

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)	
PROFESSIONAL REGULATION,)	
DIVISION OF REAL ESTATE,)	
)	
Petitioner,)	
)	
vs.)	Case No. 06-1544PL
)	
THOMAS PATRICK TAYLOR,)	
)	
Respondent.)	
_____)	

CORRECTED RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case before Larry J. Sartin, an Administrative Law Judge of the Division of Administrative Hearings, on July 7, 2006, by video teleconferencing between Tallahassee and Miami, Florida.

APPEARANCES

For Petitioner: James Harwood
Assistant General Counsel
Department of Business and
Professional Regulation
Hurston Building, North Tower
400 West Robinson Street, Suite 801N
Orlando, Florida 32801

For Respondent: John M. Jorgensen, Esquire
Scott, Harris, Bryan, Barra
& Jorgensen, P.A.
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Palm Beach Gardens, Florida 33410

STATEMENT OF THE ISSUE

The issue in this case is whether the Respondent, Thomas Patrick Taylor, committed the violation alleged in an Administrative Complaint issued by the Petitioner, Department of Business and Professional Regulation, Division of Real Estate, on December 14, 2005, and, if so, the penalty that should be imposed.

PRELIMINARY STATEMENT

Petitioner issued a one-count Administrative Complaint on December 14, 2005, against Respondent, alleging that Respondent "is guilty of having been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime which involves moral turpitude or fraudulent or dishonest dealing in violation of Section 475.25(1)(f), Florida Statutes." Petitioner alleged, in part, the following factual basis for the charge:

On or about June 30, 2004, in the United States District Court, Southern District of Florida, Respondent pled guilty to Conspiracy to travel in Foreign Commerce to Engage in Illicit Sexual Conduct with a Minor. . . .

Respondent, through counsel, timely filed a request for a formal hearing to contest the allegations of fact of the Administrative Complaint. In particular, Respondent stated that "[t]he specific facts disputed are that the actions of

Respondent do not involve moral turpitude or fraudulent or dishonest dealing in violation of Section 475.25(1)(f), Florida Statutes."

Respondent's request for hearing was filed with the Division of Administrative Hearings for assignment of an administrative law judge. The request was designated case number 06-1544PL and was assigned to the undersigned. The final hearing of this matter was scheduled for July 7, 2006, by Notice of Hearing by Video Teleconference entered May 9, 2006.

Prior to the commencement of the final hearing, the parties filed separate pre-hearing stipulations. The parties agreed at the commencement of the final hearing, however, that the Pre-Hearing Stipulation filed by Respondent was agreeable to both parties. That Stipulation contains, among other things, two stipulated facts which have been accepted in this Recommended Order.

At the final hearing, Petitioner presented the testimony of Dawn Luchik, an investigator for Petitioner. Petitioner's Exhibits, numbered 1 and 2, were admitted. Respondent testified in his own behalf and presented the testimony of his wife, Christine Ann Taylor. Respondent's Exhibits numbered 3, 4, 6, 7, 9, 10, 12 through 14, 17, 20, and 21 were admitted.

The Transcript was filed with the Division of Administrative Hearings on July 18, 2006. By Notice of Filing

Transcript entered July 19, 2006, the parties were informed that their proposed recommended orders were to be filed on or before August 17, 2006. Both parties filed proposed recommended orders on August 17, 2006. Their proposals, along with a Memorandum of Law filed by Respondent on July 3, 2006, have been fully considered in entering this Recommended Order.

All references to Florida Statutes and the Florida Administrative Code in this Recommended Order are to the versions applicable to this matter unless otherwise indicated.

FINDINGS OF FACT

A. The Parties.

1. Petitioner, the Department of Business and Professional Regulation, Division of Real Estate (hereinafter referred to as the "Department"), is the state agency charged with the duty to prosecute administrative complaints pursuant to Section 20.125, and Chapters 120, 455, and 475, Florida Statutes.

