STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL SERVICES,	)	
Petitioner,	)	
vs.	)	Case No. 06-0707PL
LARRY LORENZO JONES,	)	
Respondent.	)	

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Fort Lauderdale, Florida, on August 10, 2006.

APPEARANCES

For Petitioner: Greg S. Marr
Department of Financial Services
Division of Legal Services
300 East Gaines Street
Tallahassee, Florida 32399-0333

For Respondent: Michael A. Levin
Law Offices of Michael A. Levin
Global Commerce Center
1900 North Commerce Parkway
Weston, Florida 33326

STATEMENT OF THE ISSUES

The issues are whether Respondent, who is a limited surety agent, is guilty of violating Section 648.571(1), Florida Statutes, by failing to return the collateral within 21 days

after the discharge of the bail bond; Section 648.45(2)(e), Florida Statutes, by demonstrating lack of fitness or trustworthiness to engage in the bail bond business; Section 648.45(2)(g), Florida Statutes, by engaging in fraudulent or dishonest practices in the conduct of business under the license; and Section 648.45(2)(j), Florida Statutes, by willfully failing to comply with, or willfully violating any proper order or rule of the department or willfully violating any provision of Chapter 648, Florida Statutes, or the Insurance Code. If guilty of any of these violations, an additional issue is the penalty that should be imposed.

PRELIMINARY STATEMENT

By Administrative Complaint dated January 30, 2006, Petitioner alleged that Respondent was a licensed limited surety agent, holding license number A134458. The Administrative Complaint alleges that Petitioner has previously disciplined Respondent, pursuant to a Settlement Stipulation for Consent Order dated October 25, 2002, and Consent Order dated November 13, 2002, which placed Respondent on probation for one year and imposed a $2500 fine. The allegations underlying the Consent Order involved a failure to return collateral and the exaction of a charge in excess of the bond premium.

Count I of the Administrative Complaint alleges that, on December 7, 2003, Respondent executed two bonds for principal

Mark Blackman, and, as collateral for these bonds, Respondent received Mr. Blackman's 2002 Mercedes Benz automobile. Count I alleges that, while in possession of Mr. Blackman's automobile, Respondent used it for personal benefit or gain. Count I alleges that Respondent did not return the automobile to Mr. Blackman in the same condition as received. Count I alleges that Section 648.442(1), Florida Statutes, prohibits bail bond agents from using collateral for personal benefit or gain and requires them to return collateral in the same condition as received.

Count I alleges that Respondent thus violated Section 648.45(2)(e), Florida Statutes, by demonstrating lack of fitness or trustworthiness to engage in the bail bond business; Section 648.45(2)(g), Florida Statutes, by engaging in fraudulent or dishonest practices in the conduct of business under the license; and Section 648.45(2)(j), Florida Statutes, by willfully failing to comply with, or willfully violating, any proper order or rule of the department or willfully violating any provision of Chapter 648, Florida Statutes, or the Insurance Code.

Count II of the Administrative Complaint alleges that, on December 7, 2003, Respondent took possession of Mr. Blackman's 2002 Mercedes Benz automobile as collateral for the two bail bonds described above. Count II alleges that these bail bonds

were discharged on January 23, 2004, but Respondent did not return the automobile to Mr. Blackman until July or August 2004.

Count II alleges that Respondent thus violated Section 648.571(1), Florida Statutes, by failing to return the collateral within 21 days after the discharge of the bail bond; Section 648.45(2)(e), Florida Statutes, by demonstrating lack of fitness or trustworthiness to engage in the bail bond business; Section 648.45(2)(g), Florida Statutes, by engaging in fraudulent or dishonest practices in the conduct of business under the license; and Section 648.45(2)(j), Florida Statutes, by willfully failing to comply with, or willfully violating any proper order or rule of the department or willfully violating any provision of Chapter 648, Florida Statutes, or the Insurance Code.

By Motion to Amend Administrative Complaint filed May 1, 2006, Petitioner requested leave to amend Count II and add Count III to the Administrative Complaint. The Administrative Law Judge granted the motion by Order entered May 3, 2006. The motion amended Count II by adding a reference to Section 648.571(4), Florida Statutes, which requires the imposition of a monetary penalty when a limited surety agent fails to return collateral in a timely manner. The amendments to Count II also state that Respondent returned the automobile in June or July 2004, not July or August 2004.

