herself to another and engaged in conduction and solicitation of bail bond business in the office of the Cephass Bail Bond Agency.

18. Undisputed evidence identified Respondent as the person who, on June 19, 2001, presented herself and identified herself as Pamela Jean Coleman, Vice-President of Clarence Cephass Bail Bonds, to Noel Collier who was working in her husband's law office as a paralegal. Respondent presented to Ms. Collier bond release paperwork from the Cephass Bail Bond Agency and requested that a mutual client facing criminal charges sign the paperwork.

19. Undisputed evidence demonstrated that on or about September 2001, Respondent held herself out as the person with

whom to conduct bail bond business with Constance Castro in or about the home of Clarence Luther Cephas, Sr., that served also as the Cephas Bail Bond Agency office.

20. The records of Circuit Court of the Tenth Judicial Circuit in and for Polk County, Florida, show that on or about January 31, 2003, in criminal Case No. CF02-00597A-XX, Respondent (a/k/a Deborah Lee Diehl, a/k/a Pamela Jean Jones, a/k/a Pamela Jones, a/k/a Pamela Coleman, a/k/a Pam Jones, and a/k/a Pamela J. Coleman) was tried, found guilty, and adjudicated guilty of a violation of Subsection 648.44(8), acting as a bail bondsman while being a convicted felon, a felony of the third degree, as charged in the aforesaid Amended Information.

21. Respondent was sentenced by the court to 60 days in county jail (to be served on weekends) and placed on probation for a period of five years. The conditions of Respondent's probation required her to: (1) Pay restitution in the amount of \$457.99 to the Department of Insurance within two years; (2) pay court costs of \$400.00 within two years; and (3) not to be employed as a bail bondsman or to have any contact with her husband's (Clarence Luther Cephas, Sr.) business.

22. Counsel for Respondent represented on this record that: (1) he was counsel of record in Case No. CF02-00597A-XX and that Respondent, in this proceeding, was the person charged,

tried, convicted, and adjudicated guilty; and (2) he has filed a timely appeal of the conviction and sentence on behalf of Respondent in Case No. CF02-00597A-XX, in the Second District Court of Appeal.

CONCLUSIONS OF LAW

23. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings pursuant to Subsection 120.57(1).

24. Petitioner has jurisdiction over the insurance-related activities and eligibility for insurance licensure of Respondent pursuant to Chapters 624, 626, and 648.

25. Petitioner alleged that Respondent, who had been convicted of or who had pled guilty or no contest to a felony or a crime involving moral turpitude, participated as a director, officer, manager, or employee of a bail bond agency in violation of Subsections 648.44(8)(a), 648.44(8)(b), 648.45(2), 648.45(2)(e), 648.45(2)(j), 648.45(2)(k), 648.45(3), 648.45(3)(c), and 648.45(3)(e).

26. Subsection 648.44(8)(a) and (b) reads as follows:

(a) A person who has been convicted 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 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. (emphasis added)

(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

27. Subsection 648.45(2) 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.

(k) Has been found guilty of, or has pleaded guilty or no contest to a felony, 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, whether or not a judgment or conviction has been entered.

28. Subsection 648.45(3) reads, in pertinent part:

(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:

* * *

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

* * *

(e) Being found to be a source of injury or loss to the public or detrimental to the public interest or being found by the department to be no longer carrying on the bail bond business in good faith.

29. Respondent argues that Executive Order number 80-C-0 restored her civil rights; thus, she was not disqualified to be a bail bond agent by means of her prior criminal convictions. However, Respondent's full civil rights were not restored. Cf. Sandlin v. Criminal Justice Standards and Training Commission,

531 So. 2d 1344 (Fla. 1988) (A full pardon removes all disabilities resulting from a crime.).

30. Assuming arguendo that the pre-1980 criminal convictions are not a bar to participating in bail bond agent activities, Respondent's 1992 conviction of petit theft is a bar. Petit theft is a crime involving moral turpitude. See The Florida Bar v. Davis, 361 So. 2d 159, 161 (Fla. 1978).

31. Petitioner has established by clear and convincing evidence that Respondent violated Subsections 648.44(8)(a); 648.45(2)(e), (j), and (k); 648.45(3)(c); and 648.45(3)(e).

32. The evidence is clear and convincing that during the approximate period of time of March 1997 through December 2002, Respondent was a convicted felon and/or had pled nolo contendere to a crime involving moral turpitude, a first degree misdemeanor crime; was employed and/or did, on various occasions, act in the capacity of a bail bond agent, temporary bail bond agent, or runner, and/or performed the functions, duties, or powers prescribed for bail bond agents or runners as set forth in Chapter 648; and participated as a director, officer, manager, or employee of a bail bond agency or office thereof.

33. In Count two of the Notice of Intent, Petitioner alleged that Respondent was unlicensed and acted in the capacity of a bail bond agent, temporary bail bond agent, or runner, or performed any of the functions, duties, or powers thereof.

Petitioner alleged that Respondent's unlicensed activities were in violation of Subsections 648.30(1), 648.30(2), 648.30(3), 648.30(4), 648.45(2), 648.45(2)(e), 648.45(2)(j), 648.45(3), 648.45(3)(c), and 648.45(3)(e).

34. Section 648.30 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 approved 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.
(emphasis added)

35. Petitioner has established by clear and convincing evidence that Respondent was unlicensed and acted in the capacity of a bail bond agent, temporary bail bond agent, and

runner between March 1997 to December 2001. Thus, Petitioner has, by clear and convincing evidence, established that Respondent violated Subsections 648.30(1) through (4), 648.45(2)(e), 648.45(2)(j), 648.45(3)(c), and 648.45(3)(e).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that Petitioner enter a final order as follows:

1. Finding that Respondent, Pamela Jean Coleman, is disqualified from participation in bail bond-related activities by a prior conviction of a crime involving moral turpitude; and that Respondent is guilty of participating in the bail bond business, in violation of Subsections 648.30(1) through (3); 648.44(8)(a); 648.45(2)(e), (j), and (k); and 648.45(3)(a), (c), and (e).

2. Enter a Cease and Desist Order pursuant to Section 626.9581 and the Florida Insurance Code, directing Respondent, Pamela Jean Coleman, to immediately cease and desist any and all bail bond-related activities in the State of Florida.

DONE AND ENTERED this 17th day of October, 2003, in
Tallahassee, Leon County, Florida.

S

FRED L. BUCKINE
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 17th day of October, 2003.

ENDNOTE

1/ Respondent's Social Security number listed in the court records contained in Petitioner's Exhibit 5 is the same Social Security number identifying Respondent in Petitioner's Exhibit 6, which contains court records relating to Respondent's conviction in Case No. CF02-00597A-XX.

COPIES FURNISHED:

James R. Franklin, Esquire
The Franklin & Carmichael Law Firm, P.A.
301 East Main Street
Post Office Box 50
Bartow, Florida 33806

Dickson E. Kesler, Esquire
Department of Financial Services
401 Northwest Second Avenue, Suite N-321
Miami, Florida 33128

Honorable Tom Gallagher
Chief Financial Officer
Department of Financial Services
The Capitol, Plaza Level 11
Tallahassee, Florida 32399-0300

Mark Casteel, General Counsel
Department of Financial Services
The Capitol, Plaza Level 11
Tallahassee, Florida 32399-0300

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.