11-17-04

STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION

11/3/05
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DALE E. VEITCH,

Petitioner,

DOAH CASE NO. 04-1590 BJS-Clos
Admin. Proceeding No. 0124-S-03/04

vs.

AT

STATE OF FLORIDA, OFFICE
OF FINANCIAL REGULATION,

Respondent.
_____/

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FILED

FINAL ORDER

The Office of Financial Regulation ("Office") issued a denial of Petitioner's application to become licensed as an "associated person". Petitioner in turn filed a Petition for Administrative Hearing, which the Office referred to the Division of Administrative Hearings ("DOAH"). The assigned Administrative Law Judge ("ALJ") held a formal administrative hearing, and entered a Recommended Order thereon. That Recommended Order of November 17, 2004, is attached to this Final Order, and incorporated herein by reference.

RULING ON EXCEPTIONS

Petitioner timely filed Exceptions to the Recommended Order, and OFR filed a timely Response thereto. The exceptions are denied for the following reasons:

Petitioner filed exceptions to findings of fact 58, 61(partial), 66, and 67 of the Recommended Order. Petitioner filed exceptions to conclusions of law 105, 106, 114,

115, 116, 117 and 118 of the Recommended Order. Though not organized by Petitioner in this manner, these exceptions fall into six areas and will be addressed as such.

Exception one to conclusions of law 105 and 106, relates to Petitioner's sales of the ACEC notes. Petitioner argues that he did not and could not have sold these notes and relies on Pinter v. Dahl, 486 U.S. 622 (1988), which, Petitioner states, adopts a two-pronged test to determine whether a person is a seller of securities. The test requires both solicitation and that the seller have a financial interest in the sale. Petitioner asserts that he does not meet this test because he did not actually solicit the sale of the notes to some investors and that, for all investors, he had no financial interest as he was paid a salary, not a commission. However, as pointed out in the Office's response to this exception, Pinter is not binding on Florida. See Mehl v. Office of Financial Regulation, 859 So. 2d 1260 (Fla. 1st DCA 2003). Further, the Florida Securities and Investor Protection Act (Chapter 517, Florida Statutes) is remedial in nature and its purpose is to protect the people of Florida from fraudulent and deceptive practices in the sale of securities. Therefore, it would be more appropriate to use the "substantial contributive factor" test in this case for the reasons set forth in Hoffer v. State of Washington, 776 P. 2d 963 (Wash. 1989); and Herrington v. Hawthorne, 47 P. 3d 567 (Wash. Ct. App. 2003). In any event, Petitioner has misconstrued Pinter, by attempting to unjustifiably narrow its scope. As pointed out in the Office's response to the exceptions, Pinter states that when an agent of a principal solicits a purchase, he is a seller under the statute. The ALJ properly concluded that Petitioner sold the ACEC notes. Therefore, this exception is denied.

Exception two to conclusions of law 114, 115, and 116 relates to Petitioner's assertion that the Bankruptcy Court's Judgment of Non-Dischargeability is not a final

judgment as contemplated under Section 517.161(1)(k), Florida Statues. Section 517.161(1)(k), Florida Statutes states, in part, that registration may be denied if the registrant has had "a final judgment entered against her or him in a civil action upon grounds of fraud, embezzlement, misrepresentation or deceit ...." Petitioner's argument is that this judgment was not rendered in a civil action and that it does not enforce or protect any private right. This is based on Petitioner's exclusive reliance on the definition of civil action found in Black's Law Dictionary. Petitioner provides no other authority. This argument, aside from its lack of specific authority or application to the case at hand, ignores that the bankruptcy judge specifically relies on and cites to 11 U.S.C. Section 523 (a)(2)(A) and (a)(6). These portions of the bankruptcy code deny discharge under 11 U.S.C. Section 523(a)(2)(A) when the debtor receives money by false pretenses, false representation, or actual fraud, and under 11 U.S.C. Section 523(a)(6) when there is willful and malicious injury by the debtor to another person or his property. See In Re: Dale Edward Veitch, Debtor, Gary D. Lipson, as Receiver for LSI Holdings, Inc. and Legend Sports, Inc., v. Dale Edward Veitch (Respondent's Exhibit "G"). This clearly shows that the bankruptcy court specifically addressed "false pretences, false representation, or actual fraud" as the basis for the judgment of non-dischargaebility. . Of real significance is that Petitioner requested, in an appeal to the Federal District Court, that the court, acting in its appellate capacity, remove these statutory references from the judgment and it refused to do so. See In Re: Dale Edward Veitch, Debtor, Gary D. Lipson, as Receiver for LSI Holdings, Inc. and Legend Sports, Inc., v. Dale Edward Veitch (Respondent's Exhibit "H"). This only reinforces the fact that the Petitioner here stipulated to violations based on these statutes. Petitioner also asserts that the judgment