2. At the times material to this proceeding, Thomas Patrick Taylor, is and was a licensed Florida real estate agent. Mr. Taylor's license number is 693523.

3. For his last issued license, Mr. Taylor was listed as a sales associate affiliated with Whiddon and Company, Inc., license number CQ 1003165, a brokerage corporation located at 777 South Federal Highway, Fort Lauderdale, Florida 33316.

4. Mr. Taylor has been actively licensed in Florida since January 8, 2003. No prior disciplinary action has been brought against Mr. Taylor.

5. Mr. Taylor is and has been licensed as a real estate broker in the State of South Carolina. He has been licensed by South Carolina for more than 25 years. Mr. Taylor operates his own real estate brokerage company in South Carolina. South Carolina has not taken any disciplinary action against Mr. Taylor.

6. Mr. Taylor is high-school educated and is not trained in any field other than real estate.

B. Mr. Taylor's Marital Status.

7. Mr. Taylor is married to Christine Ann Taylor. The Taylors have been married for 18 years.

8. Mr. Taylor has five offspring, three of which are minors and dependent upon him for their support.

9. During 2002, the Taylors were having marital difficulties and, consequently, were living separately. Mr. Taylor was living in Florida, while Mrs. Taylor remained with the children in South Carolina.

10. At some time during 2002, the Taylors decided that they "were way more lonely apart then [they] were frustrated together, so [they] decided that [they] would take a cruise and spend full time with each other for eight days, with no kids and

no business, and get to know each other again. Like a second honeymoon." Transcript, Page 41, Lines 23 through 25, and Page 42, Lines 1 through 2.

C. The Cruise and "Costa Rica Taboo Vacations."

11. The Taylors booked a cruise on the Carnival Cruise Lines MS Legend, departing from Fort Lauderdale, Florida in January 2004. Among other places, the eight-day cruise was scheduled to stop in Costa Rica.

12. Some time after arranging the cruise, either Mr. or Mrs. Taylor found an advertisement (Respondent's Exhibit 4) for "Costa Rica Taboo Vacations," (hereinafter referred to as "Taboo Vacations") which was advertised as "For the Discreet Male." The advertisement, which both Mr. and Mrs Taylor saw, went on to state:

YOUR DISCRETION AND SAFETY IS FIRST TO US

Your one-stop shop on-line travel agency[.]
All personal desires fulfilled[.]

At Costa Rica Taboo Vacations, your discretion and safety is [sic] our number one concern. Through our experience, we have been able to guarantee our many satisfied customers the comfort of secure quality accommodations while fulfilling their desires. We specialize in providing only clear, fun-loving, "taboo" companions of both sexes delivered to your hotel. You never have to leave your room. [Emphasis in original].

Enjoy Costa Rica's beautiful scenery staying at one of several hotels of your choice[.]

All reservations are handled for you. All fees quoted include price of roundtrip airfare, hotel accommodations, and fee for your personal taboo companion. For your safety, have your companion delivered directly to your hotel room by our personal contacts that speak both English and Spanish. Companions are supplied 24 hours a day.

You won't find a more willing companion anywhere ~ we guarantee it!! [Emphasis in original].

Fulfill your most personal desires[.]
Feel safe and secure[.]
Flights available from the United States and Canada[.]
Easy payment by credit card ~ Visa, Mastercard, American Express[.]

. . . .

13. With Mr. Taylor's agreement, Mrs. Taylor contacted Taboo Vacations by e-mail on January 6, 2004. In the e-mail, Mrs. Taylor wrote the following:

OUR CRUISE SHIP WILL BE IN COSTA RICA ON TUESDAY JAN. 20 AND WE WOULD LIKE A HOTEL ROOM FOR THAT DAY AND ONE OR TWO FEMALE COMPANIONS. WHO DO I NEED TO CALL TO SET IT UP AND FIND OUT ABOUT RATES? [Emphasis added].

14. The same day that Mrs. Taylor sent the foregoing inquiry, Taboo Vacations responded by e-mail, stating, in part, the following:

Thank you for contacting Coast Rica Taboo Vacations. I will be your confidential vacation planner. From your e-mail I have put together some information for you.

