

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF INSURANCE,)
)
 Petitioner,)
)
vs.) Case No. 01-3576PL
)
DONALD DEAN HOOLEY, II,)
)
 Respondent.)

)

RECOMMENDED ORDER

Upon due notice, William R. Cave, an Administrative Law Judge for the Division of Administrative Hearings, held a formal hearing in this matter on November 14, 2001, in Tampa, Florida.

APPEARANCES

For Petitioner: Anthony B. Miller, Esquire
David Busch, Esquire
Department of Insurance
Division of Legal Services
612 Larson Building
200 East Gaines Street
Tallahassee, Florida 32399-0333

For Respondent: Charles D. Hinton, Esquire
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Post Office Box 7473
St. Petersburg, Florida 33739

STATEMENT OF THE ISSUES

Should Respondent's license as an insurance agent in the State of Florida be disciplined for the alleged violation of certain provisions of Chapter 626, Florida Statutes, as set

forth in the Administrative Complaint and, if so, what penalty should be imposed?

PRELIMINARY STATEMENT

By a nine-count Administrative Complaint dated August 1, 2001, and filed with the Division of Administrative Hearings (Division) on September 10, 2001, the Department of Insurance (Department) is seeking to revoke, suspend, or otherwise discipline Respondent's license as an insurance agent in the State of Florida.

As grounds therefor, the Department alleges in each count of the Administrative Complaint that Respondent violated Subsections 626.611(4),(7),(8), and (9), Florida Statutes, and Subsection 626.621(2), Florida Statutes, in that Respondent: (1) acted as an agent for Alliance Trust (n/k/a Chemical Trust), a foreign corporation, offering unregistered securities for sale in the State of Florida; and (2) had an insurance agent/client relationship with the purchasers of the investment. By a Petition for Administrative Hearing dated August 24, 2001, Respondent disputed the charges and requested an administrative hearing. By letter dated September 10, 2001, the Department referred this matter to the Division for the assignment of an Administrative Law Judge and for the conduct of an administrative hearing.

At the hearing, the Department presented the testimony of Imogene R. Skipper, Edward C. Dandignac, Jr., Dorothy Dandignac, Theodore Dostal, Laura Royal, Alice Lowe, Robert W. Marsh, and Julia Marsh. The Department's Exhibits 1A, 2A, 3A, 1B, 3B, 6B, 7B, 2C, 3C, 5C, 2D, 3D, 4D, 6D, 8D, and 2E were admitted in evidence. The Department's Exhibit AA was rejected. Upon being rejected, the Department then proffered its Exhibit AA. The videotaped depositions of Raymond Frederick Grossman and Mildred Carolyn Grossman were received in lieu of their live testimony at the hearing. Respondent testified in his own behalf but did not offer any other witness. Respondent's Composite Exhibits A (A-1 through A-12), B (B-1 through B-33, and B-35), C (C-1 through C-15), D (D-6 through D-65), and Exhibits D-1 and D-5 were admitted in evidence.

A two-volume Transcript was filed with the Division on November 30, 2001. The parties timely filed their Proposed Recommended Orders.

FINDINGS OF FACT

Upon consideration of the oral and documentary evidence adduced at the hearing, the following relevant findings of fact are made:

1. The Department is the agency of the State of Florida vested with the statutory authority to administer the disciplinary provisions of Chapter 626, Florida Statutes.

2. Respondent, at all times material to the dates and occurrences referenced in the Administrative Complaint, was licensed as an insurance agent in the State of Florida. Respondent is also currently licensed in the State of Florida as a life and life and health insurance agent.

3. During the late 1990's, Respondent became a selling agent for an entity known as Alliance Trust, which later merged with Chemical Trust, and is now known as Chemical Trust.

4. Respondent first learned of Chemical Trust through Jim Hicks of West Shore Agency of Michigan. Jim Hicks provided Respondent with selling and marketing materials for the investments, which were marketed as "guaranteed contracts" (Guaranteed Contract marketing materials).

