STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL SERVICES,

Petitioner,

vs. Case No. 17-3188PL

PAMELA WILLIAMS DENSON,

Respondent.
_____/

RECOMMENDED ORDER

On September 29, 2017, Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted the final hearing by videoconference in Miami and Tallahassee, Florida.

APPEARANCES

For Petitioner: Matthew R. Daley, Esquire
Department of Financial Services
Office of the General Counsel
200 East Gaines Street
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For Respondent: Frank Eduardo Gil, Esquire
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STATEMENT OF THE ISSUES

The issues are whether, in violation of section 648.45(3)(c), Florida Statutes, Respondent executed a bond after a judgment had been entered on a bail bond that she had executed

and the judgment had remained unpaid or unsecured for at least 35 days; and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

An Administrative Complaint dated February 24, 2017, alleges that Respondent is currently licensed as a limited surety (bail bond) agent, holding license number A097887. At all material times, Respondent allegedly was the primary bail bond agent, owner, and sole managing member of V.I.P. Bailbonds, LLC, located at 20401 Northwest Second Avenue, Suite 216, Miami Gardens, Florida. At all material times, V.I.P. Bailbonds, LLC, was allegedly an agent for Lumbermens Mutual Insurance, a surety company licensed to do business in Florida.

The Administrative Complaint alleges that, on August 3, 2007, in criminal case number 0713631CF10A, Respondent executed a bond for Richard Banton in the amount of $75,000, on which Lumbermens Mutual Insurance was the surety. On July 17, 2009, the Clerk of Circuit Court in and for Broward County, Florida, allegedly entered a judgment ordering the forfeiture of bond power number US100781910 and ordering Lumbermens Mutual Insurance to pay $75,000 by August 21, 2009. On August 21, 2009, the Clerk of Circuit Court allegedly entered a Certificate of Unsatisfied Judgment. At the hearing, the Administrative Law Judge granted Petitioner's oral motion to take official notice

of the civil action resulting in the $75,000 judgment, which may be found online at https://www.browardclerk.org/Web2/CaseSearch/Details/?caseid=Nzg1OTY3-l76xuNTkM88%3d&caseNum=CACE09039681&category=CV.

On December 28, 2010, Petitioner allegedly informed Respondent that she was prohibited from executing bail bonds until the judgment of July 17, 2009, was paid. Respondent has allegedly failed to pay the judgment.

The Administrative Complaint alleges that Respondent has violated section 648.44(1)(m) by executing bail bonds after a judgment had been entered on a bail bond that she had executed and, within 35 days of its entry, the judgment had not been paid or payment of the judgment had not been secured by bond; section 648.45(2)(f), by demonstrating a lack of reasonably adequate knowledge and competence to engage in the licensed business; section 648.45(2)(j), by willfully failing to comply with or willfully violating any proper rule or order of Petitioner or willfully violating any provision of chapter 648 or the Florida Insurance Code; and section 648.45(3)(c), by failing to comply with any law relating to the business of bail bond insurance or violating any provision of the Florida Insurance Code.

Respondent timely requested a formal administrative hearing.

At the hearing, Petitioner called two witnesses and offered into evidence seven exhibits: Petitioner Exhibits 1-7. Respondent called no witnesses, but offered one exhibit: Respondent Exhibit 1. All exhibits were admitted except Petitioner Exhibit 4, which was proffered.

The court reporter filed the transcript on October 19, 2017. The parties filed proposed recommended orders by November 20, 2017.

FINDINGS OF FACT

1. At all material times, Respondent has been licensed as a limited surety (bail bond) agent, holding license number A097887. She has not been previously disciplined.

2. From March 2004 through August 2010, Respondent was appointed as a bail bond agent to represent Indiana Lumbermens Mutual Insurance Company (Lumbermens). On August 3, 2007, Respondent, as a bail bond agent, issued a bond on behalf of her principal, Lumbermens, in the amount of $75,000 for defendant Richard Benton.

3. Almost two years later, Mr. Benton failed to appear at a mandatory court appearance on May 15, 2009, in Broward Circuit Court Case 07-13631CF10A. On May 15, 2009, a circuit judge entered an Order Estreating Bond, which ordered Lumbermens to pay $75,000 to the Broward County Clerk of Courts.

4. On July 17, 2009, the Broward County Clerk of Courts entered a judgment in the amount of $75,000 against Lumbermens based on the Order Estreating Bond (Judgment). After "Ordered and Adjudged," the Judgment reads: "Judgment in the amount of $75,000 be and the same is hereby entered against Indiana Lumbermens Mutual Ins as surety" plus interest. On July 17, 2009, the Clerk's office served a copy of the Judgment to the bail bond agency at which Respondent worked.

