

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MICKIE A. LEONARD AND LAST)
CHANCE SPECIAL, INC.,)
)
Petitioner,)
)
vs.) Case No. 02-1280
)
DEPARTMENT OF BANKING AND)
FINANCE,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on August 26-28, 2002, in Tallahassee, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Edward W. Dougherty, Jr., Esquire
Iglar & Dougherty, P.A.
1501 East Park Avenue
Tallahassee, Florida 32301

For Respondent: Richard T. Donelan, Jr., Esquire
Robert Alan Fox, Esquire
Department of Banking and Finance
101 East Gaines Street
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Tallahassee, Florida 32399-0350

STATEMENT OF THE ISSUE

Whether the Petitioner's divestiture plan complies with the Final Order entered by the Respondent on June 9, 2000.

PRELIMINARY STATEMENT

In November of 2001, the Respondent, Department of Banking and Finance (Department), rejected a divestiture plan submitted by Mickie A. Leonard. Such plan was purportedly submitted to comply with a Final Order that had been entered in June of 2000. On or about March 22, 2002, the Petitioners filed a request for an administrative hearing in order to challenge the denial of the plan. The matter was then forwarded to the Division of Administrative Hearings for formal proceedings.

At the hearing, the Petitioners presented testimony from Mickie A. Leonard, Charles S. Meyer, and Alex Hager. The Respondent offered testimony from Alex Hager, Marvin Blitz, Tony Fernandez, Ingrid Aquino, and Linda Townsend. All exhibits marked and received into evidence (or proffered) are identified in the five-volume Transcript of the proceedings filed in this cause on September 26, 2002.

On October 16, 2002, the Department filed its Proposed Recommended Order (PRO) that has been considered in the preparation of this Recommended Order. The Petitioners filed a Notice of Withdrawal of Petition for Formal Hearing after the Department's PRO had been filed. The Notice announced that the Petitioner, Mickie A. Leonard, had submitted a Second Amended Divestiture Plan. Further, such Notice maintained

that submission of the amended plan rendered the instant action moot as the Petitioners were withdrawing their request for hearing.

FINDINGS OF FACT

1. On June 9, 2000, the Department entered a Final Order and Order for Divestiture Plan (the Final Order) as a result of proceedings filed and identified in this record as DOAH Case No. 99-1664.

2. The Final Order resulted from a settlement reached among Mickie A. Leonard, James McLaughlin, Thomas Leonard, Raymond Hensler, and the Department. The understanding of settlement was memorialized in the transcript of DOAH Case No. 99-1664.

3. The underlying issue of the matter, and hence the divestiture dispute, stemmed from the Petitioner, Mickie A. Leonard's, attempt to control Sunniland Bank (the bank). Ms. Leonard and other bank shareholders have long-standing disagreements as to the bank and its control, and operation.

4. The Department erroneously thought those disagreements had been put to rest by virtue of the settlement of DOAH Case No. 99-1664.

5. Indeed the terms of the Final Order required Mickie A. Leonard to abandon her efforts to exercise control over the bank. Moreover, the Final Order recognized that

Ms. Leonard was not to seek control of the bank in the future. She was to divest herself of the majority interest in the voting securities of the bank and in furtherance of that action was to:

2. Within 15 days of the date of this Order, Ms. Leonard must submit her proposed divestiture plan in accordance with the stipulation contained in Exhibit A for incorporation in the agreed final discussed in the stipulation. This plan must provide for the accomplishment of divestiture within 90 days of the date of this Order. The plan must provide assurances that Ms. Leonard will not be able to exercise ownership or control of 25% or more of the voting securities of Sunniland Bank. The plan must provide for divestiture of control either by outright sale of all shares owned or controlled by Leonard in excess of 24.9% of the bank's total issued shares or by the establishment of a trust to hold such shares, which trust will be controlled by an independent trustee acceptable to the Department under the terms of a trust agreement approved by the Department.

6. Instead of complying with the terms of the Final Order, the Petitioner filed an appeal to the Fourth District Court of Appeal. During the time the matter was on appeal the Petitioner did not file a divestiture plan. The appellate court did not stay the Final Order.

