

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF INSURANCE,            )  
  )  
      Petitioner,                        )  
  )  
vs.                                        )    Case No. 00-4543PL  
  )  
SHEILA W. COLLINS,                    )  
  )  
      Respondent.                      )  
\_\_\_\_\_ )

RECOMMENDED ORDER

A hearing was held in this case by video teleconference, on January 11, 2001, before Arnold H. Pollock, an Administrative Law Judge with the Division of Administrative Hearings. The undersigned and counsel for Petitioner appeared from Tallahassee, and Respondent and her counsel appeared from Tampa.

APPEARANCES

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

For Respondent: Dirk R. Weed, Esquire  
4505 North Armenia Avenue  
Tampa, Florida 33603

STATEMENT OF THE ISSUE

The issue for consideration in this case is whether Respondent's license as a legal expense agent in Florida

should be disciplined in some manner as a result of the matters alleged in the Administrative Complaint filed herein.

PRELIMINARY MATTERS

By Administrative Complaint dated October 11, 2000, the Honorable Bill Nelson, Insurance Commissioner, charged Respondent with making false and material misrepresentations in her application for licensure by the Department of Insurance, in violation of Section 642.041(1), Florida Statutes. Respondent disputed the allegations of material fact and demanded formal hearing, and this hearing ensued.

Petitioner presented no testimony and relied exclusively on documentation in support of the allegations. Consistent therewith, counsel for Petitioner introduced Petitioner's Exhibits 1 and 2. Respondent testified in her own behalf, but offered no documentation.

A transcript of the proceedings was not provided. Counsel for Petitioner and Respondent both submitted matters in writing after hearing, which were carefully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times pertinent to the issues herein, Petitioner, Department of Insurance (Department) was the state agency in Florida responsible for the licensing of insurance agents and the regulation of the insurance profession in this

state. Respondent either was licensed or had applied for licensure as a legal expense agent in Florida.

2. On or about May 29, 2000, Respondent filed an application for licensure as a legal expense agent with the Department. In Section 9 of the application form, that section in which the Department asks the applicant certain questions about his or her background, at question 3, the form reads:

Have you ever been convicted, found guilty, or pleaded guilty or nolo contendere (no contest) to a felony under the laws of any municipality, county, state, territory, or country, whether or not adjudication was withheld or a judgement of conviction was entered?

3. Respondent checked the "No" block in answer to that question.

4. In that same section of the application form, the Department also asks the question:

Have you ever been convicted, found guilty, or pleaded guilty or nolo contendere (no contest) to a crime punishable by imprisonment of one (1) year or more under the laws of any municipality, county, state, territory, or country, whether or not adjudication was withheld or a judgement of conviction was entered?

5. Respondent checked the "No" block in answer to that question as well.

6. Notwithstanding her answers to the questions cited, the evidence of record indicates that on May 26, 1998,

Respondent pleaded nolo contendere to a charge of Obtaining Property by Worthless Check, a felony, in Case No. 96-01386, in the Circuit Court for the Thirteenth Judicial Circuit, in and for Hillsborough County, Florida. Adjudication of guilt was withheld by the court.

7. In reliance, at least in part, on Respondent's denials on her application for licensure that she had pleaded guilty or pleaded nolo contendere to a felony charge, on July 7, 2000, the Department issued Respondent a license as a legal expense agent.

8. Respondent admits to having plead nolo contendere to the worthless check felony charge, but because adjudication of guilt was withheld, she believed the action would not be on her record. She also admits to having recognized the nature of the questions she answered in the negative but indicated she did so because she believed the case was closed and her record would not show the court action.

9. At the time she applied for licensure, Respondent was aware a background investigation would be done and contends she was not trying to do anything to obstruct it. She did not check with the court to determine the status of her case before filling out the application. She had an attorney for the criminal action and took his word that the matter was closed and would not appear on her record. Since being

contacted by the Department's investigator, she has been completely forthright in her dealings with it.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter in this case. Section 120.57(1), Florida Statutes.

11. The Department seeks to discipline Respondent's license as a legal expense agent for her failure to acknowledge her prior felony conviction for worthless checks on her application for licensure. If proven, this failure would constitute a violation of Section 642.041, Florida Statutes. Petitioner has the burden to establish its allegations by clear and convincing evidence. Department of Banking and Finance vs. Osborne Stern and Company, 670 So. 2d 932, Fla. 1998.

12. Section 642.041, Florida Statutes, authorizes the Department to discipline the license of, or deny a license to, any sales representative, if it finds the representative has made a material misstatement, misrepresentation, or is guilty of fraud in obtaining a license; has demonstrated a lack of fitness or trustworthiness to engage in the business of legal expense insurance; or, has willfully failed to comply with, or violated, any proper order or rule of the Department.

13. Section 642.043, Florida Statutes, also authorizes the Department to discipline the license of, or deny a license to, any sales representative who has committed any action for which granting a license could have been refused at the time of application; or has been found guilty of or have plead guilty or nolo contendere to a felony or a crime punishable by imprisonment for one year or more, regardless of whether a judgment of conviction has been entered.

14. Rule 4-211.03(8), Florida Administrative Code, sets forth applicable waiting periods for licensure after the commission of a felony. In the case of those who have committed a Class "B" crime, the applicant will not be granted licensure until at least ten years have passed since the trigger date.

15. Under the rules of the Department applicable at the time of Respondent's application for licensure, Rule 4-211.031, Florida Administrative Code, the crime of Obtaining Property by Worthless Check, the crime to which Respondent plead nolo contendere on May 26, 1998, is a crime involving moral turpitude and is classified as a "Class B" crime for determining the applicable waiting period of licensure after plea.

16. The Department's policy of matters on employment and licensure, Rule 4-211.031(4), at Subsection (4)(a), Florida

Administrative Code, states that all matters part of an applicant's law enforcement record are significant and material, and the omission of any part of that record is deemed a material misrepresentation or material misstatement of that record.

17. Rule 4-211.031(4)(c)1, Florida Administrative Code, requires, in the computation of time of ineligibility as the result of a Class "B" crime, that one year be added to the ten-year waiting period where the trigger date was more than ten years. If the trigger date was less than ten years prior, two years must be added.

18. Therefore, based on her plea of nolo contendere to a Class "B" crime, Respondent was not, at the time her license was issued, eligible for licensure, and her existing license should be revoked. She will not be eligible for licensure until May 25, 2010, which is twelve years from the trigger date, the date of the court action. However, Petitioner contends, and it appears appropriate, that Respondent should be given a credit of two years for making restitution, and a further credit of five additional years for the loss of her civil rights, for a total mitigation credit of seven years. Applying the mitigation credit makes Respondent eligible for licensure on May 25, 2003.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Department of Insurance enter a final order finding Respondent guilty of Misrepresentation of a Material Matter on her application for licensure, and revoking her license as a legal expense agent.

DONE AND ENTERED this 29th day of January, 2001, in Tallahassee, Leon County, Florida.

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ARNOLD H. POLLOCK  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 29th day of January, 2001.

COPIES FURNISHED:

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The Honorable Bill Nelson  
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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.