Count III of the Administrative Complaint alleges that, while Respondent was in possession of Mr. Blackman's automobile and used it for personal benefit or gain, the automobile was uninsured and bore an expired registration and license tag.

Count III alleges that Respondent thus violated Section 648.45(2)(e), Florida Statutes, by demonstrating lack of fitness or trustworthiness to engage in the bail bond business, and Section 648.45(3)(e), Florida Statutes, by being found to be a source of injury or loss to the public or detrimental to the public interest or being found to be no longer carrying out the bail bond business in good faith.

At the hearing, Petitioner called three witnesses and offered into evidence 20 exhibits: Petitioner Exhibits 1-20. Respondent called three witnesses and offered into evidence two exhibits: Respondent Exhibits 1-2. All exhibits were admitted except that Petitioner Exhibits 2-4 were admitted solely for the purpose of determining the appropriate penalty and Petitioner Exhibit 20 was not admitted for the truth of its contents.

The court reporter filed the transcript on August 30, 2006. The parties filed their Proposed Recommended Orders by October 6, 2006.

FINDINGS OF FACT

1. At all material times, Respondent has been a licensed surety agent, holding license number A134458. Respondent is the president and owner of Big Larry Bail Bonds in Fort Lauderdale.

2. Mark Blackman, who is 45 years old, is a licensed mortgage broker and sophisticated in business matters. He has been convicted four times of driving under the influence over the past 20 years. The arrest that resulted in the fourth conviction took place on December 7, 2003.

3. Mr. Blackman's girlfriend at the time of his arrest, Tracy, suggested that he purchase a bail bond from Respondent. Tracy, who was addicted to crack cocaine, had previously purchased a bail bond from Respondent when she had been arrested for the possession of cocaine.

4. Mr. Blackman instructed Tracy to visit Respondent's office and arrange for Respondent to post bond, which was $23,500. Respondent agreed to post bond, but only if Mr. Blackman paid the bond premium of $2350 and delivered, as security, a note for the entire bail bond, an indemnity agreement, title to his 2002 C32 Mercedes Benz, and the vehicle itself. With Tracy's help, Mr. Blackman complied with these conditions, and Respondent bailed him out of jail.

5. At this point, the agreement between Respondent and Mr. Blackman, with respect to the car, was that Respondent would

store the car in a safe place. Accordingly, immediately upon receiving the car, Respondent drove it to a body shop where it could be stored safely and without charge.

6. Three or four days later, while out on bail, Mr. Blackman was arrested for felony possession of cocaine. The judge revoked the original bond and refused to set bond for the new offense. At this time, the vehicle no longer served as security because the bail bond that it had secured no longer existed. Thus, at this time, Mr. Blackman was entitled to the return of the vehicle.

7. Neither Mr. Blackman nor Respondent was under any misimpression as to Mr. Blackman's status at the time of the second arrest. Both men knew that Mr. Blackman would not be able to be released from jail on bail for these alleged offenses. Mr. Blackman would remain in jail until February 2004, after which time, following a plea deal, Mr. Blackman began serving nights in jail.

8. The day after his re-arrest, Mr. Blackman called Respondent from jail and asked him if he would help Mr. Blackman sell the vehicle. Mr. Blackman explained that he knew that he was going to lose his driver's license. He asked Respondent if he knew anyone who worked at an automobile auction. Eventually, Mr. Blackman asked Respondent if he wanted to purchase the car, but Respondent declined, at least initially.

9. Within a day or two after speaking to Mr. Blackman the day after his re-arrest, Respondent removed the car from the body shop, so he could show it to a prospective buyer. Respondent did not return the car to the body shop, but instead kept the car at his office or home. The record does not establish that Respondent had driven the car for any reason prior to showing it two or three days after Respondent's second arrest.

10. For several reasons, Mr. Blackman was content with Respondent's possession of the car after it no longer served as collateral for a bail bond. Although released from jail during days starting in February 2004, Mr. Blackman remained concerned about the car during the evenings, while he was in jail. As he explained to Respondent at the time, Mr. Blackman did not want his brother to have access to the car. As Mr. Blackman testified at the hearing, he was also concerned that a friend of Tracy not have access to the car. Mr. Blackman's concerns may have extended to Tracy, who he later determined stole $20,000 from Mr. Blackman while he was in jail. Unable to drive the car due to his loss of driving privileges, Mr. Blackman did not want the car parked in his crime-ridden neighborhood. Additionally, Mr. Blackman's auto insurance expired in January 2004.

