

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL)
SERVICES,)
)
Petitioner,)
)
vs.) Case No. 03-1834PL
)
KAREN MARIE MALDONADO,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Fort Pierce, Florida, on August 4, 2003.

APPEARANCES

For Petitioner: R. Terry Butler, Senior Attorney
Division of Legal Services
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399-0333

For Respondent: Karen Marie Maldonado, pro se
701 Southwest Ravenswood West
Port St. Lucie, Florida 34983

STATEMENT OF THE ISSUES

The issues are whether Respondent is guilty of pleading nolo contendere to three counts of uttering a forged instrument, three counts of forgery, and three counts of grand theft so as to constitute a demonstrated lack of fitness or trustworthiness

to engage in the business of insurance, in violation of Section 626.611(7), Florida Statutes; willful failure to comply with any provision of this Code, in violation of Section 626.611(13), Florida Statutes; a finding of guilty or pleading of guilty or nolo contendere to a felony involving a crime of moral turpitude, in violation of Section 626.611(14), Florida Statutes, any cause for which issuance of the license or permit could have been refused or denied by Petitioner, pursuant to Section 626.621(1), Florida Statutes; and a finding of guilty or pleading of guilty or nolo contendere to a felony, in violation of Section 626.621(8), Florida Statutes. An additional issue is whether Respondent failed to notify Petitioner of her plea of nolo contendere within 30 days, as required by Section 626.621(11), Florida Statutes. If Petitioner prevails on any of these issues, another issue is the penalty that should be imposed.

PRELIMINARY STATEMENT

By Administrative Complaint filed July 26, 2002, Petitioner alleged that Petitioner was at all material times licensed as a customer representative (4-40) insurance agent. As amended at the hearing, the Administrative Complaint alleges that, on February 21, 2001, Respondent pleaded nolo contendere to three counts of uttering a forged instrument, three counts of forgery, and three counts of third-degree grand theft, for which the

court withheld adjudication and placed Respondent on two years' probation.

Count I of the Administrative Complaint alleges that Respondent thus demonstrated a lack of fitness or trustworthiness to engage in the business of insurance, in violation of Section 626.611(7), Florida Statutes; willfully violated any provision of this Code, in violation of Section 626.611(13), Florida Statutes; was found guilty or pleaded guilty or nolo contendere to a felony involving moral turpitude, in violation of Section 626.611(14), Florida Statutes; was guilty of an act or omission for which Petitioner could have refused to issue a license, pursuant to Section 626.621(1), Florida Statutes; and was found guilty of pleaded guilty or nolo contendere to a felony, in violation of Section 626.621(8), Florida Statutes.

Count II of the Administrative Complaint alleges that Respondent failed to notify Petitioner of her plea of nolo contendere within 30 days. Count II alleges that Respondent thus failed to inform Petitioner in writing, within 30 days, of pleading guilty or nolo contendere to a felony, in violation of Section 626.621(11), Florida Statutes.

At the hearing, Petitioner called no witnesses and offered into evidence five exhibits: Petitioner Exhibits 1-5. Respondent called two witnesses and offered into evidence no

exhibits. All exhibits were admitted except Petitioner Exhibit 2, which was proffered.

The court reporter filed the transcript on August 14, 2003. Petitioner filed a proposed recommended order on August 22, 2003.

FINDINGS OF FACT

1. At all material times, Respondent has been licensed as a Customer Representative.

2. On February 23, 2001, Respondent pleaded no contest to three counts of uttering a forged instrument--i.e., a bank check--on August 10, 2000, in violation of Section 831.02, Florida Statutes; three counts of forgery of a public record on August 10, 2000, in violation of Section 831.01, Florida Statutes; and three counts of third-degree grand theft on August 10, 2000, in violation of Section 812.014, Florida Statutes. She also agreed to pay restitution of \$1892.87 and court costs.

3. By Community Supervision Order entered February 27, 2001, the court accepted the plea, withheld adjudication, placed Respondent on two years' probation, required Respondent to pay restitution of \$1892.87, and required Respondent to pay court costs.

4. Respondent entered the plea of no contest to avoid the expense of a trial. She relied on the advice of her criminal

attorney that this disposition of the criminal case would have no effect on her insurance license. She was unaware of her obligation to inform Petitioner of her entry of a no contest plea to these nine charges.

5. Respondent finished paying restitution in March 2003 and has successfully completed her probation. One of her witnesses testified that he has worked with Respondent in the past and is aware of the conduct described above. He testified that he is establishing a new insurance agency in January 2004 and, if her licensing situation permits, he intends to employ her in that office.

CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over the subject matter. Section 120.57(1), Florida Statutes. (All references to Sections are to Florida Statutes. All references to Rules are to the Florida Administrative Code.)

7. Section 626.611 provides in relevant part:

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, 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 that as to the applicant, licensee, or appointee any

one or more of the following applicable grounds exist:

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

(13) Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of this code.

(14) Having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

8. Section 626.621 provides in relevant part:

(1) Any cause for which issuance of the license or appointment could have been refused had it then existed and been known to the department.

(8) Having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

(11) Failure to inform the department in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or of any state thereof, or under the law of any other

country without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the case.

9. The crimes to which Respondent pleaded no contest are all felonies. Rule 4-211.041(3) defines a crime of moral turpitude as any felony identified in Rule 4-211.042(21). Rule 4-211.042(21) defines the following felonies as crimes of moral turpitude:

- (m) Altering public documents.
- (n) Forgery.
- (s) Grand theft.
- (qq) Uttering a forged check.

10. Petitioner must prove the material allegations by clear and convincing evidence *Department of Banking and Finance v. Osborne Stern and Company, Inc.*, 670 So. 2d 932 (Fla. 1996); and *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987).

11. Petitioner has proved that Respondent pleaded no contest to nine felonies that constitute crimes of moral turpitude. Petitioner has thus proved violations of Section 626.611(14).

12. Rule 4-231.150(1)(c) provides the penalties for a licensee who has pleaded no contest to a felony involving moral turpitude, but the court has withheld adjudication. The penalties are as follows:

1. If the conduct directly relates to activities involving an insurance license, the penalty shall be a 24 month suspension.

2. If the conduct indirectly involves dishonesty or breach of trust such as mishandling or misappropriation of money, the penalty shall be a 12 month suspension.

3. If the conduct is not related to insurance license, the penalty shall be a 6 month suspension.

13. As Petitioner argues in its proposed recommended order the appropriate penalty for the underlying conduct--i.e., the crimes of moral turpitude--is 12 months' suspension.

14. Petitioner has proved that Respondent failed to inform Petitioner of the no contest plea within 30 days, as required by Section 626.621(11). Rule 4-231.090(11) provides that the penalty for this offense is three months' suspension, which is the penalty that Petitioner seeks in its proposed recommended order.

15. Rule 4-231.160 lists various aggravating and mitigating factors that may influence the penalty. Among the mitigating factors are the modest sum involved, the completion of restitution, and the completion of probation. Under the circumstances, a better penalty would be five months' suspension.

RECOMMENDATION

It is

RECOMMENDED that the Department of Financial Services enter a final order finding Respondent guilty of violating Sections 626.611(14) and 626.621(11) and suspending her Customer Representative license for five months.

DONE AND ENTERED this 27th day of August, 2003, in Tallahassee, Leon County, Florida.



ROBERT E. MEALE
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of August, 2003.

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 must be filed with the agency that will issue the final order in this case.