CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

IN THE MATTER OF

FREDDIE WILSON

Case No. 109455-10-AG

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FINAL ORDER

This cause came on for consideration of and final agency action on the Recommended Order issued on November 29, 2011, after a formal hearing conducted on October 28, 2011 by Administrative Law Judge Susan Belyeu Kirkland (ALJ). Respondent Wilson timely filed exceptions, to which the Department has made no response. The Recommended Order, the admitted exhibits, the hearing testimony, the Respondent's exceptions, and applicable law have all been considered in the promulgation of this Final Order.

RULINGS ON THE RESPONDENT'S EXCEPTIONS

The Respondent's first exception argues that the ALJ erred by resolving conflicting testimony against the Respondent relative to the issue of whether a collateral receipt form was ever issued by Respondent to a Mr. Wisher. In paragraph seven of the Recommended Order the ALJ found that no such form was provided by Respondent Wilson. An examination of the record shows that Mr. Wisher testified on both direct and cross examination that although he was required to provide Respondent Wilson with $1,800 in collateral and a $200 premium fee, both withdrawn as a cash advance from his credit card account, he did not receive a collateral receipt form from Respondent for

the $1,800. (Tr. 51-54, 59-60) No form denoted or entitled "collateral receipt" was entered into evidence. Respondent Wilson testified that he did provide Mr. Wisher with such a receipt but that his copy of the same was destroyed in a fire at his residence. (Tr. 20, 92-93) Respondent's exception argues that a form entitled "Indemnitor/Guarantor Check List" (Department's Exhibit G) constitutes such a collateral receipt form, even though he admitted at hearing that a collateral receipt was a separate form. (Tr. 96-97). However, said form makes no reference to receipt of any collateral, but recites only the bail amount, the premium amount, and the amount paid down at the execution of that document, specifically denoting a zero dollar figure for "cash collateral" received. Under those circumstances, the ALJ credited the testimony of Mr. Wisher that a collateral receipt was not provided to him by the Respondent.

It is well established that it is the function of a hearing officer or an administrative law judge to consider all the evidence presented and resolve all conflicts therein *Walker v. Board of Professional Engineers*, 946 So.2d 604 (Fla. 1st DCA 2006); *Heifetz v. Department of Business Regulation, Div. of Alcoholic Beverages and Tobacco,* 475 So.2d 1277 (Fla. 1st DCA 1985), and that administrative agencies cannot re-weigh that conflicting evidence to come to a different finding or conclusion. *Perdue v. TJ Palm Associates, Ltd.*, 755 So.2d 660 (Fla. 4th DCA 1999); *Heifetz v. Department of Business Regulation, Div. of Alcoholic Beverages and Tobacco*, 475 So.2d 1277 (Fla. 1st DCA 1985); *Holmes v. Turlington*, 480 So.2d 150 (Fla. 1st DCA 1985); *Howard Johnson v. Kilpatrick*, 501 So.2d 61 (Fla. 1st DCA 1987); *Nat. Ins. Serv. v. Fla. Unemp. App. Com'n*, 495 So.2d 244 (Fla. 2nd DCA 1986); *Groves-Watkins Const. v. Dept. of Transp.*, 511 So.2d 323 (Fla. 1st DCA 1987); *United Health v. Dept. of Health & Rehab.*, 511

So.2d 684 (Fla. 2nd DCA 1987), among many other cases. Accordingly, this exception is rejected.

Respondent's second exception, directed at paragraph eight of the Recommended Order argues that an electronic entry in the records of the Clerk of The Court of Hillsborough County is insufficient to show that Mr. Wisher's bond was deactivated and a discharge of bond issued. However, the Respondent fails to show any legal basis for that assertion. Thus, there is no need for a ruling on that facially defective exception. Section 120.57(1)(k), Fla. Stat.

Respondent's third exception is taken to the "lack of inclusion" of a finding of fact in paragraph six of the Recommended Order. The exception urges that it should have been found that Mr. Wisher did not make an effort to obtain a written bond exoneration form, and provide it to Respondent Wilson so as to show entitlement to a refund of his collateral. However, the exception fails to provide any legal basis for finding the challenged paragraph erroneous, as it is written, for failing to make such a finding, or how such a finding would be material to any issue raised in this proceeding. This seems particularly true in view of Respondent Wilson's testimony that he routinely reviewed the court's electronically stored records, and refunded bond collateral in reliance on those electronic records without requiring a written instrument indicating bond exoneration. (Tr. 23-24, 32-34). Accordingly, this exception is rejected.

