

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ANTHONY A. SAGNELLI,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 04-3711
	)	
DEPARTMENT OF FINANCIAL	)	
SERVICES,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

On January 13, 2005, an administrative hearing in this case was held in Clearwater, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Anthony A. Sagnelli, pro se  
5549 Greyston Street  
Palm Harbor, Florida 34685

For Respondent: Michael T. Ruff, Esquire  
Department of Financial Services  
200 East Gaines Street  
Tallahassee, Florida 32399-0333

STATEMENT OF THE ISSUE

The issue in the case is whether Petitioner's application for licensure should be approved.

PRELIMINARY STATEMENT

By Notice of Denial dated August 26, 2004, the Department of Financial Services (Respondent) notified Anthony A. Sagnelli

(Petitioner) that his application for licensure as an insurance agent was denied. Petitioner filed a request for review with a departmental hearing officer. Respondent reviewed the request and determined material facts were disputed. Respondent forwarded the case to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

At the hearing, Petitioner testified on his own behalf. Respondent presented no witnesses and had Exhibits numbered 1 through 9 admitted into evidence.

The one-volume Transcript of the hearing was filed on January 31, 2005. Respondent filed a Proposed Recommended Order on February 10, 2005.

#### FINDINGS OF FACT

1. On July 12, 2004, Petitioner filed an application for licensure as a Resident Life including Variable Annuity and Health Insurance Agent with Respondent.

2. Included among the questions on the application was the following:

Have you ever been convicted, found guilty, or pled guilty or nolo contendere (no contest) to a felony or crime punishable by imprisonment of one (1) year or more under the laws of any municipality, county, state, territory or country, whether or not adjudication was withheld or a judgment of conviction was entered?

3. Petitioner answered "no" in response to the question.

4. The application requires the applicant to consent to the following statement:

Under penalties of perjury, I declare that I have read the foregoing application for license and that the facts stated in it are true. I understand that misrepresentation of any fact required to be disclosed through this application is a violation of the Florida Insurance and Administrative Codes and may result in denial of my application and/or the revocation of my insurance license(s).

5. By affixing his electronic signature to the application, Petitioner affirmed that the information set forth therein was true.

6. The evidence establishes that on April 7, 1978, Petitioner was sentenced to the Nassau County Correctional Center for a term of one year after entering a guilty plea to a felony count of Attempted Grand Larceny (Grand Jury Indictment No. 46323, June 24, 1977, Nassau County, New York.)

7. Petitioner entered the Correctional Center to begin serving his sentence on December 15, 1978, and was released on February 28, 1979.

8. Petitioner did not disclose the 1978 conviction on the application for licensure as an insurance agent.

9. After completing a criminal history check, Respondent issued two deficiency letters, dated July 26, 2004, and

August 5, 2004, seeking additional information related to Petitioner's background.

10. In response to the deficiency letters, Petitioner submitted additional information and a letter. In the letter and in his testimony at the hearing, Petitioner stated that he misinterpreted the question, and believed that because he was incarcerated for less than one year, the 1978 conviction was responsive to the question. He stated that he did not intend to mislead or deceive Respondent.

11. Respondent issued a Notice of Denial on August 25, 2004. The grounds for the denial was Petitioner's failure to disclose the 1978 conviction.

#### CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2004).<sup>1</sup>

13. Petitioner must establish that he meets the requirements for licensure by a preponderance of the evidence. Dept. of Banking and Finance, Div. of Securities and Investor Protection v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Florida Department of Transportation v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977).

14. Section 626.611, Florida Statutes, provides in relevant part as follows:

Grounds for compulsory refusal, suspension, or revocation of agent's, title agency's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.--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:

\* \* \*

(2) Material misstatement, misrepresentation, or fraud in obtaining the license or appointment or in attempting to obtain the license or appointment.  
(emphasis supplied)

15. Section 626.207, Florida Statutes, requires Respondent to adopt rules establishing waiting periods for applicants to become eligible for licensure following license application denials issued pursuant to Section 626.611, Florida Statutes, as well as other specified sections not applicable to this case. Respondent has adopted Florida Administrative Code Rule 69B-211.042(4), which in relevant part provides as follows:

Effect of Failure to Fully Disclose Law  
Enforcement Record on Application.

(a) The Department finds that all matters that are part of an applicant's law enforcement record are material elements of the application, and finds that the omission of any part of the law enforcement record required to be disclosed on the application is a material misrepresentation or material misstatement in and of itself. The applicant shall have violated Section 626.611(2) or 626.621(1), Florida Statutes, if the applicant fails to provide the Department with the documentation required by this rule.

(b)1. If an applicant fails to fully and properly disclose the existence of law enforcement records, as required by the application, the application will be denied and a waiting period will be imposed before the applicant may reapply for any license.

\* \* \*

3. The waiting period shall begin on the later of:

- a. The date that the Department issues a letter or notice of denial of the application, or
- b. The date that a previously imposed waiting period expires.

4. Waiting periods shall be calculated as follows:

- a. Class A or B crime omitted, where the trigger date was more than 10 years before time of application, add 1 year. If the trigger date was 10 years prior, or less than 10 years prior, to the time of application, add 2 years.

\* \* \*

(c) An applicant whose application is denied under this subsection shall resubmit another application and applicable fee as set forth in Section 624.501, Florida

Statutes, on the application form respective to the type and class of license sought.

(d) After the waiting period has elapsed, the Department shall consider the application if it is resubmitted in good form with applicable fees, and licensure shall be granted if the licensee then meets all the requirements and criteria for licensure as set out in the then applicable rules and statutes.

(e) Formal Record to be Made. The Department finds that submission of an application that is inaccurate as to law enforcement history is a matter of such weight that a formal record of the application shall be made and preserved by Department order for reference and consideration should the applicant subsequently become licensed and violate any portion of the insurance code. To this end, applicants are required to execute a settlement acknowledging the inaccuracy as a prerequisite to becoming licensed after all waiting periods have elapsed and the applicant is otherwise eligible for licensure. (emphasis supplied)

16. Petitioner's 1978 criminal felony conviction appears to fall within the parameters of a Class A crime. See Fla. Admin. Code R. 64B-211.042(21). As such, a one-year waiting period from the date upon which Respondent issued the Notice of Denial is required. The Notice of Denial was issued on August 26, 2004; therefore, Petitioner may not reapply for licensure prior to August 26, 2005.

17. In Petitioner's response to Respondent's deficiency letters, Petitioner asserted that his answer to the question

requiring criminal history disclosure was based on a misunderstanding of the question. Subsection 626.611(2), Florida Statutes, which requires denial of the application, does not require that the "material misstatement" be intentional. Further, as set forth herein, Florida Administrative Code Rule 69B-211.042(4)(a) establishes that "all matters that are part of an applicant's law enforcement record are material elements of the application, and . . . the omission of any part of the law enforcement record required to be disclosed on the application is a material misrepresentation. . . ."

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department of Financial Services enter a final order denying the application for licensure filed by Anthony A. Sagnelli and imposing a waiting period to expire on August 26, 2005.



DONE AND ENTERED this 28th day of February, 2005, in  
Tallahassee, Leon County, Florida.

*William F. Quattlebaum*

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WILLIAM F. QUATTLEBAUM  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 28th day of February, 2005.

ENDNOTE

1/ All citations are to Florida Statutes (2004) unless  
otherwise indicated.

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 should be filed with the agency that will issue the Final Order in this case.