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FLORIDA
DEPARTMENT OF
FINANCIAL SERVICES



TOM GALLAGHER
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

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DIVISION OF
ADMINISTRATIVE
HEARINGS
PINK-SDS

IN THE MATTER OF:

04-0443

EUGENE P. KENT

Docketed by: *[Signature]*

CASE NO: 73554-04-AG

FINAL ORDER

THIS CAUSE came on for consideration and final agency action. On November 20, 2003, a Notice of Denial was issued by the Department of Financial Services denying the license application of the Petitioner, Eugene P. Kent, for licensure as a nonresident life, variable annuity and health insurance agent because of his criminal history and prior administrative action history. The Petitioner timely filed a request for a proceeding, which was referred to the Division of Administrative Hearings in order to conduct a Section 120.57(1), Florida Statutes hearing. Pursuant to notice, the matter was heard before P. Michael Ruff, Administrative Law Judge, Division of Administrative Hearings, on April 29, 2004.

After consideration of the record and argument presented at hearing, the Administrative Law Judge issued his Recommended Order on September 3, 2004. (Attached as Exhibit A). The Administrative Law Judge recommended that the Department enter a Final Order granting Petitioner licensure.

Neither party filed exceptions to the Recommended Order.

Therefore, upon careful consideration of the entire 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. In order to correct an apparent typographical error in Conclusion of Law #18 of the Recommended Order, the reference to "Section 626.83(1), Florida Statutes" is corrected to read "Section 626.831(1), Florida Statutes".
3. In Conclusion of Law #28 of the Recommended Order, the Administrative Law Judge concludes that because the Petitioner's conviction cannot fit within any of the list of Class A crimes, no waiting period should apply to the Petitioner.

Rule 69B-211.042(7), Florida Administrative Code makes a general classification of felonies into three classes: A, B and C. The names or descriptions of crimes, as set out in the classification of crimes, are intended to serve only as generic names or descriptions of crimes and shall not be read as legal titles of crimes or limiting the included crimes to crimes bearing the exact name or description stated. Further, no inference is to be drawn from the absence of any crime from this list, to the effect that said crime is not grounds for adverse action under this rule. See, Rule 69B-211.042(7)(a), (c) and (d), Florida Administrative Code.

While the Administrative Law Judge may arguably be correct that the Petitioner's criminal conviction cannot fit within any of the list of Class A crimes, he is incorrect that no waiting period should apply in consideration of the above discussion.

Section 626.207(1), Florida Statutes states that "...The purpose of the waiting periods is to provide sufficient time to demonstrate reformation of character and rehabilitation. The waiting periods shall vary based on the type of conduct and the length of time since the conduct

occurred and shall also be based on the probability that the propensity to commit illegal conduct has been overcome..."

Based on the Petitioner's conviction of a crime and in keeping with the intention of both Section 626.207, Florida Statutes and Rule 69B-211.042, Florida Administrative Code, some waiting period must be imposed on the Petitioner in this case. Given the factual findings in this case, the most logical waiting period would be a waiting period similar to a Class B or C crime. However, since more than six years have passed since the trigger date and with one year of mitigation for "other mitigating factors", such as Petitioner's licensure in eighteen other states, the maximum applicable waiting period has been satisfied.

In consideration of the above discussion, because the Department has substantive jurisdiction over the above-referenced rule, and in accordance with Section 120.57(1)(i), Florida Statutes, Conclusion of Law #28 is modified as follows:

The preponderant, credible evidence, supportive of the above findings of fact, thus establishes that the Petitioner's conviction cannot fit within any of the list of Class A crimes, however because of Petitioner's conviction of a crime and in keeping with the intention of Section 626.207, Florida Statutes and Rule 69B-211.042, Florida Administrative Code, some waiting period must be imposed in this case. Given the factual findings, the most logical waiting period would be a waiting period similar to a Class B or C crime. However, since more than six years have passed since the trigger date and with one year of mitigation for "other

mitigating factors," such as Petitioner's licensure in eighteen other states, the maximum applicable waiting period has been satisfied.

This Conclusion of Law is as or more reasonable than the Conclusion of Law of the Administrative Law Judge.

4. With the exception of the amendments referenced above, the Conclusions of Law of the Administrative Law Judge are adopted in full as the Department's Conclusions of Law.

5. The Administrative Law Judge's recommendation that the Department enter a Final Order granting Petitioner's licensure is approved and accepted as being the appropriate disposition of this case.

ACCORDINGLY, it is ORDERED that Petitioner's, Eugene P. Kent's, application for licensure as a nonresident life, variable annuity and health insurance agent in this State is hereby GRANTED.

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 28th day of October, 2004.



Karen Chandler
KAREN CHANDLER
Deputy Chief Financial Officer

COPIES FURNISHED TO:

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