

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF )  
FINANCIAL SERVICES, )  
 )  
Petitioner, )  
 ) Case No. 07-1175PL  
vs. )  
 )  
VINCENT LAMONE ADDISON, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Notice was provided and on June 8, 2007, a formal hearing was held in this case. Authority for conducting the hearing is set forth in Sections 120.569 and 120.57(1), Florida Statutes (2006). The hearing took place in the offices of the Division of Administrative Hearings, the DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida. The hearing commenced at 9:00 a.m. Eastern Time. The hearing was held before Charles C. Adams, Administrative Law Judge.

APPEARANCES

For Petitioner: William Gautier Kitchen, Esquire  
Department of Financial Services  
Division of Legal Services  
200 East Gaines Street  
Tallahassee, Florida 32399-0333

For Respondent: Vincent Lamone Addition, pro se  
Post Office Box 483  
Port St. Joe, Florida 32457

STATEMENT OF THE ISSUE

Should discipline be imposed against Respondent's license as a limited surety agent for violation of Section 648.45(2)(a) (e), and (k), Florida Statutes (2006)?

PRELIMINARY STATEMENT

On February 9, 2007, in Case No. 86290-06-AG, before the Chief Financial Officer of the State of Florida, the Department of Financial Services (DFS) brought an Administrative Complaint against Respondent accusing him of a violation of the statute referred to in the Statement of the Issue. The Administrative Complaint was premised upon the following allegations:

\* \* \*

5. On December 19, 2006, you, VINCENT LAMONE ADDITION, pled nolo contendere in the Circuit Court for the fourteenth Judicial Circuit in and for Gulf County, Florida to the Sale, Delivery, or Possession of Cannabis within 1000 feet of a place or [sic] worship or Convenience Business. You also pled nolo contendere to Possession of Marijuana in excess of 20 grams. Both charges are felonies.

As a consequence, Respondent is alleged to have violated Section 648.45, Florida Statutes (2006) in that he:

(a) Lacks one or more of the qualifications specified in this chapter for a license or appointment. [Section 648.45(2)(a), Florida Statutes];

(b) Has demonstrated lack of fitness or trustworthiness to engage in the bail bond

business. [Section 648.45(2)(e), Florida Statutes];

(c) 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 one 1 year or more under the law of any state, territory, or country, whether or not a judgment or conviction has been entered. [Section 648.45(2)(k), Florida Statutes].

Respondent was provided several options in addressing the Administrative Complaint. He chose the third option. That option was to dispute the factual allegations contained in the Administrative Complaint. Through that option, as evidenced in the executed form provided by him, Respondent asked that he be heard in accordance with Section 120.57(1), Florida Statutes (2006), in a hearing before the Division of Administrative Hearings (DOAH).

On March 14, 2007, DFS forwarded the case to DOAH to assign an administrative law judge to conduct a formal hearing in accordance with Respondent's request for formal hearing. The assignment was made by Robert S. Cohen, Director and Chief Judge of DOAH, in reference to DOAH Case No. 07-1175PL. The assignment was to the present administrative law judge.

The hearing took place on the date previously mentioned.

Petitioner presented Respondent as its witness.

Petitioner's Composite Exhibit numbered 1 was admitted.

Respondent testified in his own behalf and presented Tynalin

Smiley, and Robert Humphrey as his witnesses. Respondent's Exhibit numbered 1 was admitted.

On June 25, 2007, the hearing transcript was filed. Within the time allotted, Petitioner and Respondent filed proposed recommended orders, which have been considered in preparing the Recommended Order.

#### FINDINGS OF FACT

1. On January 6, 2003, DFS issued Respondent a series 2-34 limited surety agent (bail bond) license. That license remains valid.

2. On May 3, 2006, in State of Florida vs. Vincent Lamone Addison, in the Circuit Court, 14th Judicial Circuit of the State of Florida, in and for Gulf County, Case No. 06-0107CF, Respondent was charged by information with: Count I, Possession with intent to sell/deliver within 1000 feet of place of worship or convenience business; Count II, Possession of marijuana in excess of 20 grams, offenses contrary to Section 893.13, Florida Statutes (2005), third degree felonies. In the same information, in Count III, it was charged that he did obstruct (an) officer without violence, a violation of Section 843.02, Florida Statutes (2005), a first degree misdemeanor.

3. On December 18, 2006, the assistant state attorney in Circuit Court Case No. 06-107CF, filed a Motion to Consolidate, asking that the Court enter an order consolidating the count for

possession of a controlled substance with intent to deliver, with the count related to possession of more than 20 grams of marijuana.