11. For these reasons, Mr. Blackman was in no hurry after his re-arrest for Respondent to give up possession of

Mr. Blackman's car. The car was safer with Respondent than it would have been returned to Mr. Blackman. Mr. Blackman knew that he would not be charged storage and was hopeful that Respondent would sell the car for Mr. Blackman.

12. At no time, though, did Respondent try to document the change from his holding the car as collateral for a bail bond to holding it for the convenience of Mr. Blackman. Specifically, Respondent never tried to obtain Mr. Blackman's signature on a collateral release, which would document that the car no longer secured a now-nonexistent bail bond. Respondent claimed that he could not obtain Mr. Blackman's signature while he was in jail, but it is customary for limited surety agents to visit inmates in jail to obtain their signatures on paperwork, such as a collateral release. Also, in February 2004, Respondent could have obtained Mr. Blackman's signature at anytime during the day.

13. After showing the car the first time, two or three days after Mr. Blackman's second arrest, Respondent began to use the vehicle for his personal and business purposes, as well as occasionally showing it to a prospective buyer. After January 2004, Mr. Blackman's car was no longer insured. It is unclear whether the registration and license tag expired during this period. Before Mr. Blackman was released on days, Respondent produced offers of $28,000 and $29,000 from two different

persons, but Mr. Blackman wanted $38,000 for the car and refused these offers.

14. After being released on days, Mr. Blackman did not visit Respondent or ask for him to return the car. Mr. Blackman was likely preoccupied with other matters immediately after his release from jail in February. Failing to report to jail one night shortly after his release, Mr. Blackman violated one of the conditions of his sentence, took off, and was re-arrested and returned to jail in March or April 2004.

15. Only after he was again incarcerated did Mr. Blackman re-address the issue of the car with Respondent. The first thing he did was tell Respondent to deduct $1200 from the price of the car for a bond forfeiture on a bond that Respondent had written on Tracy. The next thing, on April 13, 2004, Mr. Blackman entered into a written agreement with Respondent for the sale of the vehicle, on the same date, to Respondent for $35,000 cash. However, Respondent backed out of the deal.

16. About six weeks later, in late May 2004, Mr. Blackman sent his sister to pick up the car. She had a power of attorney, but it did not apply to the car, so Respondent would not release the car to her. This was a reasonable action on Respondent's part, given his knowledge of Mr. Blackman's distrust of at least one other family member. A couple of weeks later, in early June, Mr. Blackman's sister returned with a

proper power of attorney, and Respondent released the car to her.

17. After taking the car from Respondent, Mr. Blackman's sister and her husband noticed that the car had considerably higher mileage than Mr. Blackman had said that it should have. Respondent had driven the vehicle 7,000 to 10,000 miles during the six months that he had possessed the car, but entirely after the second arrest in December. Respondent was cavalier about his use of the car, as he incurred numerous parking tickets, as well as tolls on Mr. Blackman's SunPass transponder that was in the car when it was delivered to Respondent--all of which charges were imposed on Mr. Blackman. After repeated demands, Respondent paid off only some of these charges. The additional mileage that Respondent put on the vehicle reduced the vehicle's fair market value by as much as $3000.

18. On August 1, 2004, Mr. Blackman's sister, using her power of attorney and with her brother's approval, sold the car for $33,000 to a person other than Respondent.

CONCLUSIONS OF LAW

19. The Division of Administrative Hearings has jurisdiction over the subject matter. §§ 120.569 and 120.57(1), Fla. Stat. (2006).