Respondent's fourth exception is directed to paragraph twelve of the Recommended Order, wherein the ALJ found that Respondent Wilson did not refund the sum of $400 to Mr. Wisher. Once again, there was conflicting testimony on that question (Tr. 32, 55-58, 94-95), and the best documentary evidence the Respondent

could produce was a copy of an undated and apparently un-cancelled envelope addressed to Mr. Wisher. (Department's Exhibit F). For the same reasons and on the same authorities referenced in rejecting the first exception, this exception is also rejected.

Respondent's fifth exception contends that the Department failed to produce evidence that the Respondent charged Mr. Wisher more for the use of Wisher's credit card to finance the bond transaction than the credit card company charged for that usage. A review of the record shows this exception to be without merit. Mr. Ray Wenger was accepted as an expert witness on the topic of such credit card charges, and testified that the usual rates were in the 2-3% range with some charging a flat fee of 21 cents per transaction. (Tr. 78-79). Mr. Wisher's credit card statement, admitted into evidence as Department's Exhibit O, clearly indicates a five dollar cash advance charge for the bond transaction. The Respondent admitted to charging Mr. Wisher 20%, which in this case amounted to charging Mr. Wisher $400 for Respondent's use of Mr. Wisher's credit card to bail Mr. Wisher out of jail. (Tr. 20-23, 90-91, 95). Accordingly, this exception is rejected.

Respondent's sixth exception is to paragraph fifteen of the Recommended Order, wherein the ALJ found that the Department had failed to establish that the Respondent did not have the requisite posting of credit card fee schedules in his office, but that Mr. Wisher was not provided a written copy of that fee schedule. In this exception, the Respondent misrepresents the testimony of Mr. Wisher. Mr. Wisher did not testify that he received no documents from Respondent; Mr. Wisher testified that he received no receipt for the $1,800 cash collateral he had to post with Respondent. The so-called

"receipt" the Respondent here contends was a collateral receipt is the "Indemnitor/Guarantor Check List" (Department's Exhibit G), which Respondent admitted at hearing is separate document from a true collateral receipt form, a copy of which allegedly burned in the fire at Respondent's home. (Tr. 96-97). Department's Exhibit G makes no mention of a 20% credit card usage fee, and the Respondent's own testimony established that he provided only a verbal, not a written, notice of the credit card fee to Mr. Wisher. (Tr. 22-23, 87-88). Moreover, on cross examination, the Respondent testified that there were four documents he used in a bail bond transaction; he did not name a credit card fee schedule among them (Tr. 98), and the credit card fee schedule sign he claimed to be present in his office did not refer to a 20% fee for credit card usage. (Tr. 90, 98-99). The record thus contains ample evidence to support the challenged finding. Accordingly, this exception is rejected.

Respondent's seventh exception, directed to paragraph 23 of the Recommended Order, contends that there is insufficient evidence to establish that Respondent violated Rule 69B-221.145 (4)(a), F.A.C. by willfully charging a credit card fee on the premium amount of $200. A review of the record shows a number of express admissions that the Respondent knowingly and purposefully charged a credit card usage fee of 20% on the entire bond amount, including the premium, simply because he was presumably taught that figure in a continuing education course taught by a private instructor, without verifying that figure with the Department. (Tr. 22-23, 88-92, 98). The Respondent did not attempt to qualify that testimony by any exculpatory testimony. Thus, the record amply supports the challenged Conclusion of Law. Accordingly, this exception is rejected.

Respondent's eighth exception contends that the record does not show that the Respondent charged more for the cash advance which funded the bail bond transaction than the credit card company charged. The Department's Exhibit O clearly shows that Mr. Wisher' credit company charged him $5.00 for the $2,000 cash advance, and the Respondent's own testimony admitted that he knowingly and purposefully charged Mr. Wisher $400 for that same cash advance transaction. (Tr. 22-23, 88-92). Thus, the record amply supports the challenged Conclusion of Law. Accordingly, this exception is rejected.

Respondent's ninth exception is materially the same as his sixth exception with regard to whether Mr. Wisher was provided a copy of the credit card fee schedule. For the reasons stated in rejecting the sixth exception, this exception is also rejected.

