

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL)
SERVICES,)
)
Petitioner,)
)
vs.) Case No. 04-1763
)
ADRIAN MATTHEW JAGDEOSINGH,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Fort Lauderdale, Florida, on August 31, 2004.

APPEARANCES

For Petitioner: Gregg S. Marr
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399-0333

For Respondent: Charles P. Randall
Charles P. Randall, P.A.
Bank of America Tower, Suite 500
150 East Palmetto Park Road
Boca Raton, Florida 33432-4832

STATEMENT OF THE ISSUES

The issues are whether Respondent is guilty of any violations of the Insurance Code, including Chapter 626, Florida Statutes, and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

By Administrative Complaint dated April 26, 2004, Petitioner allegedly was a licensed General Lines agent, holding license number A129688. The Administrative Complaint alleges that, at all material times, Respondent was employed by America Auto Security Insurance, Inc. The Administrative Complaint alleges that, at all material times, Respondent was an officer, director, or shareholder of America Auto Security Insurance, Inc.

At the hearing, Petitioner dropped Counts I, II, and IV of the Administrative Complaint due to the nonappearance of the witnesses who were allegedly the insurance customers of Respondent.

Count III of the Administrative Complaint alleges that, on April 1, 2000, Dionne Jacques paid \$468 to Sawgrass Ford of Pembroke Pines as payment of a premium on an automobile insurance policy to be purchased from America Auto Security Insurance, Inc. Although Ms. Jacques allegedly understood that she was to receive insurance coverage immediately, she did not obtain such coverage until May 12, 2000. The Administrative Complaint alleges that Respondent signed Ms. Jacques' name to a premium finance agreement, without her permission, and America Auto submitted only \$143 to the premium finance company. The

Administrative Complaint also alleges that Respondent sold Ms. Jacques an ancillary product without her informed consent.

Count III of the Administrative Complaint alleges that Respondent thus transacted business in Florida without complying with the Insurance Code, in violation of Section 624.11(1), Florida Statutes; willfully misrepresented an insurance policy or annuity contract, in violation of Section 626.611(5), Florida Statutes; demonstrated a lack of fitness or trustworthiness to engage in the business of insurance, in violation of Section 626.611(7), Florida Statutes; demonstrated a lack of reasonably adequate knowledge and technical competence to engage in transactions authorized by his license, in violation of Section 626.611(8), Florida Statutes; committed fraudulent or dishonest practices in the conduct of business under his license, in violation of Section 626.611(9), Florida Statutes; misappropriated, converted, or unlawfully withheld money of an insured received in the business authorized by his license, in violation of Section 626.611(10); willfully failed to comply with any order or rule of Petitioner or willfully violated any provision of the Insurance Code, in violation of Section 626.611(13), Florida Statutes; violated any provision of the Insurance Code in the course of dealing under his license, in violation of Section 626.621(2), Florida Statutes; violated any order or rule of Petitioner, in violation of Section 626.621(3),

Florida Statutes; engaged in unfair methods of competition or in unfair or deceptive acts or practices, or shown himself to be a source of injury or loss to the public, in violation of Section 626.621(6), Florida Statutes; knowingly aided, assisted, procured, advised, or abetted any person in the violation of any provision of the Insurance Code or any order or rule of Petitioner, in violation of Section 626.621(12), Florida Statutes; represented to an applicant that a specific ancillary coverage or product is included in the policy without an additional charge when such charge is imposed, in violation of Section 626.9541(1)(z)2, Florida Statutes; or charged an applicant for a specific ancillary coverage or product without the informed consent of the applicant, in violation of Section 626.9541(1)(z)3, Florida Statutes.

Count V of the Administrative Complaint alleges that America Auto Security Insurance, Inc., has no designated primary agent. The Administrative Complaint alleges that Respondent thus transacted business in Florida without complying with the Insurance Code, in violation of Section 624.11(1), Florida Statutes; operated an insurance agency without designating a primary agent for each location and filing the appropriate form with Petitioner, in violation of Section 626.592(1), Florida Statutes; violated any provision of the Insurance Code in the course of dealing under his license, in violation of Section

626.621(2), Florida Statutes; or violated any order or rule of Petitioner, in violation of Section 626.621(3), Florida Statutes.

At the hearing, Petitioner called three witnesses and offered into evidence seven exhibits: Petitioner Exhibits 2, 34, 43, 59, and 61-63. Respondent called no witnesses and offered into evidence six exhibits: Respondent Exhibits 1 and 2-7. All exhibits were admitted except Respondent Exhibits 1 and 3-4, which were proffered. Petitioner Exhibit 63 was admitted, but only for the purpose of determining a penalty. Respondent Exhibit 5 was admitted, but not for the truth of its contents.

The court reporter filed the transcript on September 17, 2004. The parties filed proposed recommended orders on October 14, 2004.

FINDINGS OF FACT

1. At all material times, Respondent has been licensed as a general lines insurance agent, holding license number A129688. At all material times, Respondent has been the sole owner and director of America Security Insurance Agency, Inc., formerly known as America Auto Security Insurance Agency, Inc. (America Security).

2. On April 1, 2000, Dionne Jacques purchased a motor vehicle from Sawgrass Ford in Fort Lauderdale. She did not own a

vehicle at the time and testified that she purchased a model that was selected for her by someone at the dealership. In closing on the purchase, Ms. Jacques dealt extensively with a dealer employee named Herbert McKenzie. Ms. Jacques financed the motor vehicle purchase with Ford Credit.

