

**FILED**

MAY 11 2015

Docketed by MC



CHIEF FINANCIAL OFFICER  
JEFF ATWATER  
STATE OF FLORIDA

IN THE MATTER OF  
  
JIMMY LEE DAVIS, JR.  
\_\_\_\_\_ /

Case No. 154523-14-AG

FINAL ORDER

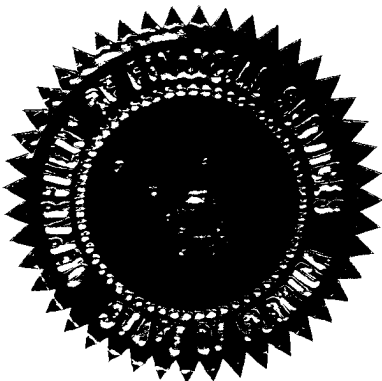
THIS CAUSE came on for consideration and final agency action on the Written Report and Recommendation issued February 27, 2015.

After review of the record and being otherwise fully apprised in all material premises,

IT IS HEREBY ORDERED that the Hearing Officer's findings of fact are adopted in full. The Hearing Officer's conclusions of law are adopted as modified: paragraphs 8 and 10 contain a scrivener's error and are corrected to reflect section 648.45(2), Florida Statutes, instead of section 648.25(2); paragraphs 9 and 11 contain a scrivener's error and are corrected to reflect section 648.45(2)(h), Florida Statutes, instead of section 648.25(2)(h), Florida Statutes.

IT IS HEREBY FURTHER ORDERED that the Hearing Officer's recommendation is adopted. Mr. Davis' license as a limited surety agent is temporarily suspended until he satisfies all of his monetary obligations owed to Roche Surety and Casualty Company. Any reinstatement of Mr. Davis' license shall be subject to section 648.49, Florida Statutes.

DONE and ORDERED this 11<sup>th</sup> day of May, 2015.



Robert C. Kneip  
Chief of Staff

### NOTICE OF RIGHT TO APPEAL

A party adversely affected by this final order may seek judicial review as provided in section 120.68, Florida Statutes, and Florida Rule of Appellate Procedure 9.190. Judicial review is initiated by filing a notice of appeal with the Agency Clerk, and a copy of the notice of appeal, accompanied by the filing fee, with the appropriate district court of appeal. The notice of appeal must conform to the requirements of Florida Rule of Appellate Procedure 9.110(d), and must be filed (i.e., received by the Agency Clerk) within thirty days of rendition of this final order. Filing with the Department's Agency Clerk may be accomplished via U.S. Mail, express overnight delivery, hand delivery, facsimile transmission, or electronic mail. The address for overnight delivery or hand delivery is Julie Jones, DFS Agency Clerk, Department of Financial Services, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0390. The facsimile number is (850) 488-0697. The email address is [Julie.Jones@myfloridacfo.com](mailto:Julie.Jones@myfloridacfo.com).

Copies furnished to:

Jimmy Lee Davis, Jr.  
April Harrell, Attorney for Department  
Donald A. Dowdell, Hearing Officer

IN THE MATTER OF:

JIMMY LEE DAVIS, JR.

CASE NO: 154523-14-AG

WRITTEN REPORT AND RECOMMENDED ORDER

This cause came on to be heard pursuant to the provisions of Section 120.57(2), Florida Statutes, on February 9, 2015 in Tallahassee, Florida. The purpose of the proceeding was to receive evidence as to whether the license and appointments of the Respondent, Jimmy Lee Davis, Jr., as a limited surety agent are subject to discipline as a result of alleged violations of provisions of the Florida Insurance Code and rules of the Department of Financial Services.

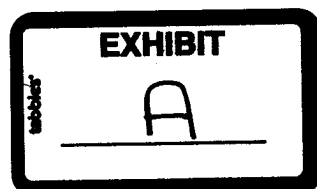
APPEARANCES

Jimmy Lee Davis, Jr.  
3225 67<sup>th</sup> Terrace South #C  
St. Petersburg, FL 33712  
Respondent, pro se

April Harrell, Esquire  
Division of Legal Services  
612 Larson Building  
Tallahassee, Florida 32399-0333  
Attorney for Petitioner  
Department of Financial Services

BACKGROUND

On September 3, 2014, the Florida Department of Financial Services (the Department) issued an Administrative Complaint against the Respondent, Jimmy Lee Davis, Jr. The Respondent requested an administrative proceeding under the provisions of Section 120.57(2), Florida Statutes regarding the



Administrative Complaint, indicating that he did not dispute any of the factual allegations of the Administrative Complaint. This proceeding then ensued.