Respondent's tenth exception contends that because of conflicting testimony from Mr. Wisher, the record does support the Conclusion of Law that the Respondent failed to provide Mr. Wisher with a collateral receipt. This same contention was dealt with in Respondent's sixth exception. Again, in this exception, the Respondent misrepresents the testimony of Mr. Wisher. Mr. Wisher did not testify that he received no documents from Respondent; Mr. Wisher testified that he received no receipt for the $1,800 cash collateral he had to post with Respondent. The so-called "receipt" the Respondent continually contends was a collateral receipt is the "Indemnitor/Guarantor Check List" (Department's Exhibit G), which Respondent admitted at hearing is separate document from a true collateral receipt form, a copy of which allegedly burned in the fire at Respondent's home. (Tr. 96-97). Department's Exhibit G makes no mention of a 20% credit card usage fee, and the Respondent's own testimony established that

he provided only a verbal, not a written, notice of the credit card fee to Mr. Wisher. (Tr. 22-23, 87-88). Moreover, on cross examination, the Respondent testified that there were four documents he used in a bail bond transaction; he did not name a credit card fee schedule among them (Tr. 98), and the credit card fee schedule sign he claimed to be present in his office did not refer to a 20% fee for credit card usage. (Tr. 90, 98-99). The record thus contains ample evidence to support the challenged Conclusion of Law. Accordingly, this exception is rejected.

Respondent's eleventh exception argues that, contrary to the ALJ's Conclusion of Law in paragraph 28 of the Recommended Order, the evidence failed to establish a violation of Section 648.571(1), Fla. Stat., by Respondent Wilson because there was no specific finding of willfulness relative to that violation. A review of the record shows that Respondent's actions in failing to make a written request to the surety for discharge of Mr. Wisher's bond while still holding Mr. Wisher's cash collateral after Mr. Wisher made a demand for a return of that collateral were all willful actions taken by Mr. Wilson. (Tr. 31-36). Moreover, there is no statutory requirement for a specific and separate finding of "willfulness" to find misconduct under the statute. Accordingly, this exception is rejected.

Respondent's twelfth exception contends that there is insufficient evidence to support the Conclusion of Law in paragraph 29 of the Recommended Order that Respondent engaged in conduct demonstrating lack of fitness or trustworthiness, and that there is no evidence showing intentional wrongdoing by the Respondent. However, a review of the record shows that Respondent violated Section 648.571(1), Fla. Stat, by failing to request a discharge of Mr. Wisher's bond after demand for return of the cash collateral had been made (Tr. 31-36), failed to give Mr. Wisher a collateral receipt,

charged a credit card fee on the premium, charged a credit card fee in excess of the fee charged by the credit card company for the cash advance transaction that funded the bail bond transaction, all as chronicled above. All those acts were clearly intentional and neither coerced nor accidental. Thus, the record amply supports the challenged Conclusion of Law. Accordingly, this exception is rejected.

WHEREFORE, IT IS HEREBY ORDERED that the Findings of Facts and Conclusions of Law set forth in the Recommended Order are adopted in full as the Department's Finding of Facts and Conclusions of Law, and

IT IS FURTHER ORDERED that, in accordance with the penalty recommended by the ALJ, all licenses held by Respondent Wilson under the Florida Insurance Code are hereby suspended for a period of six months from the date hereof. Respondent Wilson shall immediately refund collateral in the amount of $800 to Mr. Wisher, and within thirty (30) days from the date hereof pay an administrative fine in the amount of $5,000 to the Department. Upon expiration of the suspension period, reinstatement of said licenses must be requested in writing.

During the period of suspension, Respondent Wilson cannot be employed by any bail bond agent, have any ownership interest in any business involving bail bonds, or have any financial interest of any type in any business involving bail bonds. [Section 648.50(3), Fla. Stat.]

DONE AND ORDERED this 24 day of February, 2012.

Robert C. Kneip, Chief of Staff

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order is entitled to seek review of this 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 Julie Jones, DFS Agency Clerk, Department of Financial Services, 612 Larson Building, 200 East Gaines Street Tallahassee, Florida, 32399-0390, and a copy of the same with the appropriate district court of appeal, within thirty (30) days of rendition of this Order. Filing may be accomplished via U.S. Mail, express overnight delivery, or hand delivery, facsimile transmission, or electronic mail.

Copies to:
ALJ Susan Belyeu Kirkland
Doug Dolan
Curtis B. Lee