

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL)
SERVICES, DIVISION OF INSURANCE)
AGENTS AND AGENCY SERVICES,)
)
Petitioner,)
)
vs.) Case No. 11-3278PL
)
FREDDIE WILSON,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on October 28, 2011, by video teleconference with sites in Tampa and Tallahassee, Florida, before Susan Belyeu Kirkland, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Douglas D. Dolan, Esquire
Department of Financial Services
Division of Legal Services
200 East Gaines Street
Tallahassee, Florida 32399

For Respondent: Curtis B. Lee, Esquire
Post Office Box 3412
Orlando, Florida 32802

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent violated sections 648.442(1), 648.442(2), 648.442(4), 648.571(1),

648.45(2)(e), 648.45(2)(h), 648.45(2)(j), 648.571(3)(b)1., and 648.571(3)(b)2., Florida Statutes (2007),^{1/} and Florida Administrative Code Rules 69B-221.145(4)(a) and 69B-221.145(4)(b), and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On April 8, 2011, Petitioner, Department of Financial Services, Division of Insurance Agents and Agency Services (Department), filed a two-count Administrative Complaint against Respondent, Freddie Wilson (Mr. Wilson), alleging that he violated sections 648.442(1), 648.442(2), 648.442(4), 648.571(1), 648.45(2)(e), 648.45(2)(h), 648.45(2)(j), 648.571(3)(b)1., and 648.571(3)(b)2. and rules 69B-221.145(4)(a) and 69B-221.145(4)(b). Mr. Wilson requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings on June 28, 2011, for assignment to an Administrative Law Judge to conduct the final hearing.

The final hearing was scheduled for August 17, 2011, but was continued. On September 12, 2011, the Department filed an unopposed Motion to Amend Administrative Complaint. The motion was granted by Order dated September 13, 2011. The Amended Administrative Complaint deleted the allegations which were contained in Count One of the original Administrative Complaint.

At the final hearing, the Department called the following witnesses: Mr. Wilson, Nicole Cunningham, Michael Wisher, and

Ray Wenger. Petitioner's Exhibits A, B, D, G, H, I, J, K, and O were admitted in evidence. Mr. Wilson testified in his own behalf. Respondent's Exhibit F was admitted in evidence.

The one-volume Transcript of the final hearing was filed on November 3, 2011. The parties agreed to file their proposed recommended orders within ten days of the filing of the Transcript. Mr. Wilson filed his Proposed Recommended Order on November 3, 2011, and the Department filed its Proposed Recommended Order on November 15, 2011. The parties' proposed recommended orders have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Department is the state agency responsible for regulating insurance and insurance-related activities, including limited surety (bail bond) licensees in Florida.

2. At all times relevant to this proceeding, Mr. Wilson has been licensed in this state as a limited surety (bail bond) (2-34) agent, license number D012026. Mr. Wilson is the owner of Against All Odds Bail Bonds (Against All Odds), which is located in Tampa, Florida.

3. As a bail bond agent, Mr. Wilson's duties include writing bail bonds for defendants who are incarcerated; ensuring the defendants appear for court dates; arresting defendants who

fail to appear in court and returning them to jail; and returning collateral to defendants when requested.

4. In 2007, Mr. Wilson was the only limited surety agent working at Against All Odds. In May 2007, Michael Wisher (Mr. Wisher) was arrested for driving under the influence, and his bond was set at \$2,000. Mr. Wilson was contacted to post a surety bond on Mr. Wisher's behalf.

5. On May 12 or 13, 2007, Mr. Wilson met Mr. Wisher at the Hillsborough County Jail, where Mr. Wisher was being held. Mr. Wilson advised Mr. Wisher that the premium for the bail bond was \$200 and that an additional \$1,800 for collateral was required. Mr. Wisher agreed to the arrangement and gave Mr. Wilson permission to use his credit card for the payment. Mr. Wilson used Mr. Wisher's credit card at the jail to pay for the premium and collateral for a total of \$2,000.

6. Mr. Wilson secured an appearance bond with United States Fire Insurance Company on May 13, 2007. Mr. Wilson was released and accompanied Mr. Wilson to the office of Against All Odds, where he executed an Indemnitor/Guarantor Check List dated May 12, 2007. Two of the provisions of the checklist provide:

I understand that my collateral cannot be released until all bonds posted on my behalf for defendant have been exonerated and written notice form the court received by the bail agency.

I understand that it is my [Mr. Wisner's] responsibility to request return of any collateral provided. There may be a delay of return of collateral until the bail agency has researched the exoneration date and verified the bail bond status with the appropriate courts. The process may be done faster if I obtain written verification of the bond exoneration from the court and provide it to the bail agency.

