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DEPARTMENT OF FINANCIAL SERVICES

Docketed by: JC

AP

02-3763

CASE NO: 61928-02-AC

DIVISION OF
ADMINISTRATIVE
HEARINGS

FILED
03 MAR - 7 PM 12:00

JDF-CLW

TOM GALLAGHER
CHIEF FINANCIAL OFFICER

IN THE MATTER OF:

JUAN RAMON LEAL

FINAL ORDER

THIS CAUSE came on for consideration and final agency action. On June 27, 2002, a Notice of Denial was issued by the Department of Insurance, now the Department of Financial Services, against the Petitioner, Juan Ramon Leal, denying his application for licensure as a legal expense agent because of his criminal history. Petitioner timely filed a request for a proceeding pursuant to Section 120.57(1), Florida Statutes. Pursuant to notice, the matter was heard before J. D. Parrish, Administrative Law Judge, Division of Administrative Hearings, on December 6, 2002.

After consideration of the record and argument presented at hearing, the Administrative Law Judge issued her Recommended Order on January 23, 2003. (Attached as Exhibit A). The Administrative Law Judge recommended that the Department enter a final order granting Petitioner's application for licensure as a legal expense agent in the State of Florida.

On February 7, 2003, the Department timely filed exceptions to the Recommended Order. The exceptions were to two Conclusions of Law. The Petitioner did not file any exceptions or responses to the Department's exceptions. Each exception will be addressed below.

RULING ON THE DEPARTMENT'S
EXCEPTIONS

1. The Department excepts to Conclusion of Law #21 of the Recommended Order and argues that the Administrative Law Judge did not clearly outline whether the Petitioner was fit and trustworthy to hold a license. In this Conclusion of Law, the Administrative Law Judge is summarizing the Findings of Fact and stating the points in mitigation of the Petitioner's prior conduct. Although the Administrative Law Judge does not conclude one way or another whether the Petitioner violated Section 642.041(5), Florida Statutes, the Department would not be foreclosed from making a conclusion of a violation of this statute based on the Petitioner's underlying criminal actions. See, Walley v. Florida Game & Fresh Water Fish Comm'n., 501 So.2d 671 (Fla. 1st DCA 1987)(holding that expungement of records of criminal prosecution places an individual in the same position as if he had never been charged, but that such expungement does not mean he may not be held responsible for his prior criminal actions in a noncriminal proceeding). However, given the mitigation found by the Administrative Law Judge in the present case, the recommendation to grant the Petitioner a license as a legal expense sales representative will not be disturbed by the Department. Accordingly, the Department's exception is rejected in part and accepted in part.

2. The Department excepts to Conclusion of Law #22 of the Recommended Order and argues that because the Petitioner pled nolo contendere to a crime involving moral turpitude, the Administrative Law Judge should have found a violation of Section 642.041(11), Florida Statutes which requires mandatory denial of Petitioner's license application.

The Administrative Law Judge found that the circuit court granted the Petitioner's request to seal the criminal record, and that the Petitioner was not adjudicated guilty of any criminal offense. The order sealing the Petitioner's records does not allow the Department to use the

criminal records, in and of themselves, to deny a license pursuant to Sections 642.041(11), Florida Statutes. The conduct, not the criminal charge, nor the records form the basis for discipline of a licensee, when criminal records have been sealed. See, Walton v. Turlington, 444 So.2d 1082 (Fla. 1st DCA 1984). Further, Sections 943.059(4)(b), Florida Statutes provides, in pertinent part, "...a person who has been granted a sealing under this section...may not be held under any provision of law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge a sealed criminal history record." Accordingly, the Department's exception is rejected.

Therefore, upon careful consideration of the entire record, the submissions of the parties, including the exceptions filed, 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 are adopted in full, except as discussed above, as the Department's Conclusions of Law.
3. The Administrative Law Judge's recommendation that the Department enter a Final Order granting Petitioner's application for licensure as a legal expense agent in the State of Florida is approved and accepted as being the appropriate dispositions of this case.

ACCORDINGLY, it is ORDERED that Petitioner's, JUAN RAMON LEAL's, application for licensure as a legal expense agent in the State of Florida is hereby APPROVED.

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 6th day of MARCH, 2003.



A handwritten signature in cursive script that reads "K Chandler". The signature is written in black ink and is positioned above a horizontal line.

KAREN CHANDLER
Deputy Chief Financial Officer

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