

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JERROD KEITH ZELANKA,)
)
 Petitioner,)
)
 vs.) Case No.: 05-1910
)
 DEPARTMENT OF FINANCIAL SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this case was conducted by Florence Snyder Rivas, the duly-designated Administrative Law Judge of the Division of Administrative Hearings, via video teleconference at sites in Tallahassee and Fort Lauderdale, Florida on September 23, 2005, and October 19, 2005.

APPEARANCES

For Petitioner: James Curran, Esquire
633 Southeast Third Avenue, Suite 201
Fort Lauderdale, Florida 33301

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

STATEMENT OF THE ISSUE

Whether Petitioner's request for reinstatement of his suspended insurance license should be granted.

PRELIMINARY STATEMENT

By Notice of Denial dated April 19, 2005, the Department of Financial Services (Department), advised the Petitioner, Jerrod Keith Zelanka (Petitioner), that his application for reinstatement of his general lines (2-20) license was denied. The denial was based upon allegations of misconduct in connection with an insurance transaction by the Petitioner while he was a licensed agent. These allegations were not the subject of the Petitioner's previous administrative action. The allegations centered around a complaint made by Mark Feehan (Feehan), the owner and operator of JTS Woodworking (JTS), a cabinetry business and long-term insurance client of Petitioner. The complaint against Petitioner concerned Feehan's unsuccessful effort to secure fire insurance for JTS in May of 2004. The complaint essentially was that the Petitioner collected funds and an application for insurance from Feehan, but did not forward the funds to the insurance company, resulting in Feehan's not having coverage when he needed to make a claim following a fire. Petitioner timely asserted his right to an administrative hearing.

The identity of witnesses, exhibits, and attendant rulings are contained in the two-volume transcript of the hearing, which volumes were filed on October 10, 2005, and November 8, 2005,

respectively. The parties timely filed proposed recommended orders which have been carefully considered.

References to statutes are to the Florida Statutes (2004) unless otherwise noted.

FINDINGS OF FACT

Based on the oral and documentary evidence adduced at the final hearing and the entire record in this proceeding, the following findings of fact are made:

1. The Department is the agency of the State of Florida vested with the statutory authority to regulate the business of insurance, including the licensing of insurance agents, and to administer the disciplinary provisions of Chapter 626, Florida Statutes.

2. Petitioner is, and at all material times was, licensed in Florida as an insurance agent and subject to the Department's regulatory jurisdiction. Petitioner's license was suspended on or about July 16, 2004.

3. Petitioner's license suspension arises from a September 11, 2003, Final Order in Department case number 65103-03-AG (Final Order) issued against the Petitioner. The Final Order determined that the Petitioner was guilty of violating Sections 626.651(1), 626.611(7), 626.611(9), and 626.611(10), Florida Statutes, and suspended his license and eligibility for licensure for a period of nine months.

4. Petitioner exercised his right to judicial review of the Final Order. In due course, the Final Order was affirmed, per curiam, by the Florida Fourth District Court of Appeal. The suspension of Petitioner's license pursuant to the Final Order became effective with the issuance of an Order Terminating a Stay of Final Order entered on July 27, 2004 (the Order Terminating Stay). The Order Terminating Stay provided that Petitioner's license and eligibility for licensure would be placed on suspension for a period of nine months, commencing July 16, 2004. The Order Terminating Stay of Final Order also stated that:

Pursuant to Section 626.641(4), Florida Statutes, during the period of suspension the Respondent shall not engage in or attempt or profess to engage in any transaction or business for which a license or appointment is required under the Insurance Code or directly or indirectly, own, control, or be employed in any manner by any insurance agent or agency or adjuster or adjusting firm. Pursuant to Section 626.641(1), Florida Statutes, Respondent's licensure shall not be reinstated except upon request for such reinstatement, and the Respondent shall not engage in the transaction of insurance until his license is reinstated. The Department shall not grant such reinstatement if it finds that the circumstance or circumstances for which the license(s) was suspended still exist or are likely to recur.

5. Petitioner properly requested reinstatement of his license effective April 16, 2005. The Request for Reinstatement

of Suspended License/New ID License Request form requires acknowledgment by the individual seeking reinstatement that:

the circumstances which led to the suspension of my license(s) no longer exist and are not likely to recur . . . I understand that my request for reinstatement in no way guarantees that my license(s) will be reinstated.

6. At all times material to this case, Petitioner was employed by American Professional Insurance, also known as Ampro (Ampro). More specifically, at all times relevant to the allegations made by the Department in its Notice of Denial, Petitioner was an employee, director, and shareholder of Ampro.

7. Feehan, as previously noted, is the owner and operator of JTS, a cabinetry business. Feehan had been an insurance client of Ampro from 1999-2004 and had experienced no problems in the relationship. The business relationship between Feehan and Petitioner ended following a fire at JTS on July 29, 2004, when Feehan learned that there was no insurance coverage for the fire. Feehan filed a complaint with the Department, which complaint was investigated and thereafter formed the primary basis for the Notice of Denial.