5. Respondent gave the Guaranteed Contract marketing materials to Imogene Skipper, Edward Dandignac, Dorothy Dandignac, Theodore Dostal, Alice Lowe, Robert Marsh, Julia Marsh, Raymond Grossman and Mildred Grossman and had each of them sign a compliance verification form to that effect.

6. The Guaranteed Contract marketing materials contained a six-page U.S. Guarantee Corporation (U.S.G.C.) Balance Sheet, dated July 13, 1999, which listed several financial representations, including U.S.G.C.'s Accounts Receivable, Real Estate, Partnerships, Total Assets, Liabilities, Net Equities, Total Net Liabilities and Net Equity, Certificates of Deposit,

and various accounting representations. Respondent did not have a background in financials. However, he made no effort to verify the accuracy of U.S.G.C's financial statements in order to protect his customers' investments. U.S.G.C. did not have the financial wherewithal to guarantee investors' investments.

7. The Guaranteed Contract marketing materials listed several members of its "Staff," including Barry Goldwater, Jr. (Vice President/Director); Kenneth R. Pinckard (Executive Director/Vice President); Stephen M. Hammer (Chief Financial Officer); Kenneth Turner (Vice President/Comptroller); etc. Respondent did not verify that any of these individuals was actually on the staff of U.S.G.C.

8. The Guaranteed Contract marketing materials asserted that U.S.G.C. had provided financial support to various charitable organizations, including Compassion International, St. Mary's Food Bank, World Missions, Salvation Army, Food for the Poor, Tennessee, US, etc. Respondent made no attempt to verify these representations.

9. The Guaranteed Contract marketing materials, in the "Explanation of the Trust" section, falsely states, "This is a Trust and has satellite offices throughout the USA. This Trust has been providing clients steady streams of interest and the return of their principal since its inception." Respondent made no effort to verify which, if any, of these clients existed or

if the clients were being provided steady streams of interest and return of their principal.

10. The Guaranteed Contract marketing materials, in the Explanation of the Trust section, falsely states, "Profits are made by the Trust by buying and selling financial instruments and physical properties. The US Government sells Investment Grade Paper Backed by Treasury Notes on a daily basis and the Trust has Buyers purchasing large blocks at discounts. . . ." Respondent did not know what Investment Grade Paper Backed by Treasury Notes was, and made no attempt to determine what this term implied.

11. The Guaranteed Contract marketing materials, in the "Explanation of the Trust" section, falsely states: "The Trust also buys distressed properties with plans already drawn for conversion and then sell at a profit immediately. The Bonding Company approves all investments. This insures the integrity of each investment and its guarantee. There is in excess of SIX Billion Dollars security on the investor's investment." Respondent made no effort to verify these financial representations in order to protect his clients.

12. Respondent made no effort to determine if U.S.G.C. was authorized to transact insurance in the State of Florida.

13. Respondent, after reviewing the Guaranteed Contract marketing materials, considered U.S.G.C. to be a legitimate

corporation. However, Respondent made no effort to determine if U.S.G.C. was a legitimate corporation, notwithstanding his testimony to the contrary, which lacks credibility.

14. At all times material hereto, U.S.G.C. was not licensed as an insurance company or a bonding company, and, although a registered corporation in the State of Nevada, it was not a registered corporation in the State of Florida.

15. Respondent received a document from Clifton Wilkinson, Trustee for Alliance Trust dated August 1, 1999, which stated: "News and Information Regarding Misinformation and Opinions of Some State Agencies Concerning the Nature of Alliance Trust and Similar Entities. They are exempt from State Securities Laws." Therefore, sometime around August 1, 1999, Respondent was made aware that some state agencies took the position that the investments (Guaranteed Contracts) being offered by Alliance Trust (n/k/a Chemical Trust) were securities and were not exempt from state securities laws and regulations.

16. Respondent did not seek advice from the agency of the State of Florida charged with the responsibility of regulating securities as to whether the State of Florida considered these investments to be securities and subject to securities regulations. Likewise, Respondent did not seek any legal advice from an independent counsel as to whether these investments were in fact securities and subject to state securities regulations.