3. In the course of completing the required paperwork at the dealership, Mr. McKenzie referred Ms. Jacques to American Security for motor vehicle insurance. Mr. McKenzie mentioned that he dealt with someone named "AJ" at the insurance agency. According to Ms. Jacques, Mr. McKenzie informed Ms. Jacques that one year's insurance would cost \$468 or \$468.99. Mr. McKenzie did not testify, but Respondent testified that he spoke with Ms. Jacques on the telephone and explained the relevant features of the policies that were available to her. Although it is unclear who quoted the premium to Ms. Jacques, Petitioner has failed to prove by clear and convincing evidence that Mr. McKenzie did so.

4. Ms. Jacques agreed to purchase the insurance and produced a credit card for the amount due. The testimony of Ms. Jacques suggests that she allowed Mr. McKenzie to charge her credit card for the insurance premium. However, the more definitive testimony of Respondent, which is credited, is that he took her credit card information over the telephone and arranged for the card debit. In return, according to Ms. Jacques, Mr. McKenzie gave her a document that she believed would document her coverage until she

received an insurance policy in the mail in about 30 days. It is impossible to determine on this record that Mr. McKenzie attempted to bind coverage on behalf of the insurer.

5. At no time prior to the purchase of the insurance did Respondent, Mr. McKenzie, or anyone else disclose to Ms. Jacques that she was purchasing other ancillary products besides insurance. Likewise, no one informed her that she was financing part of the annual insurance premium.

6. For unclear reasons, Respondent did not obtain insurance coverage for Ms. Jacques until May 2000. At that time, he took the \$468 that she had charged and, without her knowledge, applied only \$143 of this sum toward the policy premium. Without Ms. Jacques' knowledge, Respondent, or someone at his direction, signed Ms. Jacques' name to a premium finance agreement, evidencing an unpaid premium balance of \$504.

7. At the same time, also without Ms. Jacques' knowledge, Respondent used \$300 of the initial \$468 that Ms. Jacques paid to purchase ancillary coverage that she had not agreed to purchase. This ancillary coverage included towing, supplemental medical coverage, replacement rental car, and emergency cash. These coverages supplemented a \$647 personal injury protection policy containing no personal liability or uninsured motorist coverage.

8. At no time has American Security designated a primary agent.

9. By Immediate Final Order entered March 12, 1991, the Florida Department of Insurance, now known as Petitioner, ordered Respondent to cease and desist from the unlicensed sale of insurance. However, Respondent has made substantial restitution to Ms. Jacques, who suffered no significant financial injury as a result of Respondent's misdealings.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the subject matter. §§ 120.569 and 120.57(1), Fla. Stat. (2004).

11. Section 626.611(9), Florida Statutes, provides:

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:

(9) Fraudulent or dishonest practices in the conduct of business under the license or appointment.

12. Section 626.9541(1)(z)3, Florida Statutes, provides that it is an unfair method of competition and unfair or deceptive act or practice for a licensee to engage in the act or practice of sliding, which is defined, in part, as:

Charging an applicant for a specific ancillary coverage or product, in addition to the cost of the insurance coverage applied for, without the informed consent of the applicant.

13. Section 626.592(1), Florida Statutes, provides:

Each person operating an insurance agency and each location of a multiple location agency shall designate a primary agent for each insurance agency location and shall file the name of the person so designated, and the address of the insurance agency location where he or she is primary agent, with the department, on a form approved by the department. The designation of the primary agent may be changed at the option of the agency, and any change shall be effective upon notification to the department. Notice of change must be sent to the department within 30 days after such change.

14. Section 626.621(2) and (6), Florida Statutes, provides:

The department may, in its discretion, deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, adjuster, customer representative, service representative, or managing general agent, and it may 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 under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

(2) Violation of any provision of this code or of any other law applicable to the business of insurance in the course of dealing under the license or appointment.

(6) In the conduct of business under the license or appointment, engaging in unfair methods of competition or in unfair or deceptive acts or practices, as prohibited under part IX of this chapter, or having otherwise shown himself or herself to be a source of injury or loss to the public or detrimental to the public interest.

15. 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).

16. As to Count III, Petitioner has proved that Respondent has violated Section 626.611(9), Florida Statutes, by the commission of fraud or dishonest practices in connection with the execution of the premium finance agreement in the name of Ms. Jacques without her knowledge. Petitioner has also proved that Respondent has violated Section 626.9541(1)(z)3, Florida Statutes, and, thus, Section 626.621(6), Florida Statutes, by charging Ms. Jacques for ancillary products without her informed consent.

17. As to Count V, Petitioner has proved that Respondent has violated Section 626.592(1), Florida Statutes, and, thus, Section 626.621(2), Florida Statutes, by failing to designate a primary agent for his insurance agency.

18. Florida Administrative Code Rule 69B-231.080(9) provides a nine-month suspension for a violation of Section 626.611(9), Florida Statutes. Florida Administrative Code Rule 69B-231.100(26) provides a six-month suspension for a violation of Section 626.9541(1)(z)3, Florida Statutes. Florida Administrative Code Rule 69B-231.040(1)(a) limits Petitioner to the single highest penalty for multiple violations pleaded in a single count. For Count III, then, the penalty guideline is a nine-month suspension.

19. Florida Administrative Code Rules 69B-231.110(12) and 69B-231.090(2) provide for a three-month suspension for a violation of Section 626.592(1) and 626.621(2), Florida Statutes. For Count V, then, the penalty guideline is a three-month suspension.

20. Under the penalty guidelines, the total penalty is thus a one-year suspension. Florida Administrative Code Rule 69B-231.160 identifies aggravating and mitigating factors. Aggravating factors include the willfulness of the violations and the existence of a prior violation of the Insurance Code. Mitigating factors include the restitution and absence of any substantial injury. On balance, then, the penalty guideline is appropriate.

RECOMMENDATION

It is

RECOMMENDED that the Department of Financial Services enter a final order suspending Respondent's license for one year.

DONE AND ENTERED this 18th day of November, 2004, 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 18th day of November, 2004.

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.