8. On or about May 4, 2004, Feehan executed a form provided by Petitioner for the purpose of renewing coverage for JTS for general liability as well as for the building that JTS occupied at 75 Northwest 18th Avenue (JTS building). Feehan

paid for this insurance by check in the amount of \$3,850.00. The check was made out to Ampro and was deposited into the payroll account of Ampro. At all times material to this case, Petitioner has exclusive signature authority for this account. Feehan knew the check he had issued had been negotiated and believed he had insurance for JTS through Ampro.

9. Feehan never received a copy of any insurance policy for JTS, nor was Feehan provided any type of identification of the policy number. Feehan was instead provided by Petitioner with certificates of liability insurance which identified the Nautilus Insurance Company (Nautilus) as the insurer. Petitioner partially completed the certificates, omitting any specific policy number. Petitioner signed the incomplete certificates and provided them to Feehan. Feehan required the certificates to show its contractors that JTS had general liability insurance.

10. On July 29, 2004, a fire occurred at JTS' building. Feehan attempted to make a claim. By this time, Petitioner's suspension had taken effect. Feehan made several unavailing efforts to contact Petitioner. Feehan eventually accepted the services of a freelance adjuster who was on the scene at the fire (the freelance adjuster). The freelance adjuster informed Feehan that JTS did not have any insurance coverage in place. Nevertheless, on his own initiative, Feehan then tried to

contact the Continental Insurance Company (Continental) directly and file a claim. Feehan decided to contact Continental because Feehan had seen Continental's name on several of the documents provided to JTS from Ampro. Continental also informed Feehan that JTS had no insurance. As of October 19, 2005, Feehan had yet to receive a full or partial refund of the \$3,850.00 Feehan had paid to Ampro for insurance coverage for JTS.

11. Steve Finver (Finver) is the President of Continental Agency of Florida (CAF), a business which acts as an insurance wholesaler and assists retail agents in placing insurance coverage. Finver oversees the entire operations of CAF, which include Continental. Finver is an authorized representative of Continental and has access to the records kept in the ordinary course of business. Nautilus is among the insurance carriers that Finver works with.

12. Finver had enjoyed a business relationship with the Petitioner and Ampro which dated back a generation. The relationship soured in the fall of 2003 over bad checks for policies of insureds that Ampro wrote to Continental. In response, Finver imposed upon Petitioner a requirement that Ampro must henceforth pay by cashier's check or by finance draft. The relationship between Continental and Petitioner and Ampro ended when Finver learned that Petitioner had been arrested for fraud sometime in May of 2004, although Continental

would continue to honor any quotes already rendered to Ampro clients.

13. Continental quoted an insurance policy for JTS for Ampro in May of 2004. The quote was \$3,226.76. A request to bind was made by Ampro, but Continental never received payment for the quoted JTS policy, so a policy was never issued.

CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction of the subject matter and the parties to this proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2005).

15. To prevail in this proceeding, Petitioner bears the ultimate burden to establish by a preponderance of the evidence that he is entitled to be reinstated to his license. State Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Company, 670 So. 2d 932, 933 (Fla. 1996). Petitioner has failed to meet this burden. To the extent the Department is obliged to prove the material allegations set forth in the Notice of Denial, it has done so by clear and convincing evidence.

16. Section 626.611, Florida Statutes, provides in pertinent part:

626.611 Grounds for compulsory refusal, suspension, or revocation of agent's, title agency's, solicitor's, adjuster's, customer representative's, service representative's, managing general agent's, or claims investigator'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, solicitor, adjuster, customer representative, service representative, managing general agent, or claims investigator, 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:

* * *

(5) Willful misrepresentation of any insurance policy or annuity contract or willful deception with regard to any such policy or contract, done either in person or by any form of dissemination of information or advertising.

* * *

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

(8) Demonstrated lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license or appointment.

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

(10) Misappropriation, conversion, or unlawful withholding of moneys belonging to insurers or insureds or beneficiaries or to others and received in conduct of business under the license or appointment.

17. The grounds described in paragraphs (5) (7), (8), (9), and (10) of Section 626.611, Florida Statutes, quoted immediately above, are all established by Petitioner's conduct described in the Findings of Fact. Such conduct constitutes a "willful deception" with regard to a policy or contract within the meaning of paragraph (5). Such conduct demonstrates a "lack of fitness or trustworthiness to engage in the business of insurance" within the meaning of paragraph (7). Such conduct demonstrates a "lack of reasonably adequate knowledge and technical competence" within the meaning of paragraph (8). Such conduct constitutes "fraudulent or dishonest practices in the conduct of business under the license" within the meaning of paragraph (9). Finally, such conduct constitutes "misappropriation, conversion, or unlawful withholding of moneys belonging to insurers or insureds" received in the conduct of business under the license within the meaning of paragraph (10). Under these circumstances, Section 626.611, Florida Statutes, requires that Petitioner's request for reinstatement of his license be denied.

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 denying Petitioner's request for reinstatement of his suspended insurance license.

DONE AND ENTERED this 15th day of December, 2005, in Tallahassee, Leon County, Florida.

Florence Snyder Rivas

FLORENCE SNYDER RIVAS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of December 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.