

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL)
SERVICES,)
)
Petitioner,)
)
vs.) Case No. 10-9401PL
)
AHIZER ALVAREZ,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on December 9, 2010, by video teleconference at sites in Tallahassee and Ft. Myers, Florida, before J. D. Parrish, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Thomas A. David, Esquire
Department of Financial Services
Division of Legal Services
200 East Gaines Street
612 Larson Building
Tallahassee, Florida 32399-0333

For Respondent: Ahizer Alvarez, pro se
1023 Alvin Avenue
Lehigh Acres, Florida 33971

STATEMENT OF THE ISSUES

Whether the Respondent, Alizer Alvarez (Respondent), committed the violations alleged in the Administrative Complaint, and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On December 30, 2009, Petitioner, Department of Financial Services (Petitioner or Department), issued an Administrative Complaint against the Respondent that alleged violations of Chapter 648, Florida Statutes (2009). More specifically, the Department alleged numerous violations of law set forth in the four-count complaint; all stemmed from Respondent's operation of bail bond business. Count I of the complaint averred facts regarding an inmate named Baker. In dealing with Inmate Baker, Petitioner claimed Respondent had: directly or indirectly solicited business in or on the property or grounds of a jail; demonstrated a lack of one or more qualifications for license or appointment; willfully failed to comply with or willfully violated any proper order or rule of the Department; violated a law related to the business of bail bond insurance; and was a source of injury or loss to the public or detrimental to the public interest. Count II also concerned Inmate Baker and alleged Respondent allowed a temporary licensee to engage in activities that required supervision; had willfully sought to circumvent requirements of the insurance code; demonstrated a

lack of fitness or trustworthiness to engage in the bail bond business; engaged in fraudulent or dishonest practices; willfully failed to comply with a rule or provision of the insurance law; and violated any law related to the business of bail bond insurance. Count III alleged violations of the bail bond business related to Respondent's dealings with an inmate named Malfregeot. With regard to this inmate, Petitioner asserted Respondent directly or indirectly solicited business in or on the property or grounds of a jail; demonstrated a lack of one or more qualifications for license or appointment; demonstrated a lack of fitness or trustworthiness to engage in the bail bond business; willfully failed to comply with or willfully violated any proper order or rule of the Department; violated a law related to the business of bail bond insurance; and was a source of injury or loss to the public or detrimental to the public interest. Finally, Count IV alleged that Respondent violated other provisions of the bail bond insurance law that required: the owner or operator of a bail bond agency to designate a primary bail bond agent for each location and a licensee to comply with proper order, rule, or provision of law of the insurance code.

Respondent timely challenged the allegations of the Administrative Complaint. The matter was forwarded to the Division of Administrative Hearings (DOAH) for formal

proceedings on September 30, 2010. Thereafter, the case was promptly scheduled for hearing.

At the hearing, Petitioner presented the testimony of Petitioner, Laticia Barnes, Melanie Onash, Justin Malregeot, Kathryn Malfregeot, Patricia Froebe, Melissa Monhollen, Jennifer Mudge, Laurel Raulerson, and Juanita Midgett. Petitioner's Exhibits one through 15 were admitted into evidence. Respondent testified on his own behalf. The Transcript of the proceedings was filed with DOAH on January 6, 2011. The parties were granted ten days within which to file Proposed Recommended Orders.

FINDINGS OF FACT

1. Petitioner is the state agency charged with the responsibility and authority to regulate insurance and insurance-related activities. Limited surety licensees, bail bond agents, are included within the Petitioner's authority.

2. At all times material to the issues of this case, Respondent has been licensed as a limited surety agent. Respondent's license number is E177613. At all times material to the allegations of this case, Respondent operated as a bail bond agent.

3. At all times material to the issues of this case, Respondent conducted bail bond business at 2329 Union Street, #1, in Fort Myers, Florida. Respondent was designated as the

primary bail bond agent for Sunshine State Bail Bonds (Sunshine State). Sunshine State was located at 2329 Union Street, #1, Fort Myers, Florida.