### EXHIBITS AND WITNESSES

The Department offered seventeen exhibits that were admitted in evidence without objection. Department Exhibit 1 is Licensee Profile Information regarding the Respondent obtained from the Department's licensing database; Department Exhibit 2 is a letter from Roche Surety and Casualty Company (hereinafter referred to as Roche) to the Respondent dated January 24, 2013; Department Exhibit 3 is an Accounts Receivable Statement dated 1/24/2013 sent by Roche to Act Fast Bonding; Department Exhibit 4 is a copy of an Appointment Termination Form regarding Respondent's appointment to represent Seneca Insurance Company; Department Exhibit 5 is a copy of a letter dated August 5, 2013 from Roche to Respondent; Department Exhibit 6 is a composite exhibit consisting of a copy of a letter from Respondent to Roche dated April 5, 2012 with accompanying attachments; Department Exhibit 7 is a copy of a letter dated November 18, 2013 from Roche to the Department; Department Exhibit 8 is a copy of a check to Roche from the Build Up Account of Act Fast Bail Bonds; Department Exhibit 9 is a composite exhibit consisting of a copy of a check from Roche to the Manatee County Clerk of Court together with a related invoice from Roche to Respondent regarding the bond forfeiture of Carlton Johnson; Department Exhibit 10 is a composite exhibit consisting of an Accounts Receivable Statement dated 11/5/2013 sent by Roche to Act Fast Bonding together with related supporting documents; Department Exhibit 11 is a copy of a sales report dated 12/06/2010 regarding the activities of Act Fast Bonding; Department Exhibit 12 is a copy of an Execution Report dated December 6, 2010 and regarding powers executed by Act Fast Bonding; Department Exhibit 13 is a composite exhibit consisting of Receipts and Powers regarding the individuals identified in Department Exhibit 12; Department Exhibit 14 is a copy of a letter dated August 23, 2013 from the Department to the Respondent; Department Exhibit 15 is a copy of a letter of explanation from

Respondent dated May 24, 2013; Department Exhibit 16 is a copy of the Administrative Complaint issued by the Department; and Department Exhibit 17 is a copy of the Election of Proceeding form executed by the Respondent with regard to the Administrative Complaint. The Department did not call any witnesses. The Respondent testified in his own behalf. .

#### FINDINGS OF FACT

1. The Respondent does not dispute the factual allegations of the Department's Administrative Complaint issued on September 3, 2014.
2. In accordance with the Provisions of Chapter 648, Florida Statutes, Respondent is currently licensed as a limited surety (bail bond) agent (Department Exhibit 1).
3. The Respondent was appointed to write bail bonds on behalf of Roche Surety and Casualty Company, an authorized insurer (Roche), between May 6, 2009 and July 31, 2013 (Department Exhibit 1)
4. The Respondent conducted the business of bail bonds on behalf of Roche through Act Fast Bail Bond Agency with its principal place of business in Bradenton, Florida (Administrative Complaint and Department Exhibits 1 through 15).
5. At all times pertinent to the occurrences referenced herein the Respondent was the owner and acting primary bail bond agent of Act Fast Bail Bond Agency (Department Administrative Complaint).
6. Between July 31, 2009 and December 22, 2010 the Respondent wrote bail bonds on behalf of Roche and received premiums and other funds owed to Roche as a result of his licensed activities (Department Exhibits 2 through 15).
7. The Respondent failed to remit funds owed to Roche that were received by him and Act Fast Bail Bond Agency in connection with his bail bond transactions and currently owes approximately \$9,971.19 to Roche as a result of those transactions (Department Exhibits 2 through 15).

8. Respondent has attempted without success to pay the amounts owed to Roche (Department Exhibits 2-15 and testimony of Respondent).

9. On or about February 6, 2014 the Department sent correspondence to Respondent directed to his address of record: 5360 Alcola Way S., St. Petersburg, FL. 33712-5463.

