

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ALIA SOSSOUS, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 05-1240  
 )  
 DEPARTMENT OF FINANCIAL )  
 SERVICES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

On June 7, 2005, a final administrative hearing in this case was held in Tampa, Florida, before Fred L. Buckine, Administrative Law Judge, Division of Administrative hearings.

APPEARANCES

For Petitioner: Alia Baptiste Sossous, pro se  
10310 Birdwatch Drive  
Tampa, Florida 33647

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

STATEMENT OF THE ISSUE

The issue to be determined is whether Petitioner has demonstrated eligibility for licensure as a resident life, including variable annuity, insurance agent.

PRELIMINARY STATEMENT

On or about October 4, 2004, Petitioner, Alia Sossous, filed an application with Respondent, Department of Financial Services (Department), seeking licensure as a resident life, including variable, annuity insurance agent. By letter dated December 16, 2004, the Department advised Petitioner that her application was denied because of her failure to divulge her criminal history in her application and because of her failure to meet the waiting period applicable to the crime in question. Petitioner timely requested a hearing regarding that denial, but failed to provide all the information called for by the model rules. The Department sent Petitioner a letter requesting clarification, and Petitioner filed a more detailed request to the Department. This cause was thereafter transferred to the Division of Administrative Hearings to conduct an evidentiary proceeding.

At the June 7, 2005, hearing, Petitioner testified on her own behalf and offered no exhibits into evidence. The Department made inquiry of Petitioner. The Department's Exhibits 1 through 6 were admitted into evidence.

The Transcript of the hearing was filed on June 6, 2005. Petitioner did not file a proposed recommended order. The Proposed Recommended Order filed by Respondent has been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Based upon the observation and the demeanor of the witnesses while testifying, documentary material received in evidence, stipulation of the parties, and evidentiary rulings during the hearings, and the entire record compiled herein, the following relevant, material, and substantial facts are determined:

1. The Department is the state agency responsible for the licensure of insurance agents in the State of Florida, pursuant to Chapter 626, Florida Statutes (2004).

2. On October 4, 2004, Petitioner filed an online application with the Department seeking licensure as a resident life, including variable annuity, insurance agent.

3. The online application form completed by Petitioner for the licensure at issue included the following 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 laws of any municipality, county, state, territory or country, whether or not adjudication was withheld or a judgment of conviction was entered?

Petitioner answered this question in the negative.

4. On November 9, 2004, the Department sent a letter to Petitioner, requesting she provide, among other things,

certified copies of court documents relating to her 1999 arrest in Hillsborough County, Florida, for child abuse.

5. Petitioner found the above question to be confusing and in an attempt to be completely forthcoming, she sent the Department copies of two documents: (1) an August 9, 2004, letter to Petitioner from the Department of Corrections and (2) Petitioner's two-page printout regarding the Probation/Parole record. The Department received the referenced documents on November 23, 2004.

6. Petitioner's criminal history established a November 18, 1999, arrest on two felony counts of aggravated child abuse. Petitioner had used an electric cord to spank her daughter as punishment for stealing and had left marks on the child as a result. The two-count information was filed in the Thirteenth Judicial Circuit, Hillsborough County Circuit Court, Case No. 99-20373, on January 27, 2000.

7. On December 13, 2000, Petitioner entered a plea of guilty to one felony count of child abuse, as set forth in Count II of the information, and the second count pending against Petitioner was nolle prossed. The disposition of the case was that adjudication of guilt be withheld on the one felony count of child abuse and that Petitioner be placed on four years probation and required, inter alia, to complete parenting and anger management classes, which she did.

8. Circumstances that resulted in Petitioner's plea involved her method of disciplining her daughter. Petitioner was born and grew up in Haiti and her method of punishment, spanking her daughter with electric cord, is culturally accepted. Spanking with electric cord leaves bruises and marks on the child spanked.

9. Petitioner's testimony indicates that she learned through her anger management classes that the Haitian method of punishment is not considered appropriate, and other nonphysical methods would bring about desired results.

10. Petitioner now has four children. She is employed by Lakeshore Villas, a nursing home where she is responsible for caring for elderly persons, as a full-time Certified Nursing Assistant (CNA). To acquire her CNA license from the Department of Health (DOH), Petitioner testified that she reported her criminal history to the DOH, and no disciplinary action was taken by the agency because of her plea.

11. Even though the answer to the criminal history question on her application for licensure was not correct, circumstances evident from evidence of record reveals that Petitioner, in fact, disclosed her criminal history to the Department prior to the Department's specific inquiry about that history. She testified that her "no" answer on the application was because she spent only two days in jail. Subsequently

realizing the possibility of a misunderstanding, Petitioner, before a request by the Department, mailed documents to the Department that disclosed her criminal history.

