



REPRESENTING  
**ALEX SINK**  
CHIEF FINANCIAL OFFICER  
STATE OF FLORIDA

**FILED**  
2008 FEB 21 A 11:06  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

FEB 18 2008

Decreted by *[Signature]*

CASE NO: 86820-06-AG

IN THE MATTER OF

TIMOTHY MICHAEL CROWLEY

### FINAL ORDER

THIS CAUSE came on before Alex Sink, as Chief Financial Officer, for consideration of and final agency action on a Recommended Order (attached as Exhibit A) entered by Administrative Law Judge Larry J. Sartin (hereinafter referred to as "ALJ"), after a formal hearing conducted pursuant to Section 120.57(1), Florida Statutes. Respondent timely filed exceptions (Attached as Exhibit B). Petitioner did not file any exceptions but did respond to Respondent's exceptions (Attached as Exhibit C). Each exception is addressed below.

### PRELIMINARY STATEMENT

At issue in the instant matter is whether Respondent sold a Nations Safe Drivers product providing accidental death benefits and membership in a motor club to various consumers without their informed consent. Based upon the evidence presented and testimony of witnesses, the ALJ recommended a twelve month suspension of Respondent's license and appointment as a life and health agent and a general lines, property and casualty agent. Based upon his exceptions, Respondent requests that the Department enter a final order either dismissing the Administrative Complaint or, alternatively, placing the Respondent on supervised probation as set forth more fully below.

## RULINGS ON PETITIONER'S EXCEPTIONS

Respondent first excepts to the ALJ's Findings of Fact Nos. 13 and 15 and Conclusion of Law No. 47 that Respondent sold the Nation Safe Driver product to Mr. Rosenthal without his informed consent contending that said Conclusion was not based on clear and convincing evidence. In support of his contention, Respondent asserts that Petitioner failed to present expert testimony regarding the grammar, syntax or meaning of language contained in a cover fax. Respondent further avers that with expert testimony, the ALJ could have found that either greater attention to the fax or the assistance of another person would have informed Mr. Rosenthal of the product he was buying.

Respondent's first exception is hereby REJECTED as there is no citation to authority that dictates that the Department was required to present expert testimony. As the Department correctly stated in its response to Respondent's exception, "[E]xpert testimony is generally admitted to assist the court in deciding a case involving scientific or specialized knowledge, or to ascertain the truth in areas beyond common knowledge." (citations omitted). In the instant case, the meaning and import of wording in a cover fax neither involves scientific or specialized knowledge nor an area beyond common knowledge such that expert testimony was needed that would have assisted the trier of fact in his decision. Moreover, the transcript of proceedings reveals that Mr. Rosenthal testified credibly as to his recollection of the transaction. Said testimony provided a sufficient basis for the ALJ's findings of fact and conclusions of law.

Likewise, Respondent excepts to the ALJ's Findings of Fact Nos. 22 and 25 and Conclusion of Law No. 47 that Respondent sold the Nation Safe Driver product to Ms. Schevers without her informed consent, contending that said Conclusion was not based on clear and convincing evidence. In support of this contention Respondent cites testimony by Ms. Schevers that her office manager, Ms. Carlos, was involved in the process of obtaining insurance and that

it was "very possible" that she was told about the Nation Safe Driver product. Further Respondent alleges, *inter alia*, that the signature on the Nation Safe Driver application could have been signed by Ms. Carlos. Finally, Respondent claims that the Nation Safe Driver forms were blank when sent to Ms. Shevers and were returned with a signature which he could reasonably assume was that of and by Ms. Schevers.

Respondent's second exception is hereby REJECTED as well. Based on a review of the hearing transcript and Ms. Shevers' testimony, the record is inconclusive as to whether Ms. Carlos was told about the Nation Safe Driver product. The only fact before the ALJ regarding Ms. Carlos was the fact that she was the office manager and that she and Respondent spoke regarding insurance. There is nothing clear or convincing in the record that proves that Respondent spoke to Ms. Carlos regarding the Nation Safe Driver product. Further, what *is* clear from the documentary evidence presented at the hearing is that, regardless of whatever conversation may have been had regarding the Nation Safe Driver product, Respondent failed to inform Ms. Carlos that there was an additional charge for that product. Additionally, the clear and convincing evidence before the ALJ is contrary to Respondent's assertion that the signature on the Nation Safe Driver application could have been that of Ms. Carlos. [See Schevers' Deposition Transcript p.29].