4. Annette Lilian Alvarez was licensed in Florida as a temporary bail bond agent. Ms. Alvarez's license number is P153920. At all times material to this case, Ms. Alvarez was employed by and appointed as a temporary agent with Respondent.

5. The allegations set forth in Counts I and II of the Administrative Complaint identify Baker as an inmate in the Lee County, Florida, jail. Inmate Baker was arrested on or about July 15, 2009. The total amount needed to bond Inmate Baker out was \$8,500.00.

6. Respondent issued four appearance bonds to obtain Inmate Baker's release. Each of the bonds identified Bond Out Now BB, located at 2329 Union Street, #1, Fort Myers, Florida 33901, telephone number (239)334-0060, as the bond contact in the matter.

7. Within 24 hours of facilitating Inmate Baker's release by posting the bonds, Respondent took action to return her to jail.

8. Ms. Alvarez presented Inmate Baker through the jail entrance and processed her back into custody. In order to do so, paperwork was completed and exchanged with jail staff. With

regard to Inmate Baker's return, Ms. Alvarez signed the bail bond agent form and turned Inmate Baker over to the jail staff.

9. Respondent did not sign the bail bond form regarding Inmate Baker's return. Additionally, Respondent did not accompany Ms. Alvarez into the jail where Inmate Baker was turned over to jail staff and processed back into custody. Respondent's claim that he accompanied Ms. Alvarez in this endeavor has not been deemed credible.

10. Counts III and IV of the Administrative Complaint pertain to Inmate Malfregeot.

11. On or about May 6, 2009, Inmate Malfregeot was booked into the Lee County, Florida, jail. Inmate Malfregeot's bond was set at \$1,000.00. Inmate Malfregeot telephoned his mother and asked her to arrange bond so that he could be released.

12. Without being asked by the Malfregeot family, Respondent wrote and posted the bond to secure Inmate Malfregeot's release. Respondent left a document instructing Inmate Malfregeot to report to Sunshine State within 24 hours of his release. The document was given to Inmate Malfregeot on the jail grounds.

13. Respondent's business card was provided to Inmate Malfregeot's mother when she was on the jail grounds.

14. Inmate Malfregeot's bond was posted on a form for United States Fire Insurance Company (USFIC). At the time the

USFIC bond was issued, Respondent was not authorized to write and post bonds on behalf of USFIC.

15. The USFIC bond included a notation written by Respondent that stated, "court notices were to be provided to Bond Out Now BB at the address noted above."

16. Respondent was not designated as a primary bond agent for Bond Out Now BB.

17. Respondent operated and did business representing his company as Bond Out Now BB. Respondent was the only licensed bail bond agent who wrote bonds for Bond Out Now BB.

18. At all times material to the allegations of this case, there was no primary bail bond agent designated for Bond Out Now BB, doing business at 2329 Union Street, #1, Fort Myers, Florida.

CONCLUSIONS OF LAW

19. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.560 and 120.57, Fla. Stat. (2009).

20. Petitioner has the burden of proving the specific allegations of fact that support its charges by clear and convincing evidence. See Dep't of Banking & Fin., Div. of Sec. & Inv. Prot. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); and Pou v. Dep't of Ins. & Treasurer, 707 So. 2d 941 (Fla. 3d DCA 1998).

21. Clear and convincing evidence as described by the court in Evans Packing Co. v. Dep't of Agric. & Consumer Servs., 550 So. 2d 112, 116, n. 5 (Fla. 1st DCA 1989), is:

. . . [C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the evidence must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact the firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established. Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

See also In re Graziano, 696 So. 2d 744 (Fla. 1997); In re Davey, 645 So. 2d 398 (Fla. 1994); and Walker v. Fla. Dep't of Bus. & Prof'l Reg., 705 So. 2d 652 (Fla. 5th DCA 1998) (Sharp, J., dissenting).

22. Section 648.25, Florida Statutes, provides:

Definitions.—As used in this chapter, the term:

(1) "Bail bond agency" means:

(a) The building where a licensee maintains an office and where all records required by ss. 648.34 and 648.36 are maintained; or

(b) An entity that:

1. Charges a fee or premium to release an accused defendant or detainee from jail; or

2. Engages in or employs others to engage in any activity that may be performed only by a licensed and appointed bail bond agent.