12. Viewed in the totality of circumstances, Petitioner's voluntary disclosure of her criminal history negates any reasonable inference or conclusion that Petitioner made an intentional "[m]aterial misstatement, misrepresentation, or fraud in . . . [her] attempt to obtain the licensure or appointment," Subsection 626.611(2), Florida Statutes (2004).

13. Likewise, the simple fact that Petitioner (through misunderstanding) incorrectly answered the application question does not show that Petitioner's conduct demonstrated a "lack of fitness or trustworthiness to engage in the business of insurance."

14. Notwithstanding the foregone findings, there is no evidence that Petitioner was under the age of 21 years when the crime was committed.

15. There is no written documentation from the prosecuting attorney evidencing the belief that Petitioner posed no significant threat to public welfare if licensed.

#### CONCLUSIONS OF LAW

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

17. Petitioner, as the party seeking affirmative relief, has the burden of proof in this proceeding. Petitioner must show by a preponderance of the evidence entitlement to the relief sought in the request for fair hearing. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977). Petitioner must show she meets the relevant statutory criteria in order to satisfy this burden.

18. The Department's Notice of Denial alleged violation of the Florida Insurance Code by failure to disclose current criminal history in the application made to the Department. Section 626.11, Florida Statutes (2004), 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:

(1) Lack of one or more of the qualifications for the license or appointment as specified in this code.

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

\* \* \*

(7) Demonstrated lack of fitness or trustworthiness to engage in the business of insurance.

\* \* \*

(14) Having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

Section 626.621, Florida Statutes, in pertinent part, states:

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:

\* \* \*

(8) Having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.



19. Rules promulgated provide guidelines and waiting periods for applicants with criminal histories and for determining fitness and trustworthiness for licensure. These guidelines and waiting periods are implemented per directions contained in Florida Administrative Code Rule 69B-211.042 that, in pertinent part, provides that:

(1) General Policy Regarding Conduct Prior to Licensure. The Department is concerned with the law enforcement record of applicants for the purpose of ascertaining from those records whether the person would represent a significant threat to the public welfare if licensed under Chapter 626, Florida Statutes. . . .

\* \* \*

(3)(a) The Department interprets Sections 626.611(14) and 626.621(8), Florida Statutes, which subsection relate to criminal records, as applying to license application proceedings. The Department interprets those statutes as not limiting consideration of criminal records to those crimes of a business-related nature or committed in a business context. More specifically, it is the Department's interpretation that these statutes include crimes committed in a non-business setting, and that such crimes are not necessarily regarded as less serious in the license application context than are crimes related to business or committed in a business context.

20. Pursuant to Florida Administrative Code Rule 69B-211.042(21), the felony to which Petitioner pled guilty is classified as a "Class A" by the Department. See Fla. Admin Code R. 69B-211.042(21)(r). Under the Department's rules, a

Class A crime carries a waiting period of 15 years from the trigger date. See Fla. Admin. Code R. 69B-211.042(8)(a). Class A crimes are additionally classified by the Department in its rules as crimes of moral turpitude, therefore invoking the mandatory provisions of Subsection 626.611(14), Florida Statutes (2004). See Fla. Admin. Code R. 69B-211.042(21) ("The Department finds that each felony crime listed in this subsection is a crime of moral turpitude.")

21. According to Florida Administrative Code Rule 69B-211.041(11), the trigger date in this case is the date on which an applicant was found guilty, or pled guilty, or pled nolo contendere to a crime. Petitioner pled guilty on December 13, 2000; therefore, the initial 15-year waiting period is applied from December 13, 2000.

22. Review of the application in question revealed that Petitioner is not entitled to mitigation of the 15-year waiting period. See Fla. Admin. Code R. 69B-211.042(10). Petitioner's waiting period for the crime of child abuse runs until December 13, 2015.

#### RECOMMENDATION

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

RECOMMENDED that the Department of Financial Services enter a final order finding that Petitioner did not attempt to obtain

the license at issue through material misstatement, misrepresentation or fraud, but that Petitioner has not met the 15-year mandatory waiting period applicable to her criminal history and is, therefore, ineligible for licensure pursuant to Subsection 626.611(14), Florida Statutes (2004), and denying Petitioner's request for relief.

DONE AND ENTERED this 9th day of August, 2005, in Tallahassee, Leon County, Florida.



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FRED L. BUCKINE  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 9th day of August, 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.