7. Mr. Wilson did not issue a receipt to Mr. Wisner, showing that Mr. Wisner had paid \$2,000. Based on Mr. Wilson's testimony, the Indemnitor/Guarantor Check List is not the receipt. Mr. Wilson claims that he did issue a collateral receipt, but that receipt did not show the credit card fee that was being imposed. According to Mr. Wilson, the copy of the receipt was destroyed in a fire. Mr. Wisner's testimony is credited that he did not receive a receipt.

8. Computer records of the Clerk of Hillsborough Circuit Court show that on September 18, 2007, the bond was deactivated and a certificate of discharge of bond was issued in Mr. Wisner's case. Mr. Wilson claims not to have received the certificate of discharge, and no certificate of discharge was entered in evidence.

9. Mr. Wisner contacted Mr. Wilson on December 17, 2007, requesting that his collateral be returned. Mr. Wisner advised Mr. Wilson that the bond had been discharged. Mr. Wilson was aware that the bond had been discharged because he had checked

the computer records of the Clerk of the Hillsborough Circuit Court and saw the record showing the discharge of the bond.

10. Mr. Wilson sent Mr. Wisher a money order for \$500 on January 3, 2008. He sent Mr. Wisher another money order dated January 31, 2008, for another \$500. Mr. Wisher did not agree to have his collateral returned in installments. By the end of January 2008, Mr. Wilson still owed Mr. Wisher \$800.

11. Mr. Wisher made numerous telephone calls to Mr. Wilson in an attempt to get the remaining amount of his collateral. In June 2008, Mr. Wisher wrote Mr. Wilson two times in an attempt to get his collateral returned. Both letters were returned by the United States Postal Service as unclaimed. Mr. Wisher did not receive any additional money from Mr. Wilson.

12. Mr. Wilson claims that he mailed Mr. Wisher an additional \$400, but the evidence does not support his claim. He submitted a copy of an envelope addressed to Mr. Wisher with a first class stamp on it. The envelope did not bear a post mark. The exhibit also had a portion of a customer receipt from the United States Postal Service, which states return of collateral in the section entitled "Pay To" and Michael Wisher in the section labeled "C.O.D. or Used For." The receipt contains no date and does not specify what service or goods for which the receipt was issued. Additionally, it appears that the receipt is not complete based on the wording at the bottom which

states serial number; year, month, day; post office; and amount. Such wording would suggest that additional information would be part of the receipt, but the receipt provided by Mr. Wilson did not contain the additional information.

13. In addition to the premium of \$200, Mr. Wilson charged Mr. Wisher \$400 for a credit card fee. This amount represented 20 percent of the total bond amount, not just the collateral amount. The credit card fee which Mr. Wilson charged was more than the fee which the credit card company charged him for use of the credit card.

14. Mr. Wilson claims that he was taught at the bail bond school held in Fort Lauderdale that up to 20 percent of the total bond amount could be charged to the client for the use of a credit card.

15. The Department did not establish that Mr. Wilson failed to have a sign in his office posting the credit card fee schedule when Mr. Wisher visited his office. However, Mr. Wisher was not provided a copy of the credit card fee schedule.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 & 120.57, Fla. Stat. (2011).

17. The Department has the burden to establish the allegations in the Administrative Complaint by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996).

18. The Department alleges that Mr. Wilson violated sections 648.442(1), 648.442(2), and 648.442(4), which provide:

(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. . . .

(2) When a bail bond agent accepts collateral, a written, numbered receipt shall be given, and this receipt shall give in detail a full account of the collateral received. The bail bond agent shall also give copies of documents rendered under subsection (1) to the indemnitor.

* * *

(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.

19. The Department alleges that Mr. Wilson violated sections 648.571(1), 648.571(3)(b)1., and 648.571(3)(b)2., which provide:

(1) A bail bond agent who has taken collateral or an insurer or managing general agent who holds collateral as security for a bail bond shall, upon demand, make a written request for a discharge of the bond to be delivered to the surety or the surety's agent. A copy of the written request for discharge must be given to the indemnitor or the person making the request for the collateral, and a copy must be maintained in the agent's file. If a discharge is provided to the surety or the surety's agent pursuant to chapter 903, the collateral shall be returned to the indemnitor within 21 days after the discharge is provided.

* * *

(3)(b)1. The bail bond agent may charge the credit card fee imposed in connection with the use of the credit card for payment of collateral if the fee is clearly shown on the collateral receipt and is acknowledged by the person tendering the credit card.

2. The prevailing schedule of credit card fees must be conspicuously posted in the lobby of the bail bond agency, and a copy must be provided to the person tendering the credit card.

20. Rule 69B-221.245(4)(c) provides: "The credit card fee referenced in Section 648.571(3)(b)1., F.S., is the fee charged by the credit card issuer."

21. The Department alleges that Mr. Wilson violated sections 648.45(2)(e), 648.45(2)(h), and 648.45(2)(j), which provide:

(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.

* * *

(h) Is guilty of misappropriation, conversion, or unlawful withholding of moneys belonging to a surety, a principal, or others and received in the conduct of business under a license.