17. Respondent made no independent inquiry into whether these investments were in fact securities and subject to securities laws and regulations, but relied solely on information received from Chemical Trust and two other agents for Chemical Trust in coming to the conclusion that these investments were not securities and not subject to securities laws and regulations.

18. Respondent did not personally invest in the Chemical Trust investments. However, he did tell Edward Dandignac and Theodore Dostal that he had personally invested in Chemical Trust investments.

19. Respondent earned a commission from the sale of the Chemical Trust investments.

20. Respondent's commission from the sale of Chemical Trust investments constituted properties involved in Virgil Womack's violation of Title 18, United States Code, Section 1956(h), and were subject to forfeiture pursuant to Title 18, United States Code, Section 982(a)(1). Respondent made a payment of \$63,302.29, through his attorney to the Receiver on June 18, 2001.

21. Chemical Trust's investment product (Guaranteed Contract) was an investment contract and thereby a security as defined under Subsection 517.021(19)(q), Florida Statutes. As a security, the Guaranteed Contract was required to be registered

in the State of Florida under Section 517.07, Florida Statutes, unless it was exempt from registration under Section 517.051 or 517.061, Florida Statutes. The Guaranteed Contract was neither an exempt security under Section 517.051, Florida Statutes nor an exempt transaction under Section 517.061, Florida Statutes. Therefore, the Guaranteed Contract was required to be registered in the State of Florida.

22. An individual must be licensed in the State of Florida in order to sell or offer securities in the State of Florida. Respondent was neither licensed to sell nor to offer securities in the State of Florida.

23. The monies paid to Chemical Trust for the investments were deposited in the personal bank accounts of Virgil Womack, Clifton Wilkinson, Lewey Cato, and Alvin Tang, the principals of Chemical Trust, and used for their personal benefit and to promote the fraudulent scheme.

24. The Florida Department of Banking and Finance had information concerning previous securities violations by Virgil Womack and Clifton Wilkinson. Womack committed securities violations in Georgia in 1997, and Wilkinson committed securities violations in North Dakota, Iowa, Kansas, and Illinois in June 1999. This information was contained in the National Association of Securities Dealers Regulation Central Registration Depository (NASDAQ CRD) database that was

accessible to the public in general, and to the Respondent specifically, through the Florida Department of Banking and Finance through telephonic communication.

25. Imogene Skipper, age 74, of Dover, Florida, is a retired school custodian. Skipper worked as a custodian for 19 years. Skipper met Respondent in 1997 when he came to her home as a representative of Remington Estate Services, Inc., Fort Worth, Texas, to assist her in setting up a revocable living trust. The trust agreement would allow her to plan an orderly distribution of her assets without having to go through probate.

26. In 1999, Respondent persuaded Skipper to liquidate the existing annuities with American Investors and transfer the funds to Chemical Trust. In doing so, Skipper suffered \$1,665.49 in surrender charges for policy number 303313 and \$1,171.25 for policy number 303467. Respondent told Skipper that Chemical Trust would reimburse her these surrender charges.

27. Skipper purchased these annuities when her children were young. The annuities were funded by a \$5.00 deduction from Skipper's weekly paycheck. Skipper was reluctant to transfer her annuity funds to Chemical Trust. However, Respondent kept reminding her that the 10 per cent return on her investment was good. Also, Skipper considered Respondent to be an honest, decent, and well respected man.

28. Skipper invested \$17,820.00 in Chemical Trust through Respondent. This figure represented two checks, each written to Chemical Trust by Skipper, in the amount of \$8,910.00 each. In return Chemical Trust issued two Guaranteed Contracts in the amount of \$10,158.00 each for a total of \$20,316.00. The difference in amount of the two contracts (\$20,316.00) and the amount of Skipper's checks (\$17,820.00) was \$2,496.00, which was supposed to reimburse Skipper for the surrender fees on her annuities. However, the surrender fees were \$2,836.74, which resulted in Skipper not being reimbursed for surrender fees in the amount of \$340.74.