(2) "Bail bond agent" means a limited surety agent or a professional bail bond agent as hereafter defined.

(3) "Managing general agent" means any individual, partnership, association, or corporation appointed or employed by an insurer to supervise or manage the bail bond business written in this state by limited surety agents appointed by the insurer.

(4) "Insurer" means any domestic, foreign, or alien surety company which has been authorized to transact surety business in this state.

(5) "Limited surety agent" means any individual appointed by an insurer by power of attorney to execute or countersign bail bonds in connection with judicial proceedings who receives or is promised money or other things of value therefore.

(6) "Primary bail bond agent" means a licensed bail bond agent who is responsible for the overall operation and management of a bail bond agency location and whose responsibilities include hiring and supervising all individuals within that location. A bail bond agent may be designated as primary bail bond agent for only one bail bond agency location.

(7) "Professional bail bond agent" means any person who pledges United States currency, United States postal money orders, or cashier's checks as security for a bail bond in connection with a judicial proceeding and receives or is promised therefore money or other things of value.

(8) "Temporary bail bond agent" means a person employed by a bail bond agent or agency, insurer, or managing general agent, and such licensee has the same authority as a licensed bail bond agent, including presenting defendants in court; apprehending, arresting, and surrendering defendants to the proper authorities, while accompanied by a supervising bail bond agent or an agent from the same agency; and keeping defendants under necessary surveillance. However, a temporary licensee may not execute or sign bonds, handle collateral receipts, or deliver bonds to appropriate authorities. A temporary licensee may not operate an agency or branch agency separate from the location of the supervising bail bond agent, managing general agent, or insurer by whom the licensee is employed. This does not affect the right of a bail bond agent or insurer to hire counsel or to obtain the assistance of law enforcement officers.

23. Section 648.355, provides, in part:

Temporary limited license as limited surety agent or professional bail bond agent; pending examination.—

(1) 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:

* * *

(e) The applicant must be employed full time at the time of licensure, and at all times throughout the existence of the temporary license, by only one licensed and appointed supervising bail bond agent, who supervises the work of the applicant and is responsible for the licensee's conduct in the bail bond business. The applicant must be appointed by the same insurers as the

supervising bail bond agent. The supervising bail bond agent shall certify monthly to the department under oath, on a form prescribed by the department, the names and hours worked each week of all temporary bail bond agents. Filing a false certification is grounds for the immediate suspension of the license and imposition of a \$5,000 administrative fine. The department may adopt rules that establish standards for the employment requirements.

* * *

(h) The applicant's employer is responsible for the bail bonding acts of any licensee under this section.

* * *

(7) In no event shall a temporary licensee licensed under this section perform any of the functions for which a bail bond agent's license is required after expiration of the temporary license without having passed the written examination as for a regular bail bond agent's license.

(8) (a) A temporary licensee has the same authority as a licensed bail bond agent, including presenting defendants in court; apprehending, arresting, and surrendering defendants to the proper authorities; and keeping defendants under necessary surveillance. However, a temporary licensee must be accompanied by a supervising bail bond agent or an agent from the same agency when apprehending, arresting, or surrendering defendants to authorities.

(b) A temporary licensee may not execute or sign bonds, handle collateral receipts, deliver bonds to appropriate authorities, or operate an agency or branch agency separate from the location of the supervising bail bond agent, managing

general agent, or insurer by whom the licensee is employed.

24. Section 648.387, provides:

Primary bail bond agents; duties.—

(1) The owner or operator of a bail bond agency shall designate a primary bail bond agent for each location, and shall file with the department the name and license number of the person and the address of the location on a form approved by the department. The designation of the primary bail bond agent may be changed if the department is notified immediately. Failure to notify the department within 10 working days after such change is grounds for disciplinary action pursuant to s. 648.45.

(2) The primary bail bond agent is responsible for the overall operation and management of a bail bond agency location, whose responsibilities may include, without limitations, hiring and supervising of all individuals within the location, whether they deal with the public in the solicitation or negotiation of bail bond contracts or in the collection or accounting of moneys. A person may be designated as primary bail bond agent for only one location.