. . . .

Companion Service: Sightseeing companion
female 16 to 27 year old, light
olive complexion, \$225.00 for 24 hours.

Other type companion female 16 to 27 years
old.

Light olive complexion, \$325.00 for 24
hours.

The 24 hours for both type of companions
can be broken up over your stay. I.E. 4
hours one day, 8 hours the next day, etc.
and you can change your companions.

Because you want two girls at the same time
I can work that price out for you when we
talk.

. . . .

Go to my website and fill out the form and I
will call you.

The e-mail from Taboo Vacations purported to be from a man named
"Richard Baxter," the "owner" of Taboo Vacations. Mr. Baxter
was actually a Federal Bureau of Investigation (hereinafter
referred to as the "FBI") agent and Taboo Vacations was actually
an FBI "sting" operation.

15. As directed by Mr. Baxter, Mrs. Taylor completed the
form provided on Taboo Vacations' website. Although Mrs. Taylor
testified that she did not recall how the ages of the two female
companions she told Taboo Vacations the Taylors were interested
in were selected, the evidence proved either Mrs. Taylor or
Mr. Taylor expressed an interest in two females, 16 to 17 years

of age, as opposed to Taboo Vacations or Mr. Baxter selecting the ages.

16. On January 7, 2004, Mr. Baxter telephoned Mr. Taylor. A transcript of that conversation was admitted as Respondent's Exhibit 9. Following that conversation, Mr. Taylor sent a check for \$100.00 to Taboo Vacations in payment of half of the price for the services of two 16 to 17 year old females for two hours.

17. On January 9, 2004, Mr. Baxter sent an e-mail to Mrs. Taylor in which he made the following offer:

. . . . I'm wondering if you would like to surprise you [sic] husband Tom with a girl of his own while your [sic] in Costa Rica. Because I want you as repeat customers there would be not [sic] charge. Please call me at my toll free number . . . so I can talk to you about it.

18. On January 11, 2004, Mrs. Taylor declined Mr. Baxter's offer by e-mail stating "this is my fantasy. I will keep him busy getting us drinks and snacks."

19. On January 13, 2004, Mr. Baxter wrote an e-mail to Mrs. Taylor stating, in part, the following:

You must be a great wife to Tom and he as husband to help you make your sexual fantasy come true. Please call me at . . . so I can ask you some personal questions so the 16 and 17 year old girls know exactly what to bring with them. . . .

20. Mrs. Taylor responded to the January 13, 2004, e-mail the same day, stating that "it's not necessary for them to bring

anything other than themselves and if they are really pretty that will be enough."

D. Mr. Taylor's Arrest and Conviction.

21. On January 16, 2004, as Mr. and Mrs. Taylor attempted to board their cruise ship in Fort Lauderdale, they were both arrested. They were incarcerated for five days in a federal detention center.

22. On June 30, 2004, Mr. Taylor pled guilty in the United States District Court, Southern District of Florida, to Conspiracy to Travel in Foreign Commerce to Engage in Illicit Sexual Conduct with a Minor.

23. Mr. Taylor was sentenced to three years' probation and fined \$1,000.00. Mr. Taylor subsequently filed a Renewed Motion to Terminate Supervised Release, which was granted by an Order entered July 6, 2004. Mr. Taylor has completed his sentence.

E. Mr. Taylor's Knowledge of Mrs. Taylor's Intentions.

24. Mr. Taylor has asserted throughout these proceedings that he was not aware of what his wife intended to do with the two minor females he helped her arrange for in Costa Rica. His assertions are rejected. The testimony of Mr. and Mrs. Taylor at hearing suggesting that Mr. Taylor was not aware that Mrs. Taylor intended to have sex with two minor females is simply not credited because it is contrary to the weight of the credible evidence.