7. Eventually the Final Order was affirmed on appeal and a mandate was issued. Subsequently, the Department once again directed the Petitioner to file the divestiture plan no later than March 4, 2001.

8. Once again, the Petitioner did not timely file the divestiture plan. In fact, the Petitioner ignored the Department's Final Order and direction to file the divestiture plan until April of 2001. Then, after the Department had notified her that it would seek civil monetary penalties if the plan were not filed, Ms. Leonard submitted a divestiture plan.

9. The Department's rejection of that plan resulted in the instant case.

10. The Petitioner has presented no credible explanation for why the divestiture plan in accordance with the Final Order was not timely submitted.

11. The Petitioner did not implement any divestiture plan that would have complied with the terms of the Final Order.

12. The actions purportedly taken to attempt compliance with the Final Order failed to provide any reasonable assurance that the Petitioner intended to abandon ownership or control of the bank.

13. As of August of 2001, the divestiture was incomplete. On August 6, 2001, the Petitioner's attorney advised the Department that Petitioner's shares would be sold to "the Kouzmine Group." That event never happened.

14. To attempt compliance with the Final Order the Petitioner next proposed that Mr. Meyer act as trustee of her shares. The Department rejected the proposal.

15. After employing the criteria in Sections 655.0385, 658.20, 658.21, 658.27, and 658.28, Florida Statutes, the Department rejected Mr. Meyer as he did not have the appropriate experience to serve as an independent trustee. Moreover, it is determined that Mr. Meyer was not sufficiently informed of the facts or sufficiently independent of the Petitioner to qualify as an independent trustee.

16. Additionally, Mr. Meyer refused or failed to submit financial information regarding his experience and business dealings from which the Department might judge his suitability to serve as a trustee for the Petitioner. Even at hearing Mr. Meyer was reluctant to discuss his business dealings or financial circumstances. It may well be that Mr. Meyer considers such information none of the Department's business. It is precisely the Department's business.

17. None of the proposals provided for the independent voting of the Petitioner's shares for purposes of selling the shares. Each proposal also allowed the Petitioner to revoke it at will -- with or without Department approval.

18. Mr. Meyer has never served as an independent trustee. He has never worked for nor been on the board of

directors for a bank. Mr. Meyer has no training or business experience to qualify him to serve as a fiduciary or trustee.

19. As of the date of hearing, the Petitioner had not provided any assurance that she would not be able to exercise ownership or control of no more than 24.9% of the voting securities of the bank.

20. The Petitioner has demonstrated a pattern of conduct suggesting gross indifference to the Department's Final Order and authority.

CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. Section 120.57, Florida Statutes.

22. The instant case was referred to the Division of Administrative Hearings based upon the Petitioner's challenge to the denial of the divestiture plan. Now, by reason of the Notice of Withdrawal of Petition for Formal Hearing, the Petitioner maintains the matter is moot as she has submitted a Second Amended Divestiture Plan.

23. The Petitioner did not seek leave to file such amendment. Nothing in the record suggests the Department concurred with or agreed to the filing of an amendment. Curiously, the Department filed a Proposed Recommended Order (and presumably spent time preparing same) for no apparent

reason if the Department has consented to an amendment. More important, nothing in the record suggests the Petitioner is entitled to file an amendment.

24. As a matter of law, the Petitioner was required to divest her shares so that she no longer owns or controls the bank. She absolutely failed to do so in a timely manner. Moreover, by now filing a second amended plan for divestiture the Petitioner must recognize that the prior submission was flawed or she is once again seeking to obtain additional time before divestiture may be compelled by a court of law. In either case, the Petitioner's indifference to the authority of the Department is beyond rational thought.

25. The language of the Final Order was clear and unambiguous. The Petitioner was to divest. She did not do so. Mr. Meyer is not qualified by experience or training to serve as an independent trustee. His judgment and lack of candid response to the Department also place his candidacy in question. A trustee must be a person capable of independent thought and action and Mr. Meyer is simply not qualified to take Ms. Leonard on.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Banking and Finance enter a Final Order rejecting the divestiture plan.

DONE AND ENTERED this 1st day of November, 2002, in
Tallahassee, Leon County, Florida.

J. D. PARRISH
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 1st day of November, 2002.

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.