Finally, whatever assumptions Respondent made or could have made regarding the documents that were returned to him from Ms. Schevers' office in connection with the Nation Safe Driver product is irrelevant because the documentary evidence proves clearly and convincingly that Respondent failed to explain what the Nation Safe application was for and improperly represented that the sum of \$5,190.00 was for the business general liability insurance. In doing so, Respondent failed to inform this consumer that the \$5,190.00 premium included a \$200.00 charge for the Nation Safe Driver coverage.

Finally, Respondent excepts to the ALJ's Recommendation of suspension of his license for a period of twelve months. The basis for this exception is that the ALJ failed to take into account certain mitigating factors provided in Fla. Admin. Code R. 69B-231.160, including: (a) the degree of potential injury to the victim, (b) motivation of the agent and (c) other relevant factors. Consequently, Respondent requests that the penalty be converted to probation with supervision of all of Respondent's insurance activities by another licensed agent. In support of this request Respondent cites certain mitigating factors set forth more fully below.

First, Respondent asserts that Ms. Schevers was not actually injured as evidenced by her admission that the insurance quote provided by Respondent was excellent and provided coverage that she wanted. Therefore, Respondent claims that she derived a clear financial benefit from the insurance procured by him rather than suffering any injury. The next mitigating factor cited by Respondent is the assertion that he had little or no motivation to sell the Nation Safe Driver product, in that he only sold 25 of them and voluntarily ceased such sales. Respondent cites as the final and most important mitigating factor, the fact that his family's health insurance is contingent upon his continued employment and that suspension of his license will result in termination of his employment, and thus, the loss of his health insurance at a time when his wife is on a list for a liver transplant.

With respect to the third exception, and based upon the facts set forth more fully above, the fact that Ms. Schevers received certain coverage that she sought, which was a benefit to her, does not mitigate the fact that Respondent sold her additional coverage which was not requested, was unwanted and for which she was charged without her express and informed consent. The fact that Respondent stopped selling the Nation Safe Driver policies likewise is not a valid mitigating factor, inasmuch as the his testimony indicates that he stopped selling said policies *only after* the Department took the position that they were illegal. [9/5/07 Hearing Transcript p.

41]. Further, the evidence reveals that Respondent's employer refunded the premiums for the Nation Safe Driver product to consumers only after the Department became involved. The timing of the cessation of sales of this product to consumers by Respondent, together with the refund of premiums for same to consumers who were improperly sold said product, militates against these actions as a mitigating factor.

Finally, the ALJ correctly identified the available aggravating and mitigating factors set forth in Rule 69B-231.150. F.A.C. in making his Recommendation [See Recommended Order ¶ 55]. Further, having considered the proposed orders submitted by Petitioner and Respondent, together with the evidence presented and testimony elicited at the hearing, the ALJ made findings of fact and conclusions of law consistent with the factors set forth in the Rule. Respondent failed to cite any authority to suggest that the ALJ was required to make findings and conclusions as to each factor identified in the Rule as he appears to suggest in his exceptions. Moreover, Respondent raises as an issue for the first time in his exception, the issue regarding his loss of employment and resulting loss of health insurance. As such, this information was not presented as a mitigating factor for the ALJ's consideration and even if it had been, loss of employment and related insurance is in the nature of a consequence, rather than a mitigating factor. Based on the foregoing, Respondent's third exception is REJECTED.


NOW THEREFORE, after careful consideration of the transcript of proceedings, the exhibits introduced into evidence, the Proposed Recommended Orders submitted by the parties, the Recommended Order entered by the Administrative Law Judge and the Exceptions filed by Respondent and Petitioner's response thereto, and being otherwise fully advised in the premises, it is ORDERED that:

1. The Findings of Fact of the Administrative Law Judge are adopted in full as the Department's Findings of Fact, and the Conclusions of Law reached by the Administrative Law Judge are adopted as the Department's Conclusions of Law.

2. The Recommendation made by the Administrative Law Judge is adopted by the Department and, based upon Timothy Michael Crowley's violation of Section §626.621(6)(2004), Florida Statutes, his license and appointment as a life and health agent and a general lines property and casualty agent, license no. A058537, and his eligibility for licensure, are hereby suspended for a period of twelve months from the date of this Order.

DONE and ORDERED this 18<sup>th</sup> day of February, 2008.



  
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, Florida Rules of Appellate Procedure. 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 32399-0333, and a copy of the same with the appropriate District Court of Appeal within thirty (30) days of rendition of this Order.

Copies furnished to:

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