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DIVISION OF ADMINISTRATIVE HEARINGS
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ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

IN THE MATTER OF:

LARRY LORENZO JONES /

Case No. 84091-06-AG

FINAL ORDER

THIS CAUSE came on for consideration and final agency action. On February 10, 2005, the Department of Financial Services filed an Administrative Complaint alleging that Respondent, Larry Lorenzo Jones, had violated various statutes regulating his conduct as a limited surety agent.

Respondent replied in writing to the allegations of the Administrative Complaint and timely requested a formal hearing pursuant to Section 120.57(1), Florida Statutes. Pursuant to notice, the matter was heard before Administrative Law Judge Robert E. Meale of the Division of Administrative Hearings on August 10, 2006, in Fort Lauderdale, Florida.

Both parties filed Proposed Recommended Orders. After consideration of the evidence, argument and testimony presented at the hearing, the Administrative Law Judge issued his Recommended Order on October 19, 2006. A true and correct copy of the Recommended Order is attached hereto as Exhibit "A". The Administrative Law Judge recommended that a Final Order be entered finding Respondent guilty and

recommending that Respondent's license be suspended for six months and that he be ordered to pay a \$5000 administrative fine.

The Petitioner and the Respondent filed post-hearing exceptions. The Petitioner filed its exceptions to the Recommended Order on November 3, 2006 and the Respondent filed its exceptions on November 7, 2006. The due date for exceptions was on November 3, 2006. The Respondent's exceptions were deemed to be untimely filed pursuant to Rules 28-106.217(1) and (3), Florida Administrative Code and as such, a Notice of Intent to Strike Respondent's Exceptions was issued on November 27, 2006 ordering the Respondent to show cause why the exceptions should not be stricken as untimely, and giving Respondent seven (7) calendar days, or until December 4, 2006, to file a response. Respondent's response was filed with the Department, via facsimile on December 1, 2006, and the Respondent argued that the exceptions were timely filed because they had been sent by facsimile transmission to the Division of Administrative Hearings on November 2, 2006. Further, the Petitioner filed a Response stating that the Petitioner received the Respondent's exceptions on November 2, 2006. It has also become clear that the Respondent faxed and/or mailed multiple copies of the Respondent's Exceptions on November 2 and 3, 2006. Consequently, the Respondent's Exceptions will be considered in this Final Order.

RULINGS ON PETITIONER'S EXCEPTIONS

1. Petitioner excepts to page five of the Recommended Order wherein the Administrative Law Judge stated that the Petitioner called three (3) witnesses. The record clearly reflects that the Petitioner in fact called eight (8) witnesses. [Tr. pg. 352] As this appears to be a clerical error in the Preliminary Statement, the exception is

accepted and the Preliminary Statement is modified to reflect that the Petitioner called eight (8) witnesses.

2. Petitioner further excepts to Conclusions of Law 25, 26 and 27 which imply that at some point after an appearance bond's discharge, any collateral intended to secure bond ceases to become collateral. Indeed, Conclusion of Law 26 squarely discusses "property that has lost its status as collateral." There is neither case law nor language in Chapter 648, Florida Statutes, from which to conclude that collateral may lose its status as collateral for any reason except forfeiture or return to the indemnitor. Even in cases of forfeiture, the limited surety agent or insurer would be obligated to give notice to the indemnitor or principal.

Further, the Administrative Law Judge's Conclusions of Law 25, 26 and 27 appear to be in direct contradiction to legislative intent. Section 648.442(7), Florida Statutes, clearly prohibits a bail bond agent from soliciting or accepting a waiver of the mandates of Section 648.442, Florida Statutes. Here, Section 648.442(4), Florida Statutes, is unambiguous; when a bond is released by the court, the "*collateral shall be returned to the rightful owner named in the collateral receipt.*" As such, it follows that a bail bond agent has the responsibility to hold collateral in trust until he fully complies with Section 648.442(4), Florida Statutes, by returning it or disposing of it as provided for by legal assignment. Respondent made no attempt whatsoever to either return the collateral or procure an appropriate a collateral assignment, but, instead, simply treated the collateral as his own property.

Accordingly, the Petitioner's exceptions are granted, Conclusions of Laws 25, 26, and 27 are rejected, and the Department's interpretation of Section 648.442, Florida Statutes, is substituted as follows:

That portion of Conclusion of Law 25 following the phrase "Petitioner proved these factual allegations" is deleted, and a period is inserted to convert that phrase into a complete sentence.

That portion of Conclusion of Law 26 following the second sentence thereof is deleted.

Additionally, Conclusion of Law 27 is deleted in its entirety and the following substituted therefor: "The property in question did not lose its status as collateral at any time material to the allegations against Respondent. Sections 648.442(4) and 648.442(7), Florida Statutes, provide the only avenues through which the property could be lawfully alienated from its collateral status, and neither statutory option was followed by Respondent. Therefore, Respondent's undisputed actions taken relative to that property violated his statutory and fiduciary duties, as alleged."

The Department's above-substituted Conclusions of Law are as or more reasonable than the Administrative Law Judge's Conclusions of Law in these regards.