29. Respondent supplied Skipper with documents explaining the Chemical Trust investments. Respondent had Skipper sign a compliance verification stating that Respondent had fully explained and delivered documentation concerning the Guaranteed Contracts.

30. The Cover Page of the Guaranteed Contract marketing material had "Chemical Trust" in bold print. At the bottom of the same page, the language "A Guaranteed Contract" appeared along with Respondent's name, address, and telephone number. The second page was entitled "Explanation of the Trust." The third page was titled "CHEMICAL TRUST" and consisted of information concerning "QUALIFICATIONS," "FINANCIAL STRENGTH," and "BOND PROVIDER." This page contains certain terms such as:

(a) "After funds have cleared, you will receive your Contract and Surety Bond"; (b) "With over \$725 million in assets to protect clients, Chemical Trust is dedicated to provide you the safety, liquidity, and protection you expect in today's uncertain environment"; (c) "U.S. Guarantee Corporation's financial statement is in excess of 2.4 billion dollars"; and (d) "Please note: Due to confidentially U.S. Guarantee Corporation and Fidelity National will be unable to provide any information to you without the consent of the Trust. ***If you wish to contact either of these it must be coordinated by Chemical Trust." (Emphasis furnished)

31. After her funds cleared, Skipper was provided a "Certificate of Grantor" for each investment. The first page had a bold CHEMICAL TRUST" logo and was identified as a "Certificate of Grantor." Among the terms were: (a) "SIMPLE INTEREST AT THE FIXED RATE OF 10 PERCENT PER ANNUM"; and (b) THIS PRINCIPAL AMOUNT IS SECURED BY A SURETY BOND ISSUED BY U.S. GUARANTEE CORPORATION."

32. The guarantee of ten percent per annum interest was higher than the amount Skipper was receiving on the annuities that she had liquidated.

33. The second page had the U.S. Guarantee Corporation logo at the top and was titled "Payment Surety Bond" with

Chemical Trust as Principal, U.S. Guarantee Corporation, as Surety, and Imogene R. Skipper, as Trustee.

34. Skipper identified the guarantee of ten percent interest and her full trust in Respondent as the factors that influenced her decision to make the Chemical Trust investments.

35. Skipper lost her entire investment with Chemical Trust.

36. Edward Dandignac, age 70, of Inverness, Florida, is a retired Boar's Head provision carrier. Dorothy Dandignac is the spouse of Edward Dandignac. Dorothy Dandignac, age 67, of Inverness, Florida, is a retired housewife. The Dandignacs first had contact with Respondent when he came to their home to set up a revocable living trust in April 1998.

37. Several months after setting up the irrevocable living trust, Edward Dandignac told Respondent that he was having problems with his Oppenheimer funds, Fidelity funds, and other funds. Respondent advised Edward Dandignac that he would probably do better with an investment in some annuity.

38. Subsequently, Respondent sold Edward Dandignac an annuity with Bradford Life and an annuity with United Life. Later, Respondent approached Edward Dandignac concerning Chemical Trust and reviewed the Chemical Trust documents with Edward Dandignac and explained to him that he could make a better return, up to ten percent. Respondent also advised

Edward Dandignac that Chemical Trust would cover the surrender charges. Respondent went through the Guaranteed Contract marketing materials with Edward Dandignac. As to the integrity of Chemical Trust and U.S. Guarantee Corporation, Respondent advised Edward Dandignac the companies were "backed" and "protected."

39. Based on Respondent's representations and the Guaranteed Contract marketing materials, Edward Dandignac determined that an investment with Chemical Trust would be secured and guaranteed. Subsequently, Edward Dandignac decided to invest part of his and his wife's life savings in Chemical Trust through Respondent.