25. The following discussion occurred concerning the age of the girls which both Mr. and Mrs. Taylor were interested in shows that Mr. Taylor was fully aware that he was arranging for two females who were minors:

RB: I got ya . . . got ya. Okay, your e-mail said that you are looking for like a 16- or 17-year-old female?

TT: Yes, she's just afraid that someone who's been in this business for a long time might not be as healthy . . . so

Clearly, Mr. Taylor was aware or should have been aware that the minor females he and his wife were hiring as "companions" in Costa Rica would be considered in the United States to be minors. Why else would Mr. Taylor ask whether "it was legal" in Costa Rica? See Transcript, Page 45, Line 18.

26. Despite his protestations at hearing to the contrary, it is also found that Mr. Taylor was aware that Mrs. Taylor intended to do more with the minor females than to simply have a "tourist beach party." Transcript, Page 43, Line 10. This finding is based, in part, upon the statement made by Mr. Taylor to Mr. Baxter quoted above, and the following additional statements he made to Mr. Baxter:

RB: Okay, So for how many hours did you want the girls?

TT: We only need them for a couple of hours.

RB: Like 2 or 3 hours?

TT: Yeah.

RB: Okay. Two girls.

TT: They'll wear her out in 2 or 3 hours.
[raucous laughter].

. . . .

RB: Good. And your e-mail said that you
just want the bedroom stuff, right?

TT: Right. We don't want to see the town
or any of that kind of stuff.

. . . .

RB: Right. The reason I asked if you
wanted to partake is because some of
the girls that we have don't do any
type of anal type of activity.

TT: I'm not interested in that anyway.

. . . .

TT: Apparently it's legal in Costa
Rica.

RB: Yeah, right.

TT: So, prices are . . . it looks like
something that you can just do on your
own coming off the ship.

RB: Well, in essence, I offer this service
only because of a lot of clientele.
You can go over there and just walk the
streets or go into the bars and stuff
like that, and you don't know what you
are going to get. I offer this service
because you know I have a lot of
clientele. They want to remain
discrete and that's exactly what's it
for and you know, what you're getting.
When you get over there, you're not

going to the bars, you're not going to the hotels or walking the streets looking for these girls or guys in order to have sex with and stuff. You know what you're getting

. . . .

TT: When are you going to give me an idea of price?

RB: 2/3 hours . . . 2 girls . . . what I normally get for 24 hours per girl is \$325.00, but you're only going to want it for 2-3 hours.

TT: I want 2 hours . . . she just wants to have this fantasy and that's it. Her and 2 girls and it won't even last the two hours.

RB: Right . . . her and the 2 girls having sex together . . . wonderful thing . . . you're a good man. Were you going to take pictures?

TT: No.

RB: Okay. I just wanted to make sure that if you were, I wanted to let the girls know that we [sic] going . . .

TT: Wait. I'm sure she wants the healthiest, prettiest girls . . . no pictures . . . no anal . . . no off-the-wall stuff.

RB: Okay. Excellent. Not a problem.

TT: And being girl and girl, it would probably be a welcome change for them. [much laughter].

RB: \$200.00.

TT: Total?

RB: \$200 total.

TT: Okay, that's a deal. Am I going to pay someone down there, or am I to pay you up here?

RB: You can pay half here and send the other half to my employee, Jorge, down there, or you can pay it all right now . . . it's not a problem. Any way you want to dot it. Do you want to put it on your credit card?

TT: To your cat down there.

. . . .

RB: \$100 now, and you pay \$100 to my employee over there.

. . . .

F. The Limitation on Mr. Taylor's Involvement.

27. Although Mr. Taylor participated in making the arrangements for Mrs. Taylor's fantasy, he did not intend to have sex with the two minor females.

28. During the recorded telephone conversation between Mr. Baxter and Mr. Taylor, in addition to the comments quoted above, the following comments on this issue were made:

RB: Ah, then this is for your wife?

TT: Hm, hm.

RB: Okay. Are you going to partake in it?

TT: No.

RB: Ah, come on.

