

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHRISTOPHER C. KARPELLS,)
)
 Petitioner,)
)
vs.)
)
)
DEPARTMENT OF FINANCIAL)
SERVICES,)
)
 Respondent.)

)

Case No. 05-4393

RECOMMENDED ORDER

Upon due notice, a disputed-fact hearing was held in this cause in Tallahassee, Florida, on June 19, 2006, before Ella Jane P. Davis, a duly-assigned Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: No Appearance

For Respondent: Roxanne Rehm, Esquire
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399-0333

STATEMENT OF THE ISSUE

Whether Petitioner should be granted a license to engage in business as an insurance adjuster in the State of Florida.

PRELIMINARY STATEMENT

The usual preliminary matters are found in the Findings of Fact infra.

FINDINGS OF FACT

1. Respondent Agency is charged by law with licensure of non-resident "all (insurance) lines" public adjusters.

2. On or about July 21, 2005, Respondent denied Petitioner's application for such licensure as follows:

You have never been licensed in this state to engage in business as an insurance adjuster. However, on or about October 1, 2004, you identified yourself as a licensed public adjuster to William H. Baker, of 329 Live Oak Road, Vero Beach, Florida, and solicited Mr. Baker to hire you to adjust a claim for hurricane damage with his insurer, Safeco Insurance Company. On or about November 4, 2005, Safeco received a Notice of Representation from you indicating that you were Mr. Baker's adjuster on his claim. On or about November 11, 2004, you met with a Safeco representative and attempted to settle Mr. Baker's claim.

Legal Basis for Denial

The denial is based upon the following Florida Statutes:

Section 626.112(3), Florida Statutes states:
(3) No person shall act as an adjuster as to any class of business for which he or she is not then licensed or appointed.

3. Petitioner timely requested a disputed-fact hearing, and the cause was referred to the Division of Administrative Hearings on or about December 2, 2005.

4. The case was scheduled for final hearing on February 21, 2006, in Tallahassee, Florida, by a Notice mailed

December 27, 2006. An Order of Pre-hearing Instructions was entered the same date.

5. Petitioner requested a continuance by a letter filed February 15, 2006.

6. On February 21, 2006, an Order was entered granting a continuance until April 20, 2006.

7. On April 17, 2006, Petitioner filed a letter requesting another continuance.

8. On April 24, 2006, an Order was entered granting a continuance and requiring that the parties submit mutually agreeable dates for hearing by May 10, 2006.

9. On May 10, 2006, a Consented Response was filed.

10. On May 15, 2006, a Notice of Hearing for June 19, 2006, was entered and mailed.

11. On June 19, 2006, when the final hearing was convened, Petitioner was not in attendance.

12. Respondent's counsel and Respondent's agency representative were in attendance. Respondent's counsel represented that she had been unable to get any telephonic response from Petitioner for several weeks.

13. The undersigned inquired if any Pre-hearing Stipulation, as required by the Order of Pre-hearing Instructions had been entered, and Respondent's counsel answered in the negative. The undersigned inquired if, due to the nature

of the license denial, any agreement to shift the duty to go forward had been reached, and Respondent's counsel answered in the negative. The Division's file reflects no stipulations.

14. The undersigned waited a half-hour for Petitioner to appear. He did not appear by the end of that half-hour.

15. Inquiry within the Division revealed that Petitioner had neither come to the building housing the hearing room, nor had he telephoned the secretary to the undersigned with any excuse for his absence.

CONCLUSION OF LAW

16. Petitioner, as a first-time applicant, bears the duty to go forward and the burden of proof by a preponderance of the evidence to establish his entitlement to licensure. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). He has failed to go forward and has failed to bear his burden of ultimate proof, and his license application should be denied.

RECOMMENDATION

Upon the foregoing Findings of Fact and Conclusion of Law, it is recommended that the Department of Financial Services enter a final order denying Petitioner's license application.

DONE AND ENTERED this 29th day of June, 2006, in
Tallahassee, Leon County, Florida.



ELLA JANE P. DAVIS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of June, 2006.

COPIES FURNISHED:

Honorable Tom Gallagher
Chief Financial Officer
Department of Financial Services
The Capitol, Plaza Level 11
Tallahassee, Florida 32399-0300

Carlos G. Muñiz, General Counsel
Department of Financial Services
The Capitol, Plaza Level 11
Tallahassee, Florida 32399-0300

Roxanne Rehm, Esquire
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399-0333

Christopher C. Karpells
857 Brownsitch Road
Unit 154
Slidell, Louisiana 70458

Christopher C. Karpells
585 Old Jail Lane
Barnstable, Maryland 02630

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.