5. By Clerk's Certificate of Unsatisfied Judgment dated August 21, 2009, the Broward County Clerk of Courts certified that the $75,000 Judgment had not been satisfied as of the date of the certificate. The certificate, which, on its face, was not served on Respondent or her bail bond agency, states erroneously that the Judgment was against Lumbermens and Respondent. This flawed certificate does not establish by clear and convincing evidence that the Judgment was unpaid, nor do the confusing docket remarks that the civil action against Lumbermens was "Disposed by Other," as indicated under the column marked "Statistical Closure(s)." However, Petitioner introduced into evidence Petitioner Exhibit 7, which is another Clerk's certificate certifying that the Judgment remained unpaid as of September 28, 2017. This establishes by clear and convincing evidence that the Judgment remains outstanding.

6. After the expiration of 35 days following the entry of the Judgment, Respondent continued to execute surety bonds as a bail bond agent for one or more surety companies. In 2015, an investigator employed by Petitioner called Respondent and informed her about the Judgment against Lumbermens. The investigator told Respondent that the Judgment was outstanding and "could affect her license."

CONCLUSIONS OF LAW

7. DOAH has jurisdiction of the subject matter. §§ 120.569 and 120.57(1), Fla. Stat. (2015).

8. Petitioner bears the burden of proving the material allegations by clear and convincing evidence. § 120.57(1)(j).

9. A "bail bond agent" is either a "limited surety agent" or a "professional bail bond agent." § 648.25(2). Respondent is a bail bond agent who is a limited surety agent and may be referred to by either statutory term.

10. A criminal surety bail bond encompasses an undertaking by the bail bond agent who endorsed the bond to "ensure that the defendant appears at all criminal proceedings for which the surety bond is posted." § 903.045. The undertaking by the surety company arises under the conditions and term of the surety bond. Assuming liability under the surety bond, if the defendant fails to appear as required, the court shall declare the bond forfeited, and the clerk of court shall, within five

days, transmit notice of the forfeiture to the surety agent and the surety company. § 903.26(2)(a).

11. If the forfeiture is not paid or discharged by the court within 60 days, the clerk of the court enters judgment on the forfeiture "against the surety." § 903.27(1). Within ten days, the clerk shall furnish Petitioner and the Office of Insurance Regulation a certified copy of the "judgment docket" and the "surety company" a copy of the judgment, including the power of attorney number and the name of the "executing agent." Id. If the judgment is not paid within 35 days, the clerk shall furnish copies of the judgment and a certificate of nonsatisfaction to Petitioner, the Office of Insurance Regulation, and the sheriff of the county in which the bond was executed. Id.

12. Section 903.27(3) provides:

> Surety bail bonds may not be executed by a bail bond agent against whom a judgment has been entered which has remained unpaid for 35 days and may not be executed for a company against whom a judgment has been entered which has remained unpaid for 50 days. No sheriff or other official who is empowered to accept or approve surety bail bonds shall accept or approve such a bond executed by such a bail bond agent or executed for such a company until such judgment has been paid.

13. The precondition to the nonacceptance of a bail bond from a bail bond agent or a surety is the entry of a judgment

against the party. Thus, in this case, where the judgment was not entered against Respondent, public officials could lawfully continue to accept bail bonds that she had executed as a bail bond agent, although the bail bond agent herself is prohibited from executing bail bonds by section 648.44(1)(m), which is triggered by an unpaid "judgment [that] has been entered on a bond executed by a bail bond agent," rather than a judgment against a bail bond agent.

14. It is the duty of Petitioner to prove the Judgment and that the Judgment remained outstanding at the time that Respondent executed additional bail bonds. See, e.g., State v. Robarge, 450 So. 2d 855 (Fla. 1984) (state must prove both elements of crime of "possession of a firearm without a license" because "without a license" is within the enacting clause of the statute, not a subsequent clause). Petitioner has proved both elements in this case.

15. Respondent raises the defense of equitable estoppel, which requires Petitioner to represent a material fact that is contrary to a later-asserted position, Respondent to rely on the representation, and Respondent to suffer a detrimental change in position in reliance on the representation. See, e.g., Hamilton Downs Horsetrack, LLC v. State, 226 So. 3d 1046 (Fla. 1st DCA 2017) (equitable estoppel where an investigator witnessed an invalid race due to common ownership of both horses, but, in a

post-race meeting when the race, if unofficial, could have been rerun, assured the operator that the race was official). The above-described comments by Petitioner's investigator do not rise to a representation of anything, except the fact that Respondent's license could be affected by the outstanding Judgment against Lumbermens--an assertion that Petitioner continues to make in this case. Nor is Respondent able to prove detrimental reliance. Respondent seems to imply that the investigator's comment lulled Respondent into a false sense of security, so that she did not investigate whether Lumbermens had paid the 2009 Judgment in 2015. Regardless of whether an investigation in 2015 would have uncovered anything that an investigation in 2017 failed to uncover, Respondent is really inviting the Administrative Law Judge to speculate, against the clear and convincing evidence of the Clerk's second certificate, that the Judgment was actually paid. But the fact is the Judgment was never paid, so any reliance by Respondent could never be detrimental.

