

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

KRISTA ROSE NAVARRO, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 05-0755  
 )  
 DEPARTMENT OF FINANCIAL )  
 SERVICES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a hearing was held in the above-styled case on May 3, 2005, by Stephen F. Dean, assigned Administrative Law Judge of the Division of Administrative Hearings, in Panama City, Florida.

APPEARANCES

For Petitioner: Krista Rose Navarro, pro se  
111 Placido Place  
Panama City Beach, Florida 32413

For Respondent: Dana M. Wiehle, Esquire  
Department of Financial Services  
200 East Gaines Street  
Tallahassee, Florida 32399-0333

STATEMENT OF THE ISSUE

Whether the Respondent properly denied the Petitioner's application for licensure as a Resident All Lines Insurance Adjuster for a material misstatement on her application?

PRELIMINARY STATEMENT

The Respondent denied the Petitioner's application for licensure as a Resident Independent All Lines Insurance Adjuster (05-20) by letter dated December 30, 2004. The grounds for denial was that the Petitioner had made a material misstatement, misrepresentation, or committed fraud in attempting to obtain the license, which demonstrated a lack of fitness or trustworthiness to engage in the business of insurance. The Petitioner timely requested a formal hearing on the issue, and the Respondent referred the case to the Division of Administrative Hearings. The case was noticed for hearing, and the hearing was held as noticed.

At the hearing, the Respondent introduced the application filed by the Petitioner, together with its files pertaining to the application, to include the Petitioner's responses, and certified records of the United States District Court, Central District of California as Department's Exhibits 1 through 6. The Petitioner testified in her own behalf and introduced two exhibits. A Transcript of the proceedings was filed on May 12, 2005. Both the parties filed post-hearing pleadings that were read and considered.

FINDINGS OF FACT

1. The Petitioner, Krista Rose Navarro, filed an application with the Respondent for licensure as a Resident

Independent All Lines Insurance Adjuster (05-20) by letter dated December 30, 2004. This application was filed on line. As part of that application the Petitioner answered, "no," to the question:

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 law of any municipality, county, state, territory or country, whether or not adjudication was withheld or a judgment of conviction was entered?

2. The Respondent conducted a criminal records file check that revealed that the Petitioner had entered a plea to a count of mail fraud in the Federal District Court for the Central District of California in 1986. The records of this proceeding under the seal of the records custodian of the National Archives and Records Administration were introduced as Department's Composite Exhibit 2.

3. Based upon this information, the Respondent determined that (1) the period an applicant would have to wait to be licensed for the offense involved was 15 years, and that this had run; and (2) the Petitioner's failure to disclose the offense resulted in extending the licensure eligibility date until December 30, 2005. Based upon this latter determination, the Respondent denied the Petitioner's application for licensure.

4. The Petitioner testified that the portion of the question that stated, "pled guilty or nolo contendere (no contest) to a felony or crime punishable by imprisonment of one (1) year or more under the law" was confusing to her. She took the question to require reporting an offense for which one was imprisoned for a year or more, and that she had not intentionally failed to reveal the offense.

5. In support of this contention, the Petitioner pointed out that she was currently a licensed real estate broker and held this license for ten years, and had revealed the subject offense and plea on the application for that license. She also introduced a letter from her child's school, the Petitioner's Exhibit 2, which indicated that the Petitioner had shared the information about her plea with the principal of the school as part of the vetting of parental chaperones. The Petitioner passed that vetting process.

6. Although the underlying facts of the offense to which the Petitioner entered the plea are not relevant to the matters under consideration, they show the Petitioner engaged in a telephone marketing ploy in which businesses and offices were called and copier products were offered for sale at current prices before an anticipated price increase. Although not stated, an impression was given that the salesperson was a representative of the supplier usually used by the office being

called, and the "price hike" was not factual, but a sales gimmick. The "handling charges" and similar fees in these transactions were very high, although the products were delivered to the purchasers. Such practices are specifically prohibited today, but were not specifically proscribed at the time.

7. The Petitioner was cooperative with authorities when arrested, and is now remorseful about her conduct at the time considering this is an embarrassing epiphany in her life; however, she has fully disclosed the facts as indicated above when she perceived it was necessary.

8. The Petitioner has her own real estate brokerage; has never been the subject of disciplinary action by those licensing authorities; and is a long-time resident of her community. She is married, has two children, and takes part volunteering at her children's school, as indicated above.

#### CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this hearing pursuant to Section 120.569 and Section 120.57(1), Florida Statutes.

10. The Petitioner, as the applicant, bears the ultimate burden of persuasion in this case. See Florida Department of

Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

11. Section 626.611, Florida Statutes, provides generally that the Department shall deny the application of any applicant who lacks the qualifications for licensure to include making a material misstatement, misrepresentation, or fraudulent statement in attempting to obtain a license and demonstrating a lack of fitness or trustworthiness to engage in the insurance business.

12. The Respondent determined that the Petitioner's conduct in this instance did not warrant consideration of the original offense as disqualifying because of the passage of time. See Department's Exhibit 4. The denial is based solely on the failure to disclose the offense. The narrow issue is whether the Petitioner intended to mislead the Respondent in an attempt to obtain licensure. See Munch v. Department of Professional Regulation, 592 So. 2d 1136 (Fla. 1st DCA 1992). This is a question of fact to be determined by the trier of fact. See Walker v. Department of Business and Professional Regulation, 705 So. 2d 652, 655 (Fla. 5th DCA 1998).

13. Having heard the testimony of the Petitioner and her candor in discussing the activities leading to her being charged with fraud and entering a plea to the offense, considering her having disclosed the offense in her application for a real

estate license, and considering her making this matter known to the principal of her daughter's school in relationship to be approved as a chaperone, it is concluded that the Petitioner did not intend to mislead the Respondent.

14. Although it is not specifically relevant to the issue in this case, the Petitioner's holding another similar license which requires great honesty in its dealings, her not having been the subject of discipline in that profession, and her stable personal life indicate an individual who has learned from a youthful transgression and amended her life to build a solid business. Nearly half of the time the Petitioner would have to wait to reapply has passed, and more time will pass before a final order is entered. Considering the absence of her intent to mislead and her good character, it is recommended that the Respondent issue the license for which the Petitioner applied.

#### RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law set forth herein, it is

#### RECOMMENDED:

That the Department of Financial Services issue the Petitioner as a Resident Independent All Lines Insurance Adjuster.

DONE AND ENTERED this 2nd day of June, 2005, in  
Tallahassee, Leon County, Florida.

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STEPHEN F. DEAN  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 2nd day of June, 2005.

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.