

STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION

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DIVISION OF
ADMINISTRATIVE
HEARINGS

MARCUS DOUGLAS HESTER

Petitioner,

v.

STATE OF FLORIDA, OFFICE OF
FINANCIAL REGULATION

Respondent.

Administrative Proceeding No.:
0854-F-3/05

DOAH Case No.: 05-2107

SDC
Closed

FINAL ORDER

The Office of Financial Regulation ("Office"), being authorized and directed to administer and enforce Chapter 494, Florida Statutes, and having reviewed the record and Recommended Order entered in this case, hereby enters the following Final Order.

STANDARD OF REVIEW

When reviewing a recommended order, an agency may adopt a recommended order as the final order of the agency. § 120.57(1)(l), Fla. Stat. (2002). However, with respect to a recommended order's conclusions of law or interpretations of administrative rules, in its final order, an agency,

may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact.

§ 120.57(1)(l), Fla. Stat. (2002). With respect to findings of fact,

[t]he agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

§ 120.57(1)(l), Fla. Stat. (2002). Competent substantial evidence “is defined as ‘such relevant evidence as a reasonable mind would accept as adequate to support a conclusion.’” Manassa v. Manassa, 738 So.2d 997 (Fla. 1st DCA 1999)(citing DeGroot v. Sheffield, 95 So.2d 912, 916 (Fla. 1957). The evidence “should be ‘sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.’” Id. “Neither may an agency's responsibility to determine if substantial evidence supports the administrative law judge's findings of fact be avoided by merely labeling, either by the administrative law judge or the agency, contrary findings as conclusions of law.” Gross v. Dept. of Health, 819 So.2d 997, 1001 (Fla. 5th DCA 2002).

Finally, an agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefore in the order, by citing to the record in justifying the action. § 120.57, Fla. Stat. (2002).

FINDINGS OF FACT

1. The Office is the agency charged with the administration and enforcement of Chapter 494, Florida Statutes.

2. The Administrative Law Judge in this case entered her Recommended Order on November 4, 2005.

3. The Recommended Order advised all parties of their right to submit written exceptions within fifteen (15) days of the date of entry of the order. Accordingly, because November 19, 2005 fell on a Saturday, the deadline for filing exceptions to the Recommended Order was Monday, November 21, 2005.

4. Neither party has filed exceptions to the Recommended Order as of the date of this Final Order.

5. The Office adopts, and incorporates herein by reference, the Findings of Fact in the Recommended Order entered by the Administrative Law Judge on November 4, 2005.

CONCLUSIONS OF LAW

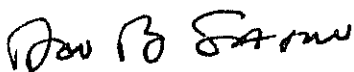
6. As the agency charged with the administration and enforcement of Chapter 494, Florida Statutes, upon entry of the Administrative Law Judge's Recommended Order, the Office has jurisdiction over this matter.

7. The Office adopts, and incorporates herein by reference, the Conclusions of Law in the Recommended Order entered by the Administrative Law Judge on November 4, 2005.

FINAL ORDER

Upon review and consideration of the Recommended Order and the complete record of this proceeding, it is ORDERED that Petitioner's application for licensure as a mortgage broker is hereby DENIED.

DONE and ORDERED this 13th day of December, 2005, in Tallahassee, Leon County, Florida.



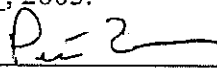
DON B. SAXON, Commissioner,
Office of Financial Regulation

NOTICE OF RIGHTS TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE (1) COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK FOR THE OFFICE OF FINANCIAL REGULATION, 200 E. GAINES STREET, FLETCHER 526, TALLAHASSEE, FLORIDA 32399, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Final Order was sent to Diane Cleavinger, Administrative Law Judge, Division of Administrative Hearings, DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, and Scott Hester, Attorney for Petitioner, 13843 Longs Landing Road East, Jacksonville, FL 32225, by U.S. Mail, on this 14th day of December, 2005.



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