

4-23-02



AT

FILED
MAY 17 2002
DIVISION OF ADMINISTRATIVE HEARINGS
Treasurer and Insurance Commissioner
Docketed by: [Signature]

THE TREASURER OF THE STATE OF FLORIDA
DEPARTMENT OF INSURANCE

TOM GALLAGHER

01-4271PL

SFD-CLOS

IN THE MATTER OF:

GARY L. KONIZ
_____ /

CASE NO: 42839-01-AG

FINAL ORDER

THIS CAUSE came on for consideration and final agency action. On September 11, 2001, an Administrative Complaint was issued by the Department of Insurance alleging that Respondent Gary L. Koniz failed to divulge on his application for licensure his guilty plea in 1988 to operating a vehicle under the influence of alcohol, a felony. Respondent timely filed a request for a proceeding pursuant to section 120.57(1), Florida Statutes. Pursuant to notice, the matter was heard before Stephen F. Dean, Administrative Law Judge, Division of Administrative Hearings, on February 27, 2002.

After consideration of the record and argument presented at the hearing, the Administrative Law Judge issued his Recommended Order on April 23, 2002. (Attached as Exhibit A). The Administrative Law Judge recommended that a Final Order be entered suspending for a period up to eighteen (18) months the licenses and eligibility for licensure of Gary L. Koniz as a health insurance agent, a life and health insurance agent, and a life including variable annuity agent.

Neither party filed exceptions to the Recommended Order.

Upon careful consideration of the record, the submissions of the parties, and being otherwise fully advised in the premises, it is ORDERED:

1. The Findings of Fact of the Administrative Law Judge are adopted in full as the Department's Findings of Fact.
2. The Conclusions of Law of the Administrative Law Judge adopted in full as the Department's Conclusions of Law.
3. That the Administrative Law Judge 's recommendation that a Final Order be entered suspending for a period up to eighteen (18) months the licenses and eligibility for licensure of Gary L. Koniz as a health insurance agent, a life and health insurance agent, and a life including variable annuity agent, is approved and accepted as being the appropriate disposition, as modified and explained below.

The Administrative Law Judge did not recommend a specific period of suspension. The penalty guidelines in Rule 4-231, Florida Administrative Code, are instructive in determining the period of suspension. As discussed in the Administrative Law Judge's Conclusions of Law, pursuant to Rule 4-231.080, Florida Administrative Code, the stated penalty for a violation of Section 626.611(2), Florida Statutes, is a 3-month suspension. Pursuant to Rule 4-231.090, Florida Administrative Code, the stated penalty for a violation of Section 626.621(1), Florida Statutes, is a 3-month suspension. The Administrative Law Judge incorrectly referenced a violation of Section 626.621(18), Florida Statutes. This was a scrivener's error. In his Conclusion's of Law, the Administrative Law Judge found the Respondent guilty of a violation of Section 626.621(8), Florida Statutes. The reference in Paragraph 15 of the Recommended Order to Section 626.621(18) is modified to refer to a violation of Section 626.621(8), Florida

Statutes. The Administrative Law Judge also incorrectly concluded that the required penalty for a violation of Section 626.621(8) is a 12-month suspension. Pursuant to Rules 4-231.090 and 4-231.150, Florida Administrative Code, the appropriate penalty for a licensee not convicted of felony, but who has been found guilty of or has pleaded guilty or nolo contendere to a felony for conduct not related to his insurance license, is a two (2) month suspension.

Pursuant to Rule 4-231.030(6), Florida Administrative Code, the penalty per count is equal to the highest penalty provided by rule for any violation proven in each count. In this case, the highest stated penalty for the one count Administrative Complaint filed against the Respondent is a six (6) month suspension of Respondent's licenses and eligibility for licensure.

As discussed in the Administrative Law Judge's Conclusions of Law, the Penalty Guidelines provide that aggravating and/or mitigating factors may be considered to determine the appropriate penalty, however, no sufficient aggravating or mitigating factors were presented or argued that would add to or decrease the penalty provided by the Penalty Guidelines.

ACCORDINGLY, Gary L. Koniz' licenses and eligibility for licensure as a health insurance agent, a life and health insurance agent, and a life including variable annuity agent are suspended for a period of six (6) months. The suspension shall be effective from the date of entry of this Final Order.

Pursuant to Section 626.651, Florida Statutes, the suspension of Respondent's licenses and eligibility for licensure is applicable to all licenses and eligibility held by Respondent under the Florida Insurance Code. Pursuant to Section 626.641(4),

Florida Statutes, the Respondent shall not engage in or attempt or profess to engage in any transaction or business for which a license or appointment is required under the Insurance Code or directly or indirectly own, control or be employed in any manner by an insurance agent or agency during the period of suspension. Pursuant to Section 626.641(1), Florida Statutes, Respondent's licensure shall not be reinstated except upon request for such reinstatement, and the Respondent shall not engage in the transaction of insurance until his licensure is reinstated. The Department shall not grant reinstatement if it finds that the circumstance or circumstances for which Respondent's licenses were suspended still exist or are likely to recur.

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order is entitled to seek review of the 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 the General Counsel, acting as the agency clerk, at 200 East Gaines Street, Tallahassee, FL 32399-0333, and a copy of the same and the filing fee with the appropriate District Court of Appeal within thirty (30) days of the rendition of this Order.

DONE and ORDERED this 17th day of MAY, 2002.




KENNEY SHIPLEY
Deputy Insurance Commissioner

COPIES FURNISHED TO:

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