



FLORIDA
DEPARTMENT OF
FINANCIAL SERVICES



FILED

2006 AUG 16 A 11:00

DIVISION OF
ADMINISTRATIVE
HEARINGS

FILED

AUG 10 2006

TOM GALLAGHER
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

IN THE MATTER OF:

Docketed by *njuw*

STEPHEN PETER ALICINO

CASE NO: 85461-06-AG

06-1418

FINAL ORDER

THIS CAUSE came on for consideration and final agency action. On February 16, 2006, a Denial Letter was issued by the Florida Department of Financial Services, (hereinafter referred to as "the Department"), denying Petitioner's application for licensure as a life, variable annuity and health insurance agent because he failed to disclose outstanding civil judgments on his license application and failed to meet the fitness and trustworthiness standards required to engage in the business of insurance. The Petitioner timely filed a request for a proceeding pursuant to Section 120.57(1), Florida Statutes. Pursuant to notice, the matter was heard before Bram D.E. Canter, Administrative Law Judge, Division of Administrative Hearings, on June 6, 2006.

After consideration of the evidence, argument and testimony presented at hearings, the Administrative Law Judge issued his Recommended Order on July 11, 2006. (Attached as Exhibit A). The Administrative Law Judge recommended that the Department enter a final order denying Stephen Peter Alicino's application for licensure as a resident personal lines insurance agent. On July 19, 2006, the Petitioner timely filed exceptions to the Recommended Order. The Petitioner

excepted to Conclusions of Law and the Recommendation. The Respondent did not file a Response to Petitioner's exceptions. The Exceptions will be addressed below.

RULINGS ON PETITIONER'S EXCEPTIONS

1. The Petitioner excepts to Conclusion of Law # 27 of the Recommended Order. Petitioner argues that the Department did not present any record of certified mailing, signature, contact or communication whatsoever in five of the six final judgments that Petitioner disputed at the hearing and that were part of the Department's grounds for denying the Petitioner's application for licensure as a resident personal lines insurance agent. The Petitioner also argues that he cannot be faulted if he never received the commissions and never had any knowledge of the judgments.

As an applicant, Petitioner bears the general burden of proving entitlement to licensure as a resident personal lines agent. Florida Dept. of Trans. v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). Petitioner must show by a preponderance of the evidence that she meets all of the relevant statutory criteria to satisfy this burden. Id. As such, it was the Petitioner's burden to show by a preponderance of the evidence that he was not responsible for the unearned commissions and was not aware of the judgments entered against him. As evidence to prove he was not responsible for the unearned commissions and was not aware of the judgments entered against him, the Petitioner provided only his own testimony that he had never received notice of the judgments and was not the person responsible for the commissions alleged in the judgments. The Department provided documentary evidence in the form of copies of all six final judgments. These final judgments are all against the Petitioner and all list the Petitioner as an individual to whom a copy was sent. Moreover, Petitioner acknowledged that he was responsible for at least one of the judgments, the General Insurance judgment, civil case number 93-5389. The Administrative Law Judge found that "the record does not indicate that Petitioner provided the Department sufficient

information for it to accept his claim that he was not responsible for the unearned commissions.” This exception deals primarily with the weight of one piece of evidence over another. The weighing of the evidence and judging the credibility of witnesses are solely the prerogative of the Administrative Law Judge as the finder of fact. See Strickland v. Florida A&M University, 799 So.2d 276 (Fla. 1st DCA 2001). Further, an administrative agency may not reject an Administrative Law Judge's findings unless it is first determined that the findings were not based on competent substantial evidence. See Bush v. Brogan, 725 So.2d 1237 (Fla. 2d DCA 1999). From a complete review of the record in this case, this Conclusion of Law was based on facts supported by competent substantial evidence in the record, including but not limited to the Respondent's exhibits reflecting the six Final Judgments entered against Petitioner and the notation by the court that a copy was mailed to Petitioner.

This Conclusion of Law also ratifies the Department's actions in requiring Petitioner to satisfy all the judgments entered against him before they “will consider favorably Petitioner's application for licensure,” not just the single judgment Petitioner accepted responsibility for at the hearing. Petitioner has presented no credible argument as to why the Administrative Law Judge's finding that the Department did not act unreasonably in requiring Petitioner to satisfy all the judgments against him as a condition to be met prior to licensure was not an acceptable finding. In contrast, the Department presented copies of all six final judgments entered by the circuit court of Leon County that all list Petitioner as the responsible party for payment of the amounts listed within the judgments. Petitioner's willingness to accept responsibility for one judgment does not obviate the fact that he was found to be responsible by the circuit court for all six judgments, not just one. Accordingly, Petitioner's exception is rejected.

2. Petitioner also excepts to the Recommendation portion of the Recommended Order and requests that the Petitioner be granted licensure upon the payment of only one of the six judgments entered against him, the General Insurance judgment (civil case no. 93-5389).

Based on the above discussions and upon a complete review of the record in this case, there are no arguments made by the Petitioner that would justify ignoring the other five judgments and dismissing the Administrative Law Judge's recommendation in this case. Accordingly, Petitioner's exception to the Recommendation is rejected.

Therefore, upon careful consideration of the record, the submissions of the parties and being otherwise fully advised in the premises, it is ORDERED:

1. The Findings of Fact of the Administrative Law Judge are adopted in full as the Department's Findings of Fact.

2. The Conclusions of Law of the Administrative Law Judge are adopted in full as the Department's Conclusions of Law.

3. The Administrative Law Judge's recommendation that the Petitioner's application for licensure as a resident personal lines insurance agent be denied is approved and accepted as being the appropriate disposition of this case.

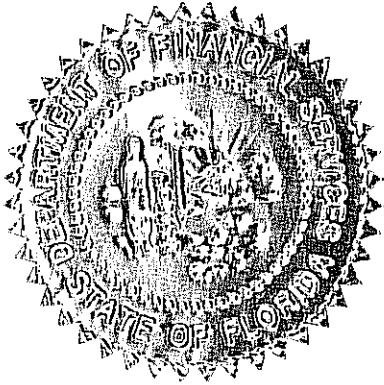
ACCORDINGLY, it is ORDERED that the application for licensure of the Petitioner, STEPHEN PETER ALICINO, as a resident personal lines insurance agent, is hereby DENIED.

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order is entitled to seek review of this Order pursuant to Section 120.68, Florida Statutes, and Rule 9.110, Florida Rules of Appellate Procedure. Review proceedings must be instituted by filing a Notice of Appeal with the General Counsel, acting as the agency clerk, at 612 Larson Building, Tallahassee, Florida 32399-0333, and a

copy of the same and the filing fee with the appropriate District Court of Appeal within thirty (30) days of the rendition of this Order.

DONE and ORDERED this 10 day of August, 2006.



A handwritten signature in black ink that reads "Karen Chandler". The signature is written in a cursive, flowing style.

KAREN CHANDLER
Deputy Chief Financial Officer

COPIES FURNISHED TO:

Bram D.E. Canter
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550

Stephen Peter Alicino
434 Polk Avenue
Cape Canaveral, Florida 32920

Dickson E. Kesler, Esquire
Department of Financial Services
Division of Legal Services
400 West Robinson Street
Suite S-225
Orlando, Florida 32801-1799