TT: I don't think so. I mean . . . because

I mean opportunities like that that I'm going to have are going to be few and far between. I've mental pictures of somebody other than those people.

RB: Right.

TT: Sounds kind of silly, but at the same time, it's one of those things, you know. Between us, my wife is the nasty one. I'm the virtuous one, Richard. [laughter] Then if I see something that I'm just dying for, I could say, "Well, just for this one time I might" and I'd still be the virtuous one. She would be my slave. I pay her bills and I have more character than she does.

29. Additionally, all of the e-mails between Mrs. Taylor and Taboo Vacations, including her response declining Mr. Baxter's offer of a female for Mr. Taylor, support the finding that Mr. Taylor did not intend to participate in any sexual activities with the two minor females the Taylors had hired.

G. Mr. Taylor's "Rehabilitation."

30. Mr. Taylor has asserted that he is now rehabilitated and that he has learned his lesson. Based upon his testimony at hearing, the lesson Mr. Taylor learned, however, is apparently only that you should not do anything that will cause you a great deal of trouble if you get caught. At no point in his testimony did he admit the true wrong he committed: assisting his wife's desire to have sex with two minors. Rather than acknowledging the wrong, Mr. Taylor testified unconvincingly that he did not

really know what his wife's intentions were, that, although he did not know what his wife was going to do, he had been led to believe it was "legal" in Costa Rica, and that he wasn't even sure that they would actually go through with "it."

31. Mr. Taylor has also relied upon comments made by the judge during the hearing to release him from serving the full length of his probation. Little weight can be giving to such comments.

CONCLUSIONS OF LAW

A. Jurisdiction.

32. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2006).

B. The Burden and Standard of Proof.

33. In the Administrative Complaint, the Department seeks to impose penalties against Mr. Taylor including suspension or revocation of his license and/or the imposition of an administrative fine. The Department, therefore, has the burden of proving the allegations of the Administrative Complaint by clear and convincing evidence. Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); and Nair v. Department

of Business & Professional Regulation, 654 So. 2d 205, 207 (Fla. 1st DCA 1995).

34. In Evans Packing Co. v. Department of Agriculture and Consumer Services, 550 So. 2d 112, 116, n. 5 (Fla. 1st DCA 1989), the court defined "clear and convincing evidence" as follows:

[C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the evidence must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact the firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established. Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

C. The Charge Against Mr. Taylor.

35. Section 475.25, Florida Statutes, provides that disciplinary action may be taken against the license of a real estate sales associate if it is found that the associate has committed certain enumerated offenses. In this matter, it has been alleged that Mr. Taylor committed the offense described in Section 475.25(1)(f), Florida Statutes, which provides, in pertinent part:

(f) Has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the activities of a licensed broker or sales

associate, or involves moral turpitude or fraudulent or dishonest dealing. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the state shall be admissible as prima facie evidence of such guilt. [Emphasis added].

36. In support of the alleged statutory violation, the Department has alleged that Mr. Taylor's guilty plea to Conspiracy to Travel in Foreign Commerce to Engage in Illicit Sexual Conduct with a Minor, which the Department proved clearly and convincingly, constitutes a plea to a crime which "involves moral turpitude."

37. Being penal in nature, Section 475.25, Florida Statutes, "must be construed strictly, in favor of the one against whom the penalty would be imposed." Munch v. Department of Professional Regulation, Div. of Real Estate, 592 So. 2d 1136, 1143 (Fla. 1st DCA 1992).

38. In his defense, Mr. Taylor has argued that it must be decided first whether the alleged offense was committed and, if so, whether the offense involved moral turpitude. Then Mr. Taylor argues it must be decided whether any rational connection exists between the moral turpitude and Mr. Taylor's fitness to engage in the real estate business and, if so, whether Mr. Taylor has been rehabilitated. The later two arguments are relevant, if at all, only to the type of punishment Mr. Taylor should be subjected to.

