

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

STEPHEN PETER ALICINO,)
)
 Petitioner,)
)
 vs.) Case No. 06-1418
)
 DEPARTMENT OF FINANCIAL)
 SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice a formal hearing was held in this case on June 6, 2006, before Bram D. E. Canter, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Stephen Peter Alicino, pro se
434 Polk Avenue
Cape Canaveral, Florida 32920

For Respondent: Dickson E. Kessler, Esquire
Department of Financial Services
Suite S-823, Hurston Building
400 West Robinson Street
Orlando, Florida 32801

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner is entitled to be licensed as a "resident personal lines" insurance agent.

PRELIMINARY STATEMENT

On February 16, 2006, Respondent Department of Financial Services (Department) issued a Notice of Denial, in which it informed Petitioner that his application for licensure as a resident personal lines insurance agent was denied. Petitioner timely sought an administrative review of that decision, and the matter was forwarded to the Division of Administrative Hearings (DOAH) to conduct a formal evidentiary hearing.

At the hearing, Petitioner testified on his own behalf. Petitioner's Exhibit 1 was admitted into evidence. The Department presented no witnesses. The Department's Exhibits I through VI were admitted into evidence.

The Transcript of the hearing was filed with DOAH, and the parties timely filed post-hearing submittals, which have been carefully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner was issued a Florida license as a "general lines" insurance agent in 1980. He started a business named Atlas Auto Insurance, Inc., in that same year. He sold Atlas Auto Insurance in 1990. He started Budget Insurance Center, Inc., in 1995 and sold that business in 1997.

2. On August 2, 1994, a Final Judgment was issued in the Circuit Court for Leon County, Florida, in favor of the

Department of Insurance, as Receiver of insolvent American Risk Assurance Company and National United Insurance Company, against Petitioner and Atlas Auto Insurance for failure to return unearned commissions of \$1,138.96, plus interest and attorney's fees.

3. On April 7, 1995, a Final Judgment was issued in the Circuit Court for Leon County, Florida, in favor of the Department of Insurance, as Receiver of insolvent Great Oaks Insurance Company, against Petitioner and Atlas Auto Insurance for failure to return unearned commissions of \$259.95, plus interest and attorney's fees.

4. On August 12, 1996, a Final Judgment was issued in the Circuit Court for Leon County, Florida, in favor of the Department of Insurance, as Receiver of insolvent General Insurance Company, against Petitioner and Budget Insurance Center for failure to return unearned commissions of \$1,718.14, plus interest and attorney's fees.

5. Based on Petitioner's failure to satisfy the Final Judgment in the General Insurance Company case, the Department of Insurance initiated an administrative proceeding to revoke Petitioner's license. On March 3, 1999, following a formal hearing at DOAH which Petitioner did not attend (DOAH Case No. 98-3776), the Department of Insurance revoked Petitioner's license.

6. On August 29, 1996, two final judgments were issued in the Circuit Court for Leon County, Florida, in favor of the Department of Insurance, as Receiver of insolvent International Bankers Insurance Company, against Petitioner and Atlas Auto Insurance for failure to return unearned commissions of \$6,914.90 and \$1,579.31, plus interest and attorney's fees.

7. On June 7, 2000, a Final Judgment was issued in the Circuit Court for Leon County, Florida, in favor of the Department of Insurance, as Receiver of insolvent Armor Insurance Company, against Petitioner and Budget Insurance Center for failure to return unearned commissions of \$3,446.65, plus interest and attorney's fees.

8. Petitioner has never made a payment on any of the six judgments against him.

9. Petitioner insists that he received no notice of the civil actions cited above, or the final judgments that resulted. Petitioner learned about the 1996 Final Judgment regarding General Insurance Company when the administrative revocation case was initiated by the Department of Insurance, because that particular final judgment and Petitioner's failure to satisfy the judgment were the bases for the revocation action. According to Petitioner, he first learned about the other five cases in May 2005, when the Department informed him about them during the processing of his license application.

10. Petitioner also stated that, except for the General Insurance Company case, he was no longer associated with the insurance companies involved in these civil cases and was not personally responsible for any of the unearned commissions.

11. Each of the six final judgments of the Leon County Circuit Court indicated that a copy was sent to Petitioner. However, no address for Petitioner is stated. Each judgment is against an insurance company, as well as Petitioner, but the "cc" only lists the Department of Insurance attorney and Stephen Peter Alicino.¹ That suggests the final judgments, and perhaps all notices, were sent to one address for both the insurance company and Petitioner. It is possible that all correspondence regarding the civil cases was sent to the businesses where Petitioner no longer maintained an office or was otherwise associated. It is also possible that the new owners of the businesses never informed Petitioner about the cases.