* * *

(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. The Department alleges that Mr. Wilson violated rules 69B-221.145(4)(a) and 69B-221.145(4)(b), which provide:

(4) A bail bond agent may directly enter into an arrangement with a credit card facility in order to charge a credit card

holder's account for the issuance of a bail bond.

(a) A bail bond agent may not charge or receive a transfer fee, or any other additional fee, surcharge or commission, for the use of a credit card if the bail bond agent accepts payment by credit card. Any fee or discount points which may be charged to the bail bond agent by the credit card facility or organization shall be borne by the bail bond agent and shall not be passed on to any person involved in the bail bond transaction. This paragraph does not prohibit a bail bond agent from charging a fee on a transfer bond in accordance with Rule 69B-221.105, F.A.C.

(b) A bail bond agent may not deduct a transfer fee, or other additional fee, surcharge or commission, from the amount of collateral charged, except as provided in Section 648.571(3)(b), F.S., at the time the collateral is returned.

23. The Department has established by clear and convincing evidence that Mr. Wilson violated rule 69B-221.145(4)(a) by charging a credit card fee on the premium amount of \$200. Mr. Wilson charged a credit card fee on \$2,000, which included the \$200 premium charge.

24. The Department has established by clear and convincing evidence that Mr. Wilson violated section 648.45(2)(j) by violating rule 69B-221.145(4)(b) and section 648.571(3)(b) by charging a credit card fee on the collateral which was more than the credit card fee charged by the credit card company.

25. The Department did not establish that no sign was posted in the office of Against All Odds, which contained the credit card fee schedule at the time Mr. Wisher came to the office to transact business. The Department did establish that Mr. Wilson failed to give Mr. Wisher a copy of the credit card fee schedule in violation of section 648.571(3)(b)2. and, thus, in violation of section 648.45(2)(j).

26. The Department has established by clear and convincing evidence that Mr. Wilson violated section 648.571(3)(b)1. by failing to give Mr. Wisher a collateral receipt that showed the credit card fee.

27. The Department has failed to establish by clear and convincing evidence that Mr. Wilson violated sections 648.442(1) and 648.442(4), because the evidence did not establish that the court had released the liability on the bond in writing.

28. The Department has established that Mr. Wilson violated section 648.571(1) by failing to make a written request for a discharge of the bond, when Mr. Wisher advised him that the bond had been discharged and that he wanted his collateral returned. Mr. Wilson was aware that the bond had been discharged by checking the clerk of the court's computer records, which showed that the bond had been discharged on September 18, 2007. Mr. Wilson argues that he had no obligation to return the collateral because he had not received a

certificate of discharge from the court clerk. However, he returned portions of the collateral in January 2008 because he knew that the bond had been discharged. Once Mr. Wilson became aware that the bond had been discharged, he should have requested a copy of the discharge certificate, but, rather than making the request, he kept part of Mr. Wisner's collateral and, as of the day of the final hearing, had still not returned Mr. Wisner's collateral in full. By not requesting the certificate of discharge and then claiming that he did not have to return the collateral because he did not have a certificate, Mr. Wilson was unlawfully holding Mr. Wisner's money, which is a violation of section 648.45(2)(h).

29. The Department established by clear and convincing evidence that Mr. Wilson violated section 648.45(2)(e). The failure to request a certificate of discharge, the failure to give Mr. Wisner a collateral receipt, and the charging of 20 percent of the total bond as a credit card fee demonstrate lack of fitness or trustworthiness to engage in the bail bond business.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding that Mr. Wilson did not violate sections 648.442(1), 648.442(4), and 648.571(3)(b)2.; finding that Mr. Wilson violated sections

648.442(2), 648.571(1), 648.571(3)(b)1., 648.45(2)(e),
648.45(2)(h), and 648.45(2)(j) and rules 69B-221.145(4)(a) and
69B-221.145(4)(b); suspending Mr. Wilson's license for six
months; imposing an administrative fine of \$5,000; and requiring
Mr. Wilson to return the remainder of Mr. Wisner's collateral to
him.

DONE AND ENTERED this 29th day of November, 2011, in
Tallahassee, Leon County, Florida.

Susan Belyeu Kirklund

SUSAN BELYEU KIRKLAND
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of November, 2011.

ENDNOTE

^{1/} Unless otherwise indicated, all references to the Florida
Statutes are to the 2007 version.

COPIES FURNISHED:

Douglas D. Dolan, Esquire
Department of Financial Services
Division of Legal Services
200 East Gaines Street
Tallahassee, Florida 32399

Curtis B. Lee, Esquire
Post Office Box 3412
Orlando, Florida 32802

Julie Jones, CP, FRP, Agency Clerk
Department of Financial Services
Division of Legal Services
200 East Gaines Street
Tallahassee, Florida 32399-0390

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.