10. The Department's February 6 correspondence was returned by the United States Postal Service with an indication that the Respondent's forwarding address was 3225 67<sup>th</sup> Terrace S., Apt. C, St. Petersburg, FL 33712

11. As of the date that the Department issued its Administrative Complaint, the Respondent had not notified the Department of his change of address.

12. At the administrative hearing conducted on February 9, 2015 the Respondent admitted that he had failed to notify the Department of his change of address as alleged in the Administrative Complaint and testified that his failure had been inadvertent.

#### CONCLUSIONS OF LAW

1. The Department of Financial Services has jurisdiction over the subject matter of and the parties to this proceeding, pursuant to Chapters 120 and 648, Florida Statutes.

2. In an administrative proceeding such as this where an agency seeks to impose discipline upon a licensee as a result of alleged violations of regulatory statutes, the agency must prove the alleged violations with clear and convincing evidence. Ferris v. Turlington, 510 So.2d 292 (Fla. 1987); Department of Banking and Finance v. Osborne Stern & Company, 670 So.2d 932 (Fla. 1996).

3. "Clear and convincing evidence is an intermediate standard of proof, more than the 'preponderance of the evidence' standard used in most civil cases, and less than the 'beyond a reasonable doubt' standard used in criminal cases." Smith v. Department of Health and Rehabilitative Services of Health and Rehabilitative Services, 522 So.2d 956, 958 (Fla. 1st DCA 1988). Clear and convincing evidence requires:

that the evidence must be found to be credible; the fact to which the witnesses testify must be precise and explicit and the witnesses must be lacking in confusion as to the fact in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

Smith, 522 So. 2d at 958 (quoting Slomowitz v. Walker, 429 So.2d 797, 800 (Fla. 4th DCA 1983)).

4. The Department has discretion in interpreting the statutes it is charged with enforcing, in determining the fitness of licensed agents, and in the regulation of those "occupations which are engaged in by privilege rather than by right and which are potentially injurious to the public welfare."

Astral Liquors, Inc. v. State Department of Business Regulation, 432 So.2d 93, 95-96 (Fla. 3<sup>rd</sup> DCA, 1983); Natelson v. Department of Insurance, 454 So.2d 31 (Fla. 1<sup>st</sup> DCA, 1984).

5 Count 1 of the Department Administrative Complaint charges that the Respondent violated the provisions of Sections 648.295(1), 648.45(2)(h), 648.45(2)(m), and 648.45(3)(d), Florida Statutes.

6. Section 648.295(1), Florida Statutes provides as follows:

All premiums, return premiums, or other funds belonging to insurers or others received by a person licensed pursuant to this chapter in transactions under her or his license are trust funds received by the licensee in a fiduciary capacity, and the licensee must account for and pay the same to the insurer, insured, or other person entitled to such funds.

7. It is concluded as a matter of law that the Respondent violated the requirements of Section 648.295(1) Florida Statutes due to his failure, as described herein, to remit amounts owed to Roche Surety and Casualty Company as a result of his transactions as a bail bond agent.

8. Section 648.25(2), Florida Statutes provides in part as follows:

(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...

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

9. It is concluded as a matter of law that under the provisions of Section 648.25(2)(h), Florida Statutes the Department is required to suspend or revoke Respondent's license as a bail bond agent due to his failure, as described herein, to remit amounts owed to Roche Casualty and Surety as a result of his transactions as a bail bond agent.

10. Paragraph (m) of Section 648.25(2), Florida Statutes requires suspension or revocation of the license of a bail bond agent if the agent has "... failed to perform a contractual obligation or agreement with a managing general agent or insurer which results in an unrecovered loss due to nonpayment of a forfeiture or judgment by the licensee."

11. It is concluded that under the provisions of Section 648.25(2)(h), Florida Statutes the Department is required to suspend or revoke Respondent's license as a bail bond agent due to his failure, as described herein, to remit amounts owed to Roche Surety and Casualty Company as a result of his transactions as a bail bond agent.

12. Section 648.45(3), Florida Statutes provides in part as follows:

(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...

(d)Failure or refusal, upon demand, to pay over to any insurer the bail bond agent represents or has represented any money coming into his or her hands which money belongs to the insurer.

13. It is concluded that the Department has discretionary authority under the provisions of Section 648.45(3)(d), Florida Statutes to suspend or revoke Respondent's licenses and appointments as



a bail bond agent due to his failure to remit payments to Roche Surety and Casualty Company as described herein.