20. Section 668.442(1), (3), (4), and (7), Florida Statutes, provides:

(1) Collateral security or other indemnity accepted by a bail bond agent, except a promissory note or an indemnity agreement, shall be returned upon final termination of liability on the bond. Such collateral security or other indemnity required by the bail bond agent must be reasonable in relation to the amount of the bond. Collateral security may not be used by the bail bond agent for personal benefit or gain and must be returned in the same condition as received. A bail bond agent may accept collateral security in excess of $50,000 cash per bond, provided any amount over $50,000 cash is payable to the insurer in the form of a cashier's check, United States postal money order, certificates of deposit, or wire transfer and is remitted to and held by the insurer. A copy of IRS Form 8300 must be retained as part of the defendant's file if it is otherwise required. A quitclaim deed for property may not be taken as collateral. Other acceptable forms of security or indemnity may consist of the following:

(a) A promissory note;

(b) An indemnity agreement;

(c) A real property mortgage in the name of the insurer;

(d) Any Uniform Commercial Code filing; or

(e) Any other type of security approved by the department. The department may approve other security only if, after considering the liquidity and other characteristics of the security, it determines that the security is of a type which increases the probability that the defendant will in fact appear in court or increases the probability that the defendant will be subsequently apprehended by the bail bond agent.

* * *

(3) . . . If the bail bond agent or managing general agent fails to return the

collateral to the indemnitor upon final termination of liability on the bond, the surety shall be liable for the collateral and shall return the actual collateral to the indemnitor or, in the event that the surety cannot locate the collateral, the surety shall pay the indemnitor pursuant to the provisions of this section.

(4) When the obligation of the surety on the bond or bonds has been released in writing by the court, the collateral shall be returned to the rightful owner named in the collateral receipt unless another disposition is provided for by legal assignment of the right to receive the collateral to another person.

* * *

(7) No bail bond agent or insurer shall solicit or accept a waiver of any of the provisions of this section or enter into any

21. Section 648.45(2), Florida Statutes, provides:

(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 if the person:

* * *

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

* * *

(g) Has engaged in fraudulent or dishonest practices in the conduct of business under the license or appointment.

* * *

(j) Has willfully failed to comply with or willfully violated any proper order or rule of the department or willfully violated any provision of this chapter or the insurance code.

* * *

22. Section 648.45(3)(e), Florida Statutes, provides:

(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:

* * *

(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.

* * *

23. Section 648.571(1), Florida Statutes, requires a limited surety agent in possession of collateral to apply for a written discharge of the bond, upon request of the indemnitor. Within 21 days of receipt of an executed discharge of the bond, according to Section 648.571(1), Florida Statutes, a limited

surety agent must return the collateral to the indemnitor. Section 648.571(2), Florida Statutes, provides that the bond is canceled, if the court fails to issue the written discharge within seven days of the request for discharge, and the limited surety agent must return the collateral to the indemnitor within 21 days of receipt of the written request for discharge. Section 648.571(4), Florida Statutes, states: "In addition to the criminal penalties and any other penalties provided in this chapter, the department shall impose against any person violating this section an administrative fine of five times the dollar amount of the collateral."

24. 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).

25. Count I alleges that, while in possession of Mr. Blackman's car, Respondent used it for personal benefit or gain and failed to return it in the same condition it was in when it was delivered as collateral. Petitioner proved these factual allegations, but failed to prove that Respondent used the car while it was collateral or that, upon the expiration of the bond, the car was not in the same condition as it was when delivered to Respondent. In fact, Respondent never used the car while it was collateral, except to drive it to storage.

26. The statutes on which Petitioner relies in Count I impose obligations upon the limited surety agent in his treatment of collateral. In particular, Section 668.442(1), Florida Statutes, prohibits the personal use of collateral security. This statute does not attempt to impose this prohibition on property that has lost its status as collateral. While the car served as collateral, Respondent satisfied these obligations. Petitioner has thus failed to prove any of the violations alleged in Count I.

27. The real question in Count I is whether the prohibition against personal use of collateral continues to apply after the property has lost its status as collateral. Common sense would dictate that, after the limited surety agent has returned the collateral to the indemnitor, the agent could acquire the right to use the property, upon the agreement of its owner (the former indemnitor), and use it without subjecting himself to discipline because his relationship to the property no longer directly involves his role as a limited surety agent. However, common sense also dictates that the statutory protection accorded property used as collateral for a bail bond should extend a reasonable time after the expiration of the bond, or else the agent could put the property to personal use immediately after the bond expired, but before he was required to return to collateral to the indemnitor.

28. In this case, Mr. Blackman clearly did not want his car back upon the expiration of the bond, but instead wanted Respondent, in whatever capacity, to keep it. Thus, this case does not present the issue, described in the preceding paragraph, as to whether the law extends protection to the property for the short period after the bail bond has expired that the agent reasonably needs to return the property to the indemnitor.

