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JUL 9 2007

ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

IN THE MATTER OF:

JIBRI KHALEID KNIGHT

Docketed by: *SSB*

Case No. 87216-06-AG

2007 JUL -5 A 11:35
DIVISION OF ADMINISTRATIVE HEARINGS

FILED

FINAL ORDER

This cause came on for consideration of and final agency action on the Recommended Order rendered on May 7, 2007 by Administrative Law Judge Charles C. Adams (the ALJ), after hearing held pursuant to Section 120.57(1), Fla. Stat., on February 28, 2007. An exception was timely filed by the Respondent. The Proposed Recommended Orders, the Recommended Order, the transcript of proceedings, the exhibits admitted into evidence, the Respondent's exception, and applicable law have all been considered in the promulgation of this Final Order. A copy of the Recommended Order is attached hereto as Exhibit "A".

RULING ON THE RESPONDENT'S EXCEPTION

Although subdivided into thirteen paragraphs, the gravamen of the Respondent's exception is that the ALJ should have mitigated the recommended penalty because the Respondent's illegal activity (transacting insurance without a license) was not "willful", but was the result of improper training by her employer, that the victim identified in Count One of the Administrative Complaint received, via settlement of another administrative action against the Respondent's employer, a refund of monies at issue here, that said victim was of an age and capacity to understand the insurance

transaction, that the Respondent had no financial motive to violate the Insurance Code, that the recommended penalty is excessive for a first time offense, and that the Respondent's receipt of a general lines license subsequent to the time of the illegal transaction provided additional experience making it unlikely that the Respondent would violate the Insurance Code in the future.

The exception does not contend that the ALJ's findings of fact are not supported by competent, substantial evidence, and a review of the record shows that all those matters referenced in the exception were known to the ALJ and were considered in the promulgation of the Recommended Order. Therefore, the Respondent's exception is no more than an invitation to the Department to re-weigh the same evidence considered by the ALJ, and substitute its judgment for that of the ALJ on those same matters. This, the Department cannot do. Gross v. Department of Health, 819 So.2d 997 (Fla. 5th DCA 2002); White Const. Co., Inc. v. State Dept. of Transp. 535 So.2d 684 (Fla. 1st DCA 1988). It is the province of an ALJ to consider all the evidence, resolve all conflicts therein, judge the credibility of witnesses, draw permissible inferences from the evidence, and to reach ultimate findings of fact. Gross v. District School Bd. of St. Johns County, 601 So.2d 1232 (Fla. 5th DCA 1992), and the matter of intent is not decided by subjective mind reading, but by circumstantial evidence. Plantation Key Developers v. Colonial Mortg., Etc., 559 F.2d 164 (5th Cir.1979); Florida East Coast Ry. Co. v. Thompson, 111 So. 525 (Fla. 1927); Phifer v. Steenburg, 64 So. 265, reh. den. 64 So. 265 (Fla. 1914); Heineman v. State, 327 So.2d 898 (Fla. 3rd DCA 1976), cert. den. 336 So.2d 1182; Gavin v. State, 259 So.2d 544 (Fla. 3rd DCA 1972), cert. den. 265 So.2d 370; Edwards v. State, 213 So.2d 274 (Fla. 3rd DCA 1968), cert. den. 221 So.2d 746;

State v. Gantt, 217 S.E.2d 3, at 5 (N.C. App. 1975); State v. Evans, 548 P.2d 772, at 777 (Kan. 1976).

So long as an ALJ's findings of fact are supported by competent, substantial evidence, they cannot be disturbed by the affected agency. Tuerson v. Florida Governor's Council On Indian Affairs, Inc., 495 So.2d 790 (Fla. 1st DCA 1986) rev. den. 504 So.2d 767; Section 120.57(1)(l), Fla. Stat. Here, the record supports the ALJ's finding (Paragraph 32 of the Recommended Order) that the Respondent aided and abetted customer representative Turnbull in violating Section 626.621(12), Florida Statutes, when the Respondent willfully used her insurance license to execute the application in question without any involvement with the customer, thereby letting Ms. Turnbull engage in an insurance transaction for which she was not licensed. The Recommended Order also confirms that the ALJ consulted Rule 69B-231, Florida Administrative Code, when arriving at a recommended penalty. Said rule includes the consideration of aggravating and mitigating factors to be applied to standard penalties.


Accordingly, IT IS HEREBY ORDERED that the Findings of Fact and Conclusions of Law set forth in the Recommended Order are adopted as the Department's Findings of Fact and Conclusions of Law, and the Recommended Penalty is accepted as the appropriate penalty in this cause, and all are incorporated by reference hereinto.

IT IS THEREFORE FURTHER ORDERED that Respondent Knight's insurance license(s) and eligibility for licensure is suspended for a period of six months immediately following the date of this order. Pursuant to Section 626.651, Florida Statutes, the suspension of the Respondent's license(s) and eligibility for licensure is

applicable to all licenses and eligibility held by the Respondent under the Florida Insurance Code. Pursuant to Section 626.641(4), Florida Statutes, the Respondent shall not engage in or attempt or profess to engage in any transaction or business for which a license or appointment is required under the Insurance Code or directly or indirectly own, control, or be employed in any manner by any insurance agent or agency or adjuster or adjusting firm during the period of suspension. Pursuant to Section 626.641(1), Florida Statutes, the Respondent's licensure shall not be reinstated except upon written request for such reinstatement, and the Respondent shall not engage in the transaction of insurance until her licensure is reinstated. The Department shall not grant reinstatement if it finds that the circumstance or circumstances for which the Respondent's licenses were suspended still exist or are likely to recur.

DONE and ORDERED this 3rd day of July, 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 the 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 200 East Gaines Street, Tallahassee, FL 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.

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