14. Rule 69B-241.090, Florida Administrative Code (F.A.C.) provides as follows:

If it is found that the licensee has violated any of the following subsections of Section 648.45, F.S., for which suspension or revocation of license(s) and appointment(s) is authorized, the following stated penalty shall apply...

(9) Section 648.45(2)(h), F.S. – Suspension for not less than 1 month for each count, plus full restitution for the first violation; suspension for not less than 12 months up to 24 months, plus full restitution for every violation subsequent to the first....

(14) Section 648.45(2)(m), F.S. – Temporary suspension, which shall continue until all obligations have been performed for the first violation; temporary suspension, which shall continue until all obligations have been performed for every violation subsequent to the first.

15. It is concluded that under the provisions of Rule 69B-241.090, F.A.C. quoted immediately above, Respondent's license and any appointments as a bail bond agent should be temporarily suspended until such time as he has satisfied all of his monetary obligations to Roche Surety and Casualty Company detailed herein.

16. In Count II of its Administrative Complaint the Department charged that, due to the Respondent's failure to apprise the Department of his address change as described in paragraphs 9 through 12 of the above Findings of Fact, the Respondent had violated the provisions of Sections 648.421 and 648.45(2)(j), Florida Statutes and Rule 69B-221.060, F.A.C.

17. Section 648.421, Florida Statutes provides as follows:

Each licensee under this chapter shall notify in writing the department, insurer, managing general agent, and the clerk of each court in which the licensee is registered within 10 working days after a change in the licensee's principal business address or telephone number. The licensee shall also notify the department within 10 working days after a change of the name, address, or telephone number of each agency or firm for which he or she writes bonds and any change in the licensee's name, home address, e-mail address, or telephone number.

18. It is concluded that Respondent violated the provisions of Section 648.421, Florida Statutes as charged in the Administrative Complaint.

19. Rule 69B-221.060, F.A.C. provides in part as follows:

Each licensee under Chapter 648, F.S., shall notify in writing the Department of Financial Services, Bail Bond Section, Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0320, insurer, managing general agent and the clerks of each court in which they are registered, of a change of each business address, telephone number, or name of each agency or firm for which they write bonds within ten (10) working days of such change

20. It is concluded that Respondent violated the provisions of Rule 69B-221-060, F.A.C. as charged in the Department Administrative Complaint..

21. Section 648.45(2)(j), Florida Statutes requires the Department to suspend or revoke the license of a bail bond agent if the agent willfully violates any provision of Chapter 648, Florida Statutes or a related Department rule.

22. Several different meanings have been ascribed to the word "willful" depending on the context in which it is used. For purposes of Section 648.45(2)(j), Florida Statutes, and in the context of this case it is concluded that an act is performed willfully if done intentionally and without justifiable excuse (Black's Law Dictionary).

23 Although the Department has established that Respondent violated the requirements of Section 648.421, Florida Statutes and Rule 69B-221.060, F.A.C. as charged in the Administrative Complaint, the Department has not established by clear and convincing evidence that the Respondent's violation was a willful one within the contemplation of Section 648.45(2)(j), Florida Statutes

24. It is concluded that the Respondent is not accountable under the provisions of Section 648.45(2)(j), Florida Statutes as charged in the Administrative Complaint..

RECOMMENDATION

Based upon the foregoing Findings of Fact, and Conclusions of Law, it is:

RECOMMENDED that a Final Order be entered that temporarily suspends Respondent's license as a limited surety agent until he has satisfied his financial obligations to Roche Surety and Casualty Company. Such Order should also specify that any reinstatement of Respondent's license shall be subject to the provisions of Section 648.49, Florida Statutes.

Respectfully submitted this 27<sup>th</sup> day of February, 2015.



Donald A Dowdell  
Hearing Officer  
2124 Deerfield Drives  
Tallahassee, FL 32308

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Recommended Order has been provided by US Mail to: Jimmy Lee Davis, Jr., 3225 67<sup>th</sup> Terrace S, #C, St. Petersburg, FL 33712 and to April Harrell, Esquire, Division of Legal Services, 612 Larson Building, Tallahassee, FL 32399-0333, this 27<sup>th</sup> day of February, 2015.



Hearing Officer