(3) The department may suspend or revoke the license of the owner, operator, and primary bail bond agent if a bail bond agency employs, contracts with, or uses the services of a person who has had a license denied or whose license is currently suspended or revoked. However, a person who has been denied a license for failure to pass a required examination may be employed to perform clerical or administrative functions for which licensure is not required.

(4) An owner, operator, or primary agent may not employ, contract with, or use the services of any person in a bail bond agency who has been charged with, found guilty of, or pled guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of any jurisdiction, without regard to whether judgment was entered or withheld by the court.

(5) A bail bond agency location may not conduct surety business unless a primary bail bond agent is designated at all times. The failure to designate a primary agent on a form prescribed by the department, within 10 working days after an agency's inception or a change of primary agent, is a violation of this chapter, punishable as provided in s. 648.45.

25. Section 648.44, provides in part:

Prohibitions; penalty.-

(1) A bail bond agent or temporary bail bond agent may not:

* * *

(b) Directly or indirectly solicit business in or on the property or grounds of a jail, prison, or other place where prisoners are confined or in or on the property or grounds of any court. The term "solicitation" includes the distribution of business cards, print advertising, or other written or oral information directed to prisoners or potential indemnitors, unless a request is initiated by the prisoner or a potential indemnitor. Permissible print advertising in the jail is strictly limited to a listing in a telephone directory and the posting of the bail bond agent's or agency's name, address, and telephone number in a designated location within the jail.

* * *

(i) Loiter in or about a jail, courthouse, or where prisoners are confined.

* * *

(o) Attempt to collect, through threat or coercion, amounts due for the payment of any indebtedness related to the issuance of a bail bond in violation of s. 559.72.

(p) Conduct bail bond business with any person, other than the defendant, on the grounds of the jail or courthouse for the purpose of executing a bond.

* * *

(4) A place of business, including a branch office, may not be established, opened, or maintained unless it is under the active full-time charge of a licensed and appointed bail bond agent.

* * *

(6) (a) No bail bond agency shall advertise as or hold itself out to be a bail bond or surety company.

(b) Any misleading or false advertisement or deceptive trade practice is prohibited as provided in part IX of chapter 626.

(c) The advertisement of reduced premium rates is prohibited.

(d) After October 1, 2002, a bail bond agency may not use a name that implies a reduced rate of premium.

(e)1. A bail bond agent may not make material misrepresentations or omissions in statements or use advertisements that

constitute material misrepresentations of facts, create unjust expectations concerning services, or make improper comparisons.

2. Bail bond agents may not own or advertise under firm names that are false, misleading, or deceptive, or use trade names that imply a connection with any government agency.

3. A bail bond agent may not use any advertisement or advertise under any name that includes the word "free".

4. A bail bond agent may not advertise under a trade name unless the name and address appear on the agent's letterhead or business cards. Such name must be registered with the department.

(7) Any permissible advertising by a bail bond agent or agency must include the address of record filed with the department.

(8) (a) A person who has been convicted of 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 act in any capacity for a bail bond agency or participate as a director, officer, manager, agent, contractor, 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. 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 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.

(c) Any law enforcement agency, state attorney's office, court clerk, or insurer that is aware that a bail bond agent or temporary bail bond agent has been convicted of or who has pleaded guilty or no contest to a crime as described in paragraph (a) shall notify the department of this fact.

(d) Upon the filing of an information or indictment against a bail bond agent or temporary bail bond agent, the state attorney or clerk of the circuit court shall immediately furnish the department a certified copy of the information or indictment.

(9) (a) Any person who violates any provisions of paragraph (1) (e), paragraph (1) (f), paragraph (1) (g), paragraph (1) (j), or paragraph (1) (n), or subsection (2) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who violates the provisions of paragraph (1) (a), paragraph (1) (b), paragraph (1) (c), paragraph (1) (h), paragraph (1) (k), paragraph (1) (m), paragraph (1) (o), paragraph (1) (p), subsection (3), subsection (4), or subsection (5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

26. Section 648.45, provides, in part:

Actions against a 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 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:

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

* * *

(d) Has willfully used, or intended the use, of the license or appointment to circumvent any of the requirements or prohibitions of this chapter or the insurance code.