40. Edward Dandignac liquidated one of his annuities and had the funds transferred to Chemical Trust.

41. Respondent advised Edward Dandignac that he had personally invested in Chemical Trust.

42. Because Respondent had worked with the Dandignacs in getting them the annuities, which were making better money than their stock, and the fact that Respondent had also invested in Chemical Trust, the Dandignacs trusted Respondent in regard to their investment in Chemical Trust.

43. One of the business cards given to the Dandignacs by Respondent listed "Insurance," "Estate Plans," and "Investments" as the areas in which he was involved.

44. Edward Dandignac identified the Guaranteed Contract marketing material as being similar to the documents given to him by Respondent. This material was the same as the Guaranteed Contract marketing material provided to Skipper by Respondent.

45. The Dandignacs expected a return on their investment with Chemical Trust but instead lost \$25,444.89.

46. Theodore Dostal, age 74, of Port Richey, Florida, first had contact with Respondent in October 1997, when Respondent delivered a revocable living trust to him through Senior Estates Services. Shortly thereafter, Respondent and Dostal discussed other investments.

47. Between October 28, 1997, and July 27, 1998, Dostal transferred varying amounts from his revocable living trust to purchase three different annuities from Respondent with Bradford Life.

48. Subsequently, Respondent furnished Dostal the Guaranteed Contract marketing materials identical to those provided to Skipper by Respondent. Based on the Guaranteed Contract marketing materials and Dostal discussions with, and his trust in Respondent, Dostal invested in Chemical Trust. Dostal's investment in Chemical Trust involved the purchase of: (1) a Certificate of Grantor dated September 24, 1999, in the amount of \$17,327.00; (2) a Certificate of Grantor dated September 28, 1999, in the amount \$92,010.00; (3) a Certificate

of Grantor dated October 11, 1999, in the amount of \$10,000.00 and; (4) a Certificate of Grantor dated November 10, 1999, in the amount of \$37,120.00. Each Certificate of Grantor was issued by Chemical Trust and was backed by a Payment Surety Bond backed by U.S. Guarantee Corporation Other than the terms specific to Dostal, the Certificate of Grantor and the Payment Surety Bond referenced above are the same as those issued to Skipper.

49. Of the monies he invested with Chemical Trust, Dostal lost \$56,000.00.

50. Respondent told Dostal that he had personally invested in Chemical Trust

51. Alice Lowe, an elderly lady, is a retired office manager. Lowe currently lives in Orlando, Florida. Lowe purchased an annuity product from Respondent in April 1998. Subsequently, Lowe liquidated her annuity and at the suggestion of Respondent invested \$39,914.95 in the Chemical Trust investments, which she lost plus the surrender charges in the amount of \$4,350.73 for a total loss of \$44,229.85.

52. Lowe could not recall receiving the Guaranteed Contract marketing materials. However, she did recognize her signature on the verification form which confirms that she received the Guaranteed Contract marketing materials. As such,

the documents she received would have contained the same terms as the documents received by Skipper.

53. The ten percent interest per annum was a factor in Lowe's decision to invest in Chemical Trust investment along with her confidence in Respondent.

54. Robert Marsh, an elderly man, is a retired mechanic, and is married to Julia Marsh. Currently, the Marshes live in Bradenton, Florida. The Marshes became acquainted with Respondent about May 2, 1998, when Respondent delivered a revocable living trust to them through Remington Estate Services. After this initial contact, the Marshes' interaction with Respondent consisted of Respondent's stopping by a few times, talking to Respondent on the telephone, and discussing investments with Respondent. During all visits with Respondent, both Robert Marsh and Julia Marsh were present. Likewise, the Marshes discussed all financial matters jointly before making a final decision concerning financial matters.

55. The Marshes had an existing annuity that was earning interest at the rate of 2.37 or 3.00 percent, which they were not pleased with. Subsequently, the Marshes transferred some of the money from the existing annuity to purchase an annuity with Respondent. Afterwards, Respondent visited with the Marshes every two to three months. During this time, Respondent discussed Chemical Trust investments with the Marshes and

advised them that Chemical Trust was a "good company" that the company "had been around a long time" and "the investments" were a "good deal."