39. In arguing that it must first be decided whether the alleged offense was committed, Mr. Taylor is suggesting that it must be decided whether the crime for which Mr. Taylor pled guilty was actually committed. This suggestion is rejected. The offense defined in Section 475.25(1)(f), Florida Statutes, is the plea itself, not the underlying crime.

40. Even if Mr. Taylor were correct, the evidence in this case proved clearly and convincingly that Mr. Taylor did indeed commit the crime of Conspiracy to Travel in Foreign Commerce to Engage in Illicit Sexual Conduct with a Minor. Mr. Taylor and his wife planned to travel to Costa Rica where she planned to engage in sexual activities with two minor females, sexual activities which Mr. Taylor paid the down payment.

41. As to the second issue raised by Mr. Taylor, his argument that the crime for which he pled guilty does not constitute a crime involving moral turpitude is rejected. Assisting his wife in making plans to have sex with a minor is an act which "involves the idea of inherent baseness or depravity in the private social relations or duties owed by man to man or by man to society." See Tullidge v. Hollingsworth, 146 So. 660, 661 (Fla. 1933).

42. The Department has proved clearly and convincingly that Mr. Taylor violated Section 475.25(1)(f), Florida Statutes, as alleged in the Administrative Complaint.

D. The Appropriate Penalty.

43. A range of disciplinary guidelines for violations of Chapter 475, Florida Statutes, has been adopted in Florida Administrative Code Rule 61J2-24.001.

44. For a violation of Section 475.25(1)(f), Florida Statutes, the suggested penalty range is a seven-year suspension to revocation and an administrative fine of \$1,000. Fla. Admin. Code R. 61J2-24.001(1)(g).

45. The Department in its Proposed Recommended Order has suggested revocation of Mr. Taylor's license. This recommendation is based upon the Department's conclusion that no mitigating circumstances have been proved and that aggravating circumstances exist.

46. Florida Administrative Code Rule 61J2-24.001(4) provides for a consideration of aggravating or mitigating circumstances demonstrated by clear and convincing evidence by the petitioner or respondent in a proceeding before the Division of Administrative Hearings. If demonstrated, the disciplinary rule may deviate from the guidelines.

47. The aggravating or mitigating circumstances that may be considered include, but are not limited to, the following:

1. The degree of harm to the consumer or public.
2. The number of counts in the Administrative Complaint.

3. The disciplinary history of the licensee.

4. The status of the licensee at the time the offense was committed.

5. The degree of financial hardship incurred by a licensee as a result of the imposition of a fine or suspension of the license.

48. While the Department is correct in concluding that Mr. Taylor's lack of candor constitutes an aggravating circumstance, the Department's assertion that there are no mitigating circumstances ignores the Department's own rules and the evidence. The following mitigating circumstances also apply in this case:

a. There has been no harm to the consumer or the public as a result of Mr. Taylor's offense. Mr. Taylor's offense had absolutely no connection with the real estate profession;

b. Mr. Taylor has only been charged with one count in the Administrative Complaint;

c. Mr. Taylor has no prior discipline as a real estate associate in Florida or as a real estate broker in South Carolina;

d. Mr. Taylor's status at the time of the offense was that of an active Florida associate and an active South Carolina broker;

e. Mr. Taylor has already suffered financial harm as a result of his crime. To revoke his license would result in

further financial harm to him and his family, including his wife and three minor children.

49. Mr. Taylor's conduct, including the crime he committed, his lack of candor concerning his conduct, and his failure to recognize the nature of his crime, is unacceptable conduct. That conduct did not, however, impact his practice of the real estate business and, therefore, his practice of real estate in Florida does not constitute a threat to the public. Therefore, revocation of his license, and the resulting financial harm to his family is not justified.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the a final order be entered finding that Thomas Patrick Taylor violated Section 475.25(1)(f), Florida Statutes, suspending his license for one year, and placing his license on probation for a period of two years after his one-year suspension.

DONE AND ENTERED this 5th day of October, 2006, in
Tallahassee, Leon County, Florida.



LARRY J. SARTIN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of October, 2006.

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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.