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

(f) Has demonstrated lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license or appointment.

(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.

* * *

(p) Has demonstrated a course of conduct or practices which indicate that the

licensee is incompetent, negligent, or dishonest or that property or rights of clients cannot safely be entrusted to him or her.

(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.

(f) Interfering or attempting to interfere with the administration of justice.

(4) Any licensee found to have violated s. 648.44(1)(b), (d), or (i) shall, at a minimum, be suspended for a period of 3 months. A greater penalty, including revocation, shall be imposed if there is a willful or repeated violation of s. 648.44(1)(b), (d), or (i), or the licensee has committed other violations of this chapter.

(5) Grounds for revocation of the license or appointment exist when any licensee is adjudged bankrupt or insolvent.

(6) Suspension, revocation, and refusal to renew a license or appointment issued under this chapter is subject to the procedures provided in s. 648.46.

27. Section 648.46, provides:

Procedure for disciplinary action against licensees.--

(1) The department shall investigate the actions of a licensee when it receives a written complaint containing allegations of fact that, if true, show that a violation of this chapter, or a rule adopted pursuant thereto, has occurred. The department shall also investigate a licensee if the department is made aware that a possible violation of this chapter, or a rule adopted pursuant thereto, has occurred. If the department determines that a violation of this chapter or a violation of a rule adopted pursuant to this chapter has occurred, the department may file a formal complaint against the licensee and prosecute under chapter 120.

(2) Any proceeding for the purpose of summary suspension of a license pursuant to s. 120.60(6) shall be conducted by the department, which shall issue the final summary order.

(3) The complaint and all information obtained pursuant to the investigation of the department are confidential and exempt from the provisions of s. 119.07(1) until such investigation is completed or ceases to be active. For the purpose of this section, an investigation is considered "active" while the investigation is being conducted by the department with a reasonable, good faith belief that it may lead to the filing

of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the department is proceeding with reasonable dispatch and there is good faith belief that action may be initiated by the department or other administrative or law enforcement agency.

28. The Department has established by clear and convincing evidence that Respondent has violated numerous provisions of the law. Specifically, it is concluded that Respondent directly or indirectly solicited business in or on the property or grounds of a jail. By leaving a business flyer and card for Inmate Malfregeot, and by soliciting his mother on the jail grounds, Respondent conducted business on the grounds of a jail in violation of law. Further, Respondent allowed a temporary licensee to engage in activities that required supervision. The testimony of jail staff has been deemed credible and persuasive in the conduct of Ms. Alvarez returning Inmate Baker to the jail facility. Respondent did not accompany Ms. Alvarez as is required by law. Next, it is concluded that Respondent willfully sought to circumvent requirements of the insurance code. By indirectly or directly soliciting bail bond business at the jail, Respondent willfully sought to circumvent the law. Respondent also circumvented the law when he allowed Ms. Alvarez to return an inmate to the jail. Respondent violated the law when he wrote a bond on a company for whom he was not authorized to issue bonds. Respondent operated an unregistered bail bond

business at the same location as another. Respondent was authorized to conduct business only as Sunshine State, not Bail Out Now BB. Taken in totality, the evidence in this case clearly and convincingly established Respondent lacks the fitness or trustworthiness to engage in the bail bond business. Respondent violated laws requiring the mandatory revocation of his license.


29. Based upon the foregoing, given the pattern of conduct and severity of the violations established, Petitioner has proven by clear and convincing evidence that Respondent lacks the trustworthiness to engage in bail bond business.

30. The public has an expectation of trust in a person conducting bail bond business. It is concluded that Respondent violated that trust.

RECOMMENDATION

It is recommended that the Department of Financial Services enter a final order revoking Respondent's license as a limited surety agent, license number E177613.

DONE AND ENTERED this 5th day of April, 2011, in
Tallahassee, Leon County, Florida.



J. D. PARRISH
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of April, 2011.

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.