16. Florida Administrative Code Rule 69B-241.080(13) provides that the penalty range for a violation of section 648.44(1)(m) is suspension for not more than three months for the initial violation. In its proposed recommended order, Petitioner requests a six months' suspension based on the willfulness of Respondent's violation. However, the evidence

fails to support Petitioner's assertion that the violation was willful and, thus, fails to support the aggravated penalty.

17. In its proposed recommended order, Petitioner also requests that post-suspension reinstatement be conditioned on Respondent's payment of the Judgment. Petitioner's request does not cite any authority, but section 648.49(1) provides that Petitioner "may not grant . . . reinstatement if it finds that the circumstances for which the license . . . was suspended still exist or are likely to recur." The Administrative Complaint sought revocation, so Petitioner has provided Respondent notice of the possibility that the penalty in this proceeding could effectively deprive her permanently of her license as a bail bond agent.

18. In her proposed recommended order, Respondent contends that discipline in this case would violate her procedural due process rights, citing Mathews v. Eldridge, 424 U.S. 319 (1976). The argument appears to supplement her equitable-estoppel argument by focusing on the long delay of Petitioner in bring this case. Perhaps, the argument is that her procedural due process rights are violated by a lack of an administrative statute of limitations. Neither the government nor private interest is paramount, so the focus turns to the risk of error of the lack of statute of limitations in the context of the ample procedural safeguards that attach in a chapter 120

administrative proceeding. See Rivera v. Minnich, 483 U.S. 574 (1987); Addington v. Texas, 441 U.S. 418 (1979); Santosky v. Kramer, 455 U.S. 745 (1982) (Rehnquist, J., dissenting). The flaw in this argument is that nothing suggests that the outcome of this prosecution would have been any different if it had been filed one day after Respondent had executed the first bail bond after the time had run for Lumbermens to pay the Judgment. Thus, a court's addition of a limitations period, on the ground of procedural due process, would not alter the outcome of this case.

19. This is not to imply that Respondent may not have a substantive due process argument--a prospect that Petitioner may wish to consider in assessing the penalty. The facts of this case establish a clear violation based on the bail bond agent's strict liability for endorsing surety bonds after the failure of the surety company that she represents to pay a Judgment arising out of a surety bond that the agent has endorsed on behalf of her principal. The facts of this case fail to establish a single act or omission on Respondent's part in connection with this breach of contract by Lumbermens. Neither the allegations nor the evidence suggests that Petitioner somehow knew that Lumbermens might not pay the surety bond at issue in this case or that she endorsed bail bonds on behalf of Lumbermens after the forfeiture order entered by the Clerk.

20. Petitioner may not deprive Respondent of her license, which is a property interest, without due process:

> Substantive due process refers to certain actions that the government may not engage in, no matter how many procedural safeguards it employs." Blaylock v. Schwinden, 862 F.2d 1352, 1354 (9th Cir. 1988). Substantive due process "protects a liberty or property interest in pursuing the 'common occupations or professions of life.'" Benigni v. City of Hemet, 868 F.2d 307, 312 (9th Cir. 1988) (quoting Schware v. Board of Bar Examiners, 353 U.S. 232, 238-39, 1 L. Ed. 2d 796, 77 S. Ct. 752 (1957)); see also Chalmers v. City of Los Angeles, 762 F.2d 753, 757 (9th Cir. 1985). In order to prove a substantive due process claim, appellants must plead that the government's action was "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare." Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 395, 71 L. Ed. 303, 47 S. Ct. 114 (1926). Betsey Lebbos's allegations that appellees' actions deprived her of the ability to practice law thus states a substantive due process claim.

Lebbos v. Judges of Superior Court, 883 F.2d 810, 818 (9th Cir. 1989). If, on the present facts, Petitioner can determine that suspending Respondent's license until she pays a $75,000 Judgment bears a substantial relation to the public health, safety, morals, or general welfare, it may impose the relief sought in its proposed recommended order; otherwise, Petitioner may prefer to confine itself to the penalty recommended in its rule.

RECOMMENDATION

It is

RECOMMENDED that Petitioner enter a final order finding Respondent guilty of violating section 448.44(1)(m), Florida Statutes; suspending her limited surety license for three months; and reinstating the license at the end of three months without regard to whether the Judgment remains outstanding.

DONE AND ENTERED this 22nd day of November, 2017, 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
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this 22nd day of November, 2017.

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.