56. The Marshes transferred, through Respondent, their funds from two annuities and an IRA to Chemical Trust.

57. The Marshes invested over \$23,000.00 in Chemical Trust investments. Originally the Marshes lost all of their investment. However, they recouped all but \$2,300.00 through the efforts of the U.S. Government. The \$2,300.00 was surrender charges for early withdrawal of their annuities.

58. Based on Respondent's representations, the Marshes expected to be reimbursed for surrender charges, receive ten percent interest per annum, the principal amount to be secured by a surety bond, and to receive a \$700.00 bonus.

59. The Marshes were provided Chemical Trust's Guaranteed Contract marketing materials from Respondent, which was identical (contained the same terms) to the Guaranteed Contract marketing material provided to Skipper.

60. Mildred Grossman, age 79, of Debary, Florida, is a retired secretary. Raymond Grossman, age 80, also of Debary, Florida, is the spouse of Mildred Grossman. Raymond Grossman is retired Methodist minister. The Grossmans became acquainted with Respondent when he came to their home to deliver a revocable living trust as a representative of Remington Estate

Services, Inc. After his initial contact with the Grossmans, Respondent visited them every one to three months to check on their needs.

61. Because the Grossmans were seriously considering the possibility that one of them would be going into a nursing home or some type of assisted living facility, Respondent encouraged the Grossmans to purchase annuities. Consequently, the Grossmans cashed in their life insurance policies and their certificates of deposit and purchased annuities from Respondent through American Investors.

62. After they purchased the annuities, the Grossmans were still concerned as to whether they could afford potential retirement home expenses. The Grossmans discussed their concerns with Respondent, and he advised them that they could get a better return on their investment if they switched to Chemical Trust investment.

63. Respondent represented to the Grossmans that their principal investment was protected by a surety payment bond issued by U.S. Guarantee Corporation, that they would receive a guaranteed ten percent interest per annum return for seven years, and that they would be reimbursed for surrender charges incurred when they transferred their funds to Chemical Trust.

64. The Grossmans lost approximately \$36,900.00 from their investment with Chemical Trust through Respondent. This amount

constituted their life savings, leaving them about \$2,000.00 in the bank.

65. Respondent strongly suggested that the Grossmans invest in Chemical Trust. In fact, one of strongest motivating factors for the Grossmans' decision to invest in Chemical Trust was their faith and trust in Respondent.

66. The Guaranteed Contract marketing materials provided to the Grossmans were identical (containing the same terms) to those provided to Skipper.

67. As a result of the lost investments, the Grossmans: (1) were forced to move from a condo to mobile home; (2) cannot provide financial help to their children; and (3) can no longer afford an assisted living home.

68. The Chemical Trust enterprise was a deliberate and largely transparent scheme to swindle Florida residents.

69. Respondent either knew or should have known, had he made good faith attempt to verify the representations contained in the Guaranteed Contract marketing materials and the information furnished to him by other agents, employees, officers or staff of Chemical Trust, that Chemical Trust investments were worthless. Respondent failed to make a due diligence inquiry in this regard.

70. Respondent employed either his past or then current insurance/client relationship with Imogene Skipper, Robert and

Julia Marsh, Raymond and Mildred Grossman, Alice Lowe, and Edward and Dorothy Dandignac to gain their trust and then abused that trust by his failure to properly research and verify the claims made by Chemical Trust, a fellow insurance agent, others associated with Chemical Trust investments, and those otherwise contained in the Guaranteed Contract marketing materials.

71. Respondent was the source of injury to Imogene Skipper, Robert and Julia Marsh, Raymond and Mildred Grossman, Alice Lowe, and Edward and Dorothy Dandignac by inappropriately attempting to act in multiple roles as their insurance agent and as an agent for Chemical Trust. As a result of Respondent's actions, Imogene Skipper, Robert and Julia Marsh, Raymond and Mildred Grossman, Alice Lowe, and Edward and Dorothy Dandignac were sold an investment that was nothing more than a scheme to swindle those who invested. The aggregate loss to the Chemical Trust investment scheme by Skipper, the Marshes, the Grossmans, Lowe, the Dandignacs, and Dostal was approximately \$200,000.