12. Petitioner stated that when he was notified of other judgments resulting from the insolvency of insurance companies, he always paid those judgments. Petitioner has never had a civil action brought against him except in the context of insolvent insurer cases.

13. The only evidence in the record regarding whether Petitioner received actual notice of the civil cases and their final judgments is the testimony of Petitioner and the "cc" on

the final judgments. The more persuasive evidence, taking into account the demeanor of Petitioner during his testimony, is that he did not receive actual notice of the six civil cases and their final judgments.²

14. Petitioner filed an application for licensure as a resident personal lines insurance agent on or about May 24, 2004. In response to the question on the application about whether the applicant ever had a judgment against him in a civil action related to insurance, Petitioner answered "No."

15. In response to the question on the application about whether the applicant has ever had his license revoked, Petitioner answered "Yes" and provided the Department of Insurance case number.

16. The Department told Petitioner it would not process his application for licensure until the outstanding judgments were paid or a plan to satisfy the judgments was established. In three separate responses, Petitioner told the Department that he was not liable for the unearned commissions and should not have to pay them.

17. Petitioner stated that he has had illnesses, financial problems, and family issues that have prevented him from making any payments to date on the one judgment that he acknowledges responsibility for, the 1996 Final Judgment regarding General Insurance Company.

18. In his post-hearing submittal, Petitioner continues to urge that the judgments against him, except for the Final Judgment in the General Insurance Company case, be treated as erroneous and that he be granted a license upon his satisfaction of the General Insurance Company judgment.

CONCLUSIONS OF LAW

19. DOAH has jurisdiction over the parties to and the subject matter of these proceedings pursuant to Subsections 120.569(1) and 120.57(1), Florida Statutes (2005).³

20. The Department is the state agency charged with the responsibility of regulating the licensing of insurance agents pursuant to Chapter 626, Florida Statutes.

21. As the applicant for a license, Petitioner bears the burden of proof in this case to establish he is entitled to the license. Florida Department of Transportation v. J.W.C. Co. Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

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

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.

23. Chapter 631, Florida Statutes, deals with the procedures applicable when an insurance company is determined to be insolvent, including the appointment of a receiver to manage the insurer's assets and liabilities. Section 631.155, Florida Statutes, states that insurance agents have a duty to account to the receiver for all premiums and unearned commissions associated with the insolvent insurer and must pay sums determined to be owed by the court within 30 days of judgment. The section states further that, "failure to comply with this section shall be sufficient grounds for the license revocation."

24. The Department asserts that Petitioner's failure to disclose the six final judgments on his application is evidence of his lack of trustworthiness and fitness for licensure. Although Petitioner answered "No" to the question about the existence of any judgments against him in civil actions, he

informed the Department of the one judgment he was aware of at the time of his application in his answer to a subsequent question, by giving the case number for the final order in the revocation proceeding. That final order indicated the revocation was based on Petitioner's failure to satisfy the Final Judgment in the General Insurance Company case.

Petitioner's lack of precision in answering these application questions was not intended to mislead or deceive the Department and is not evidence that Petitioner lacks trustworthiness or fitness to be an insurance agent.

25. However, Petitioner failed to meet his burden of proof to establish he is entitled to the license he seeks, because he has not satisfied the judgments against him for unearned commissions. Even assuming the correctness of Petitioner's claim that he was never notified of the six civil actions and was not responsible for the unearned commissions identified in five of the judgments, he has yet to satisfy the General Insurance Company judgment which he admits responsibility for. This is a sufficient basis, pursuant to Section 631.155 and Subsections 626.611(1) and (7), Florida Statutes, for the Department to deny Petitioner's application for a license.

26. In determining whether to issue Petitioner a license, the Department may be able to consider Petitioner's claims that he had no notice of the six insolvent insurer cases and that he

had no responsibility for the unearned commissions in five of those cases because the commissions were paid long after he ceased to be associated with the companies involved. However, the undersigned has no authority in this licensing proceeding to "rehear" the five civil cases that Petitioner disputes.

27. Moreover, 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. Therefore, the Department did not act unreasonably in determining that all six judgments against Petitioner must be paid, or a plan to pay them must be established, before it will favorably consider Petitioner's application for licensure.

RECOMMENDATION

Based on 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 application for licensure.

DONE AND ENTERED this 11th day of July, 2006, in
Tallahassee, Leon County, Florida.



BRAM D. E. CANTER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of July, 2006.

ENDNOTES

- 1/ The same attorney appeared for the Department of Insurance in all six cases.
- 2/ This finding is not intended to suggest that the final judgments are invalid or unenforceable. It is relevant only to the issue of whether Petitioner's failure to satisfy the judgments is evidence of lack of trustworthiness or fitness to be an insurance agent.
- 3/ Unless otherwise indicated, all references to the Florida Statutes are to the 2005 codification.

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.