resulted from a stipulation and not as a result of a trial. Even if so, it in no way affects the basis for the judgment because it was based on a stipulation. See Pasco Holding Co. v. Well, 168 So. 34 (Fla. 1936). The ALJ properly declined to interpret this judgment inconsistently with the bankruptcy court and found that this judgment was a violation of Section 517.161(1)(k), Florida Statutes. Therefore, this exception is denied.

Exception three to conclusions of law 106 and 117 relates to Petitioner's assertion that no violation of Section 517.12, Florida Statutes was in the Notice of Denial. This is simply not the case. The Denial Letter issued by the Office on March 22, 2004, clearly refers to this section and cites it as a basis for the denial. Therefore, this exception is denied.

Exception four to conclusion of law 118 relates to Petitioner's assertion that the ALJ erred in finding that Petitioner's efforts at rehabilitation were insufficient to overcome Petitioner's serious violations of the securities laws and the judgment of non-dischargeability against Petitioner. Petitioner fails to take into account conclusion of law 117, which refers to the sale of unregistered securities in the form of the Legends notes as well as the ACEC notes. There was clearly a weighing of the evidence by the ALJ in reaching this conclusion. The Office may not reweigh the evidence. See Packer v. Orange County School Board, 881 So. 2d 1204 (Fla. 5th DCA 2004). Further, the Office finds the ALJ's conclusion to be well founded and, therefore, this exception is denied.

Exception five by Petitioner states that Petitioner takes exception to the ALJ's "failure" to adopt certain proposed findings of fact contained in Petitioner's Proposed Recommended Order. First, as pointed out in the Office's response to the exceptions, this exception does not identify a disputed portion of the Recommended Order and does

not state the legal basis for the exception. Under these circumstances, the Office may reject these exceptions without discussion. See Section 120.57(1)(k), Florida Statutes. Further, this is not actually an exception to the Recommended Order. It is merely a statement by Petitioner that the ALJ should have adopted his proposed findings. No substantive reasoning is supplied for this assertion. Therefore, this exception is denied.

Exception six to findings of fact 58, 61, 66, and 67 does not, at any point state that these findings of fact are not supported by any competent, substantial evidence. This is the standard and the only standard under which an agency may reject or modify a finding of fact made by an ALJ. See Section 120.57(1)(*l*), Florida Statues. This alone would be sufficient to deny the exceptions to these findings of fact. However, as pointed out in the Office's response to the exceptions, there is competent, substantial evidence in the record to support these findings of fact. Petitioner also takes exception to conclusion of law 117 in exception six, but does not comply with Section 120.57(1)(k), Florida Statutes. Therefore, this exception is denied.

WHEREFORE, based on the findings of fact and conclusions of law contained in the Recommended Order in Case 04-1590, and on the legislative intent of protecting investors, Petitioner's application for registration as an associated person is denied.

DONE and ORDERED this 3RD day of January, 2005, in Tallahassee, Florida.

Don B Saxon

DON B. SAXON, Commissioner
Office of Financial Regulation

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE OFFICE OF FINANCIAL REGULATION, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U.S. Mail, or by hand delivery, to the persons named below on this 3rd day of January, 2005.

Lealand L. McCharen, Esquire
Office of Financial Regulation
The Fletcher Building, Suite 526
200 East Gaines Street
Tallahassee, Florida 32399-0379

COPIES FURNISHED TO:

Barbara J. Staros
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

Robert Schott, Esquire
Office of Financial Regulation
The Fletcher Building, Suite 526
200 East Gaines Street
Tallahassee, FL 32399-0379

Edward W. Dougherty, Esquire
Igler & Dougherty, P.A.
2457 Care Drive
Tallahassee, FL 32308

Don B. Saxon, Commissioner
Office of Financial Regulation