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DIVISION OF ADMINISTRATIVE HEARINGS

ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

Docketed by: DS

Case No. 85763-06-AG

IN THE MATTER OF:

JOSEPH JOHN RIPA

DOAH CASE # 06-34219L

FINAL ORDER

This cause came on for consideration of and final agency action on a Recommended Order rendered by Administrative Law Judge Larry J. Sartin (ALJ) on May 16, 2007, pursuant to a formal hearing held on March 12-14, 2007. The Respondent Ripa filed no exceptions to the Recommended Order, while the Petitioner Department filed a six page exception. The Recommended Order, the transcript of proceedings, all exhibits entered into evidence at the hearing, the Department's exceptions, and applicable law have been considered during the promulgation of this Final Order. A copy of the Recommended Order is attached hereto as Exhibit "A".

RULINGS ON THE DEPARTMENT'S EXCEPTIONS

The Department excepts to a Conclusion of Law set forth in Paragraphs 65 and 66 of the Recommended Order on the ground that the ALJ incorrectly imposed a willfulness standard on Section 626.611(7), Fla. Stat., in the absence of any legislative intent to do so. The Department's exception is well taken.

Section 626.611(7), Fla. Stat., provides that the Department *must* suspend or revoke an insurance agent's license if it is found that the agent's actions demonstrate a "lack of fitness or trustworthiness to engage in the business of insurance." Unlike

Sections 626.611(4), (5), and (6), Fla. Stat., each of which include the terms “willfully”, or “willful”, or “intent”, and Section 626.611(9), which uses the word “fraudulent, which by definition includes the concept of intent, the plain language of Section 626.611(7), Fla. Stat., does not subject it to the requirement that the lack of fitness or trustworthiness must stem from an intentional misdeed. Certainly, one’s negligence in an insurance transaction can render one unfit or untrustworthy to engage in the business of insurance. Moreover, when the legislature uses a particular term in one section of a statute but not in another, the courts will not imply the missing term into the section from which it was omitted. Leisure Resorts, Inc. v. Frank J. Rooney, Inc., 654 So.2d 911, 914 (Fla. 1995); Beshore v. Department of Financial Services, 928 So.2d 411, 412 (Fla. 1st DCA 2006). The legislature’s use of different terms in different sections of the same statute is strong evidence that different meanings were intended. Maddox v. State, 923 So.2d 442,446 (Fla. 2006).

Therefore, Paragraph 65 of the Recommended Order is modified to delete the reference to Paragraph “64 b.”, wherein Section 626.611(7), Fla. Stat., is referenced, and Paragraph 66 of the Recommended Order is modified to delete the words “that he acted in such as way as to be considered untrustworthy” from the same. These modified and substituted Conclusions of Law are as or more reasonable than those they replace.

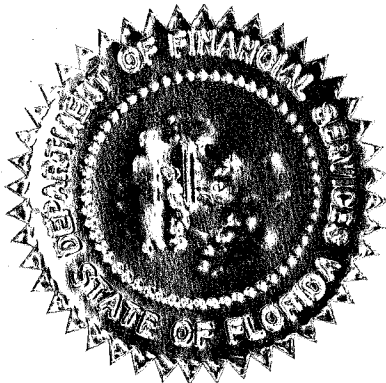
The Department’s exception to the typographical error in Paragraph 67 is accepted, and the erroneous statutory citation found therein (Section 626.621(8), Florida Statutes) is corrected to read “Section 626.611(8), Florida Statutes.” This modification is as or more reasonable than the citation it replaces.

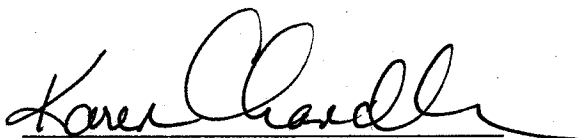
Accordingly, IT IS HEREBY ORDERED that the Findings of Fact in the Recommended Order are adopted as the Department’s Findings of Fact, and that the

Conclusions of Law in the Recommended Order, as modified herein, are adopted as the Department's Conclusions of Law.

IT IS FURTHER ORDERED that the Respondent Joseph John Ripa shall pay to this Department the sum of \$40,000 within thirty days from the date hereof, and that the Respondent's insurance licenses and eligibility for licensure are hereby REVOKED. Pursuant to Section 626.641, Florida Statutes, during the period of revocation and until reinstatement, which must be applied for in writing, Ripa shall not engage in or attempt or profess to engage in any transaction or business for which a license is required under the Florida Insurance Code, or directly or indirectly own, control, or be employed in any manner by any insurance agent, agency, or adjuster or adjusting firm.

DONE AND ORDERED this 15th day of June, 2007.




Karen Chandler
Deputy Chief Financial Officer

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, Fla. R. App. P. Review proceedings must be instituted by filing a petition or notice of appeal with the General Counsel, acting as the agency clerk, at 612 Larson Building, Tallahassee, Florida, and a copy of the same with the appropriate district court of appeal within thirty (30) days of rendition of this Order.

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