4. On December 19, 2006, in Circuit Court Case No. 06-107CF, a Plea, Waiver and Consent was signed by Respondent as defendant in that case, attested by his counsel and the assistant state attorney, and found by the Circuit Court Judge to be a plea freely and voluntarily made and sworn to and subscribed before the court and approved and accepted by the court related to possession of marijuana, a third degree felony with a statutory maximum imprisonment of five years. The plea was made upon the agreement that the adjudication be withheld, with service of three-years' probation, to terminate after 18 months if all conditions were complete and no violations of the probation had occurred. In addition, by order of the Circuit Court Judge, certain charges/costs/fees were imposed in Circuit Court Case No. 06-107CF.

5. When Respondent executed his Plea, Waiver and Consent in Circuit Court Case No. 06-107CF, it reflected that the charge of "Obstruct officer without violence" had been stricken by line and initials provided, by what appears to be the defense counsel and the assistant state attorney in the case.

6. In Circuit Court Case No. 06-107CF, as reflected in an order by the Circuit Court Judge referring to those proceedings, entered December 19, 2006, upon his appearance before the Court with representation, it indicates a plea of nolo contendere was entered. It pertained to Count I. On the form order, it refers to "Sales/Del/Poss/cannis-w/in-100Ft. Church 893.13(1)(a) 3F." Under that reference is found "Poss. Marijuana in Excess 20 grs. 893.13(6)(a) 3F". The numbers refer to Section 893.13(1)(a) and (6)(a), Florida Statutes (2005), and "3F" refers to third degree felony. In this order it was reflected that the adjudication of guilt was withheld, and that the defendant received three-years' probation, to terminate after 18 months upon satisfaction of conditions of probation. The court order refers to fees required by the court to satisfy its terms for accepting the plea.

7. On December 21, 2006, in Circuit Court Case No. 06-107CF, the Circuit Court Judge entered an Order Withholding Adjudication of Guilt and Placing Defendant on probation. In this order it reflects entry of a plea of nolo contendere to the offense of "Possession of more than 20 grams, 3rd-Degree Felony," for which the Respondent received three years of probation. Other conditions of the probation were reflected in this order, to include the costs and fees imposed by the Court.

On January 12, 2007, precisely the same order was entered by the Circuit Court Judge.

8. In addition to the nolo contendere plea in Circuit Court Case No. 06-107CF, Respondent in his testimony at hearing in the present case, acknowledged that the drug offense took place in Port St. Joe, Florida. He was arrested on April 21, 2006. Respondent did not contest the charges because marijuana was found on the console of his car and some was in his front pocket. Respondent's understanding of his nolo contendere plea was that it was to possession of marijuana exceeding 20 grams. The amount was somewhere in the range of 118 to 120 grams.

9. In the present case, Respondent through his testimony, explained that he had been diagnosed with lupus and that he smoked marijuana to help his body function while confronting his disease. Respondent is aware that possession of marijuana in Florida is illegal, even if intended for the purpose he had in mind to provide him relief from the pain of lupus.

10. Respondent is not acting in the capacity of a bail bond agent at this time. That loss of income has had significant impact on his earning capacity.

11. Mr. Tynalin Smiley, who resides in Port St. Joe where the Respondent lives, has known the Respondent from the time Respondent was born. They are good friends. Mr. Smiley belongs to the same church as Respondent. He visits in Respondent's

home at times. He believes that Respondent is a respectable person in the community.

12. Mr. Robert Humphrey, who resides in Dothan, Alabama, met Respondent in 1996 when Respondent did an internship from Troy State University. Mr. Humphrey and Respondent worked in the area of juvenile justice, going into schools and providing counseling to students. Over the years Mr. Humphrey has kept in contact with Respondent. Occasionally Mr. Humphrey and Respondent are together socially. They go out to dinner. Respondent has attended Mr. Humphrey's church. Mr. Humphrey looks upon himself as being a big brother to Respondent. Mr. Humphrey has observed that Respondent remains active in the Respondent's community. Mr. Humphrey believes that Respondent regrets his choice that led to the action against him, that involving the marijuana possession that has been discussed.

#### CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding in accordance with Sections 120.569 and 120.57(1), Florida Statutes (2006).

14. Respondent is a licensed limited surety agent (bail bond), as defined in Section 648.25(5), Florida Statutes (2006). He held that license at times relevant to the case. The license



was issued by DFS, which has authority to administer the law regulating bail bond agents. § 648.26, Fla. Stat. (2006).

