

Received Event (Event Succeeded)

1-26-04

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LEGAL SERVICES

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FLORIDA
DEPARTMENT OF
FINANCIAL SERVICES

TOM GALLAGHER
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

March 1, 2004

Via Facsimile

Hon. Larry J. Sartin
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550

Re: Sara Kaczmerek Schubert
DOAH Case No. 03-002359

LJS-CWS

Dear Judge Sartin:

I am faxing herewith a copy of the Final Order In the Matter of: Sara Kaczmerek Schubert, DOAH Case No. 03-002359.

If I may be of further assistance in this matter, please do not hesitate to contact me.

Sincerely,

Melinda J. Wood
Melinda J. Wood, CFM

/mw

Attachment

Received Event (Event Succeeded)

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FILED

MAR 1 2004

Dictated by *mjlw*

DEPARTMENT OF FINANCIAL SERVICES

TOM GALLAGHER
CHIEF FINANCIAL OFFICER

IN THE MATTER OF:

Case No. 67954-03-AG

SARA KACZMEREK SCHUBERT

FINAL ORDER

This cause came on for consideration of the Recommended Order entered by Administrative Law Judge Larry J. Sartin on January 26, 2004. Exceptions to that Recommended Order were filed by the Department of Financial Services (the Department) on February 10, 2004.

In its exceptions the Department points out that authority to deny an application is found in Sections 648.27(2), and 648.27(4), Fla. Stat., as well as in Section 648.45, Fla. Stat., referenced in the Recommended Order. The exception is a correct statement of the law over which the Department has substantive jurisdiction, and is accepted.

Having reviewed the record, including the transcript of proceedings, and being otherwise fully apprised in all material premises,

IT IS HEREBY ORDERED that the Findings of Fact made by the Administrative Law Judge are adopted as the Department's Findings of Fact, and that the Conclusions of Law reached by the Administrative Law Judge, except as modified by recognition of Sections 648.27(2) and 648.27(4), Fla. Stat., are adopted as the Department's Conclusions of Law.

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IT IS HEREBY FURTHER ORDERED that the Recommendation made by the Administrative Law Judge is adopted by the Department, and that Sara Kaczmarek Schubert be issued a limited surety (ball bond) license forthwith. On issuance of the license, Sara Kaczmarek Schubert shall be placed on probation for one year from the date of this Final Order. During that probation she shall adhere to all provisions of Ch. 648 applicable to her license and licensure, and will, on its request, promptly and fully grant the Department access to all transaction records required by law to be kept by Sara Kaczmarek Schubert.

DONE AND ORDERED this 1st day of March, 2004.




Karen Chandler
Deputy Chief Financial Officer

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order is entitled to seek review of this 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 612 Larson Building, Tallahassee, Florida, and a copy of the same with the appropriate district court of appeal within thirty (30) days of rendition of this Order.

XC: Ramon de la Cabada
Dickson E. Kesler
Dana M. Wiehle

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
RECEIVED
DEPT OF FINANCIAL SERVICES
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SARA KACZMEREK SCHUBERT,

Petitioner,

vs.

Case No. 03-2359PL
67954-03-AG

DEPARTMENT OF FINANCIAL
SERVICES,

Respondent.

EXCEPTIONS TO RECOMMENDED ORDER

The Department of Financial Services, pursuant to Section 120.57(1)(k), Florida Statutes and Rule 28-106.217, Florida Administrative Code, hereby files the following Exceptions to the Recommended Order issued in this case by the Honorable Larry J. Sartin, Administrative Law Judge, Division of Administrative Hearings, on January 26, 2004. These exceptions are being filed to correct the interpretation of statutes over which the Department has substantive jurisdiction, as set forth in the conclusions of law submitted by the Administrative Law Judge, but not to contest the facts found or the penalty recommended.

CONCLUSIONS OF LAW

1. The Administrative Law Judge's legal conclusion, set forth in paragraph 65, that the "actual authority for denial of an application for a bail bond agent license comes from Section 648.45, Florida Statutes," should be rejected. Section 648.27(2) and 648.27(4), Florida Statutes, also contains language on which a decision to deny a

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license may be based. Section 648.27(2) expressly states that "[t]he department may not issue ... a license ..." under the circumstances proscribed therein. Similarly, subsection (4) provides that "the department shall disapprove the application" of an individual found to possess certain characteristics. The language of these provisions is clear, and can alone provide the authority for the Department to deny a particular application. "The Legislature must be understood to mean what it has plainly expressed and this excludes construction. The Legislative intent being plainly expressed, so that the act read by itself or in connection with other statutes pertaining to the same subject is clear, certain and unambiguous, the courts have only the simple and obvious duty to enforce the law according to its terms." VanPelt v. Hilliard, 78 So. 693 (Fla. 1918).

2. Under the facts of the instant case, the Department does not contest the penalty recommended by the Administrative Law Judge. A continuing education course is not recommended under these facts, however, as there is no single course designed to cover the specific matters at issue.

Respectfully submitted this 10th day of February, 2004.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to Ramon de la Cabada, Esq., 3191 Coral Way, Suite 115, Miami, Florida 33145, on this 10th day of February, 2004.


DICKSON E. KESLER


DANA WIEHLE