72. Under the circumstances of this case, the participation of Respondent in the sale of Chemical Trust investments to Skipper, the Dandignacs, Dostal, Lowe, the Marshes, and the Grossmans was "in the conduct of business under the [insurance license]" and "in the course of dealing under the [insurance] license."

CONCLUSIONS OF LAW

73. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to Subsections 120.57(1), Florida Statutes.

74. The burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal, Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). To meet this burden, the Department must establish facts upon which its allegations are based by a clear and convincing evidence. Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996) and Subsection 120.57(1)(j), Florida Statutes.

75. Subsections 626.611(4),(7),(8), and (9), Florida Statutes, provide:

The department shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, title agency, solicitor, adjuster, customer representative, service representative, or managing general agent, and it shall suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist:

* * *

(4) If the license or appointment is willfully used, or to be used, to circumvent

any of the requirements or prohibitions of this code.

* * *

(7) Demonstrated lack of fitness or trustworthiness to engage in the business of insurance.

(8) Demonstrated lack of reasonably adequate knowledge and technical competence to engage in transactions authorized by the license or appointment.

(9) Fraudulent or dishonest practices in the conduct of business under the license or appointment.

76. Subsection 626.621 (2), Florida Statutes, provides:

The department may, in its discretion, deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, solicitor, adjuster, customer representative, service representative, managing general agent, or claims investigator, and it may suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

* * *

(2) Violation of any provision of this code or of any other law applicable to the business of insurance in the course of dealing under the license or appointment.

77. The Department has shown by clear and convincing evidence that Respondent committed the acts as alleged in Counts II through VII, of the Administrative Complaint and has thereby

violated Subsections 626.611(4),(7),(8), and (9), Florida Statutes, and Subsection 626.621(2), Florida Statutes.

78. The Department presented no evidence as to the allegations of Count I and IX of the Administrative Complaint. Therefore, Counts I and IX should be dismissed.

79. The parties stipulated that Count VIII of the Administrative Complaint should be dismissed.

80. Under Rules 4-231.080(4), (7), (8), and (9), Florida Administrative Code, the stated penalty for violation of either Subsection 626.611(4) or (7) or (8) or (9), Florida Statutes, is a three-month or six-month or six-month or nine-month suspension, respectively. Under Rule 4-231.090(2), Florida Administrative Code, the stated penalty for violation of Subsection 626.621(2), Florida Statutes, is a three-month suspension. Under Rule 4-231.040(1)(a), Florida Administrative Code, the highest "penalty per count" for each of the six counts is a nine-month suspension. Adding each of the penalties per count gives a total penalty of 54 months. See Rule 4-231.040(2), Florida Administrative Code. However, Subsection 626.641(1), Florida Statutes, does not allow the Department to suspend a license for more than two years. Under Rule 4-231.040(3), Florida Administrative Code, the final penalty shall be the total penalty, as adjusted to take into consideration any aggravating or mitigating factors. Under Rule 4.231.160,

Florida Administrative Code, the Department may, if warranted, after consideration of the aggravating or mitigating factors, increase or decrease the penalty to any penalty authorized by law.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, and after careful consideration of both aggravating and mitigating factors set forth in Rule 4-231.160(1), Florida Administrative Code, it is

RECOMMENDED that the Department enter a final order finding Respondent, Donald Dean Hooley, II, guilty of violating Subsections 626.611(4), (7), (8), (9), and 626.621(2), Florida Statutes, and revoking his license and eligibility for licensure as a life and life health insurance agent in the State of Florida.

DONE AND ENTERED this 28th of January, 2002, in Tallahassee, Leon County, Florida.

WILLIAM R. CAVE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of January, 2002.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit 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.