15. Through the Administrative Complaint, Count I, Respondent has been accused of various violations within Chapter 648, Florida Statutes (2006). The manner of the alleged violation is that:

On December 19, 2006, you, VINCENT LAMONE ADDITION, pled nolo contendere in the Circuit Court for the fourteenth Judicial Circuit in and for Gulf County, Florida to the Sale, Delivery, or Possession of Cannabis within 1000 feet of a place or [sic] worship or Convenience Business. You also pled nolo contendere to Possession of Marijuana in excess of 20 grams. Both charges are felonies.

16. The statutory basis for pursuing Respondent's alleged misconduct, as reflected in the Administrative Complaint, is as follows:

648.45 Actions against licensee; suspension or revocation of eligibility to hold a license.--

\* \* \*

(2) The department shall deny, suspend, revoke, or refuse to renew any license or appointment issued under this chapter of the insurance code, and it shall suspend or revoke the eligibility of an person to hold a license or appointment under this chapter or the insurance code, for any violation of the laws of this state related to bail or any violation of the insurance code or if the person:

(a) Lacks one or more of the qualifications specified in this chapter for a license or appointment.

\* \* \*

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

\* \* \*

(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.

17. This is a disciplinary case. For that reason, Petitioner bears the burden of proving the allegations in the Administrative Complaint by clear and convincing evidence. See Department of Banking and Finance Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); and Pou v. Department of Insurance and Treasurer, 707 So. 2d 941 (Fla. 3rd DCA 1998). See also § 120.57(1)(j), Fla. Stat. (2006).

18. The term clear and convincing evidence is explained in the case In re: Davey, 645 So. 2d 398 (Fla. 1994), quoting from Slomowitz v. Walker, 429 So. 2d 797 (Fla. 4th DCA 1983).

19. Given the penal nature of this case, Section 648.485(2)(a), (e) and (k), Florida Statutes, has been strictly

construed and any ambiguity favors Respondent. See Lester v. Pattishall, 99 Fla. 296 and 126 So. 147 (Fla. 1930), and Lester v. Department of Professional and Occupational Regulation, State Board of Medical Examiners, 348 So. 2d 923 (Fla. 1st DCA 1977).

20. In reference to Section 648.45(2)(a), Florida Statutes (2006), accusing Respondent of a lack of one or more of the qualifications specified in Chapter 468, Florida Statutes, for his license, Respondent has failed to meet the qualification in Section 648.34(1)(e), Florida Statutes (2006), which states:

The applicant is a person of high character and approved integrity and has not been convicted of or 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.

21. Clear and convincing evidence was presented to prove that Respondent pled nolo contendere to the third degree felony of possession of more than 20 grams of marijuana in Circuit Court Case No. 06-0107CF. This established that Respondent lacks one of the qualifications specified to hold his license as a limited surety agent (bail bond), in violation of Section 648.45(2)(a), Florida Statutes (2006).

22. By his plea, clear and convincing evidence is presented that Respondent lacks fitness to engage in the bail

bond business as addressed in Section 648.45(2)(e), Florida Statutes (2006). Respondent has violated that provision.

23. Likewise, by entering the plea Respondent has violated Section 648.45(2)(k), Florida Statutes (2006).

24. The possession of more than 20 grams of marijuana in violation of Section 893.13, Florida Statutes (2005), was a crime punishable by a term of imprisonment not exceeding five years. § 775.82 (3)(d), Fla. Stat. (2005). Thus it met the definition of possible imprisonment for pleading nolo contendere to a felony, as contemplated in Section 648.34(2)(e), Florida Statutes (2006), as made applicable pursuant to Section 648.45(2)(a), Florida Statutes (2006), and Section 648.45(2)(k), Florida Statutes (2006).

25. Respondent's explanation for the possession of marijuana does not excuse his misconduct. Respondent's health is of great concern to him. He perceived the use of marijuana to address his lupus as acceptable. It was not. Given the nature of his license, with his recognition that possession of marijuana was a criminal offense, a stern response is needed in imposing discipline. In this connection, the nature of Respondent's license deals with matters of criminal law for those who have been extended bail.

RECOMMENDATION

Upon consideration of the facts found and the conclusions of law reached, it is

RECOMMENDED:

That a final order be entered Respondent in violation of Section 648.45(2)(a), (e) and (k), Florida Statutes (2006) and revoking Respondent's limited surety agent (bail bond) license.

DONE AND ENTERED this 27th day of July, 2007, in Tallahassee, Leon County, Florida.

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CHARLES C. ADAMS  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of July, 2007.

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.