ADDITIONAL AND CONSEQUENT MODIFICATIONS

In light of the previous modifications to Conclusions of Law 25-27, Conclusions of Law 32 and 36 must also be addressed. As stated in substituted Conclusion of Law 27, Mr. Blackman's car did not lose its character as collateral while in Respondent's possession. Consequently, the Respondent held the property in a fiduciary capacity. [Section 648.442(3), Florida Statutes] While the Administrative Law Judge's conclusion that there was no evidence of whether the car's registration or tag expired while in the Respondent's possession is correct, the Respondent's use of the car, use of the car's SunPass transponder and incursion of parking tickets is clear and convincing evidence that the Respondent violated the fiduciary duty that the Respondent owed the insurer to

preserve the property until its return to the indemnitor. As well, the Respondent's omissions in this regard are directly related to misconduct under Section 648.45(2)(e), and (3)(e), Florida Statutes, for which the Department may impose discipline.

Accordingly, Conclusions of Law 32 and 36 are rejected in their entirety and the following substituted therefor:

"While the evidence failed to establish whether the car's registration or tag expired while in Respondent's possession, the evidence does establish the Respondent's considerable mileage incurred in the use of the car, his use of Mr. Blackman's SunPass transponder, and the numerous parking tickets Respondent incurred while using Mr. Blackman's car, none of which were authorized or contemplated by Mr. Blackman, violated the fiduciary duties Respondent owed to the insurer relative to the preservation of collateral property until returned to the indemnitor or lawfully assigned. [Sections 648.442(3),(4), Florida Statutes] Moreover, these actions demonstrate the Respondent's lack of fitness and trustworthiness pursuant to Section 648.45(2)(e), Florida Statutes, and further demonstrate that the Respondent has been the source of injury or loss to the public, and has not carried on the bail bond business in good faith, pursuant to Section 648.45(3)(e), Florida Statutes."

This substituted Conclusion of Law is as or more reasonable than Conclusions of Law 32 and 36 set forth by the Administrative Law Judge.

RULING ON RESPONDENT'S EXCEPTIONS

1. Respondent excepts to the Conclusions of Law related to Count II. The pertinent Conclusions of Law are 29-31. Essentially, the Respondent argues that contract law applies to the facts of this matter, and/or that the indemnitor waived his right to receive his collateral. However, pursuant to Section 648.442(7), Florida

Statutes, a bail bond agent shall not solicit or accept a waiver of any provision of Section 648.442, Florida Statutes, including the provisions concerning the return of collateral. As well, general contract law does not apply in light of explicit statutory language which requires that a limited surety agent return collateral that has been released by the court. Consequently, these exceptions are rejected.

2. Respondent also excepts to the ALJ's recommended penalty. The Respondent's arguments assert that the violation committed by the Petitioner was *de minimis* and that Respondent's prior violation that forms the basis of the aggravating factor in determining penalty occurred four (4) years ago. The Recommended Order, in paragraph 35, addresses the fact that an aggravating factor exists in this case in the form of a previous violation. The Recommendation by the Administrative Law Judge is based on clear and convincing evidence and is consistent with the Department's disciplinary statutes and the penalty guidelines. Accordingly, Respondent's exception to this Conclusion of Law is rejected.

Therefore, upon careful consideration of the entire record, the submissions of the parties, and being otherwise fully advised in the premises, it is hereby ORDERED:

1. The Findings of Fact of the Administrative Law Judge are adopted in full as the Department's Findings of Fact, except as modified herein.
2. The Conclusions of Law of the Administrative Law Judge are adopted in full as the Department's Conclusions of Law, except as modified herein.
3. The Administrative Law Judge's recommendation that the Department enter a Final Order suspending Respondent's license(s) and eligibility for licensure in the State of Florida for six (6) months and imposing a five thousand dollar (\$5000.00)

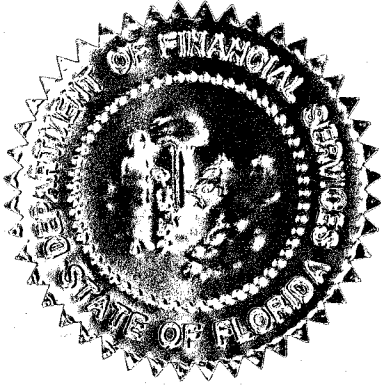
administrative fine is approved and accepted as being the appropriate disposition of this case.

ACCORDINGLY, it is ORDERED that Respondent, LARRY LORENZO JONES', license and eligibility for licensure be SUSPENDED for a period of six months immediately upon issuance of this Final Order. Pursuant to Section 648.50, Florida Statutes, the suspension of Respondent's licenses and eligibility for licensure is applicable to all licenses and eligibility under Section 648.50(3), Florida Statutes, and the RESPONDENT shall not be employed by any bail bond agent, have any ownership or interest in any business involving bail bonds, or have any financial interest of any type in any bail bond business during the period of suspension. Further, Respondent is hereby ordered to pay an administrative fine in the amount of \$5,000 within thirty (30) days of the entry of this Final Order. Pursuant to Section 648.52(2), Florida Statutes, failure to pay said fine within the time allowed shall cause the immediate and continuing suspension of the Petitioner's licensure until such time as that fine has been paid, and reinstatement requested and granted.

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order is entitled to seek review of the Order pursuant to Section 120.68, Florida Statutes, and Rule 9.110, Fla.R.App.P. Review proceedings must be instituted by filing a petition or Notice of Appeal with the General Counsel, acting as the agency clerk, at 200 East Gaines Street, Tallahassee, FL 32399-0333, and a copy of the same and the filing fee with the appropriate District Court of Appeal within thirty (30) days of the rendition of this Order.

DONE and ORDERED this 17th day of January, 2007.




KAREN CHANDLER
Deputy Chief Financial Officer

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