29. Count II alleges that Respondent failed to timely return the collateral. Petitioner has proved this factual allegation, and Petitioner has proved that this failure violates the cited statutes. Section 668.442(1), Florida Statutes, clearly requires the limited surety agent to return the collateral upon the expiration of the bond. The applicability of Section 648.571, Florida Statutes--and thus the five-times penalty of Section 648.571(4), Florida Statutes--is questionable due to the absence in this case of a request for discharge of bond or a written discharge of bond.

30. As in Count I, Mr. Blackman desired Respondent to keep the car after the bond expired. However, for the violation alleged in Count II, Mr. Blackman's desire is irrelevant. Without regard to Mr. Blackman's desires, Respondent was obligated to complete the paperwork and at least tender the collateral back to Mr. Blackman. It is irrelevant that

Mr. Blackman probably would have asked Respondent to continue to hold the car. Section 648.442(1), Florida Statutes, states that Respondent "shall" return the collateral upon the expiration of the bond, and Section 648.442(7), Florida Statutes, permits no waiver of this provision. Nor is the specific time of the accrual of this obligation important on the facts of this case. Respondent knew that the bond had expired for many months, but never formally attempted to return the vehicle to Mr. Blackman or even have him sign a collateral release.

31. As to Count II, Petitioner has thus proved a lack of fitness or trustworthiness to engage in the bail bond business, in violation of Section 648.45(2)(e), Florida Statutes.

32. Petitioner failed to prove the allegations of Count III in a couple of respects. First, the evidence failed to establish whether the car's registration or tag expired while in Respondent's possession, although it was not insured during at least part of this time. Second, the cited statutes clearly do not impose any obligation on Respondent for the use of property after it has lost its status as collateral.

33. If Petitioner has rules governing the imposition of discipline on limited surety agents, this Administrative Law Judge could not find them. A reference at the hearing to Florida Administrative Code Chapter 69B-231 proved inapt due to the provision in Rule 69B-231.020(2) that these rules do not

apply to "bail bond agents." Florida Administrative Code Chapter 69B-231 governs limited surety agents, but contains no penalty provisions. Petitioner's proposed recommended order contains a tantalizing reference to "the penalty guidelines" and their calling for a 15-month suspension, but omits any reference.

34. Section 648.49(1), Florida Statutes, limits the term of any suspension to two years. Section 648.52(1), Florida Statutes, authorizes an administrative fine: "the department may, in its discretion, in lieu of or in addition to such suspension, revocation, or refusal, and except on a second offense, impose upon the licensee an administrative penalty in an amount up to $5,000 or, if the department has found willful misconduct or willful violation on the part of the licensee, $20,000." Either the fine option is unavailable for a second offense or it is unavailable for a second offense in lieu of a suspension. The latter interpretation makes more sense; otherwise, a licensee could suffer a suspension (or revocation) and fine for a first offense, but only a suspension (or revocation) for a second offense.

35. Absent guidance from penalty guidelines, the appropriate penalty is a suspension of six months. The violation is fairly technical, as the material omission by Respondent is his failure to present Mr. Blackman with an

opportunity to reclaim possession of a car for which he had no use and limited ability to safeguard. The major aggravating circumstance is prior discipline.

36. Respondent's use of the vehicle exceeded Mr. Blackman's expectations. The mileage that Respondent ran up on the car and his irresponsible incurring of parking tickets and use of Mr. Blackman's SunPass transponder are reprehensible. But these acts and omissions fell outside the ambit of Petitioner's regulatory responsibilities. Given the likelihood that Mr. Blackman would have declined the opportunity to regain possession of his car in December or January, Respondent's cavalier use of Mr. Blackman's vehicle (and his SunPass transponder) is not sufficiently linked to Respondent's omissions at the expiration of the bail bond to permit the inclusion of Respondent's irresponsible behavior and Mr. Blackman's consequent economic losses as aggravating factors.

RECOMMENDATION

It is

RECOMMENDED that the Department of Financial Services enter a final order dismissing Counts I and III, finding Respondent guilty of violation Section 648.45(2)(e), Florida Statutes, in Count II, and imposing a six-month suspension and a $5000 administrative fine.

DONE AND ENTERED this 19th day of October, 2006, in Tallahassee, Leon County, Florida.

ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of October, 2006.

COPIES FURNISHED:

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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.