

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL)
SERVICES,)
)
Petitioner,)
)
vs.) Case No. 06-4551PL
)
TIMOTHY MICHAEL CROWLEY,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case before Larry J. Sartin, an Administrative Law Judge of the Division of Administrative Hearings, on February 20, 2007, in Fort Lauderdale, Florida, and on September 5, 2007, by telephone between Fort Lauderdale and Tallahassee, Florida.

APPEARANCES

For Petitioner: Robert Alan Fox, Senior Attorney
Division of Legal Services
Department of Financial Services
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200 East Gaines Street
Tallahassee, Florida 32399-0333

For Respondent: Jed Berman, Esquire
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STATEMENT OF THE ISSUES

The issues in this case are whether Respondent, Timothy Michael Crowley, committed the offenses alleged in an Administrative Complaint issued by Petitioner, the Department of Financial Services, on September 14, 2006, and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On or about September 14, 2006, Petitioner issued a five-count Administrative Complaint, Petitioner's Case No. 86820-06-AG, alleging that Timothy Michael Crowley had violated certain statutory provisions governing the conduct of Florida insurance agents. Mr. Crowley, through counsel, filed a DOAH Rule 28-107.004 Request for Hearing and an Answer to Administrative Complaint dated October 2, 2006, with Petitioner.

A copy of the Administrative Complaint and Mr. Crowley's pleadings were filed by Petitioner with the Division of Administrative Hearings on November 13, 2007. The matter was designated DOAH Case No. 06-4551PL and was assigned to the undersigned.

The final hearing was initially scheduled for January 24 and 25, 2007, by Notice of Hearing entered November 27, 2006. On January 19, 2007, an Unopposed Motion for Continuance was granted and the hearing was re-scheduled for February 20 and 21, 2007.

At the portion of the final hearing conducted in February 2007, Petitioner presented the testimony of Charles Rosenthal, Steven Eng, Xiaoqi Ma, and Carol Davidson. Petitioner also had admitted Petitioner's Exhibits numbered 3, 4 (without an attached affidavit), 6 (excluding pages two and three), 7 (without an attached affidavit), 8 (excluding pages two and three), and 25. Mr. Crowley had admitted Respondent's Exhibit A.

At the request of Petitioner, and without objection by Mr. Crowley, the record was left open to allow Petitioner to take the testimony of Selma Schevers by deposition and to offer the transcript of her testimony into evidence. It was also agreed that Mr. Crowley, after hearing Ms. Schevers' testimony, would decide whether he wished to testify or call other witnesses in response to Petitioner's case-in-chief.

Ms. Schevers' deposition testimony was filed with the Division of Administrative Hearings on May 5, 2007, and has been, along with the four exhibits attached thereto and offered into evidence, considered in issuing this Recommended Order.

On May 8, 2007, a Notice of Hearing was issued scheduling additional hearing time for June 12, 2007, to allow Mr. Crowley to testify. That portion of the hearing was subsequently re-scheduled several times at the request of the parties.

The conclusion of the hearing was ultimately conducted by telephone on September 5, 2007. At that time, Mr. Crowley testified on his own behalf. Additionally, Petitioner had admitted Petitioner's Exhibit number 10b, and pages two and three of Petitioner's Exhibits numbered 6 and 8, which had been rejected at the February 20, 2007, hearing.

The official Transcript of the portion of the final hearing conducted on February 20, 2007, was filed on March 19, 2007. The official Transcript of the portion of the final hearing conducted on September 5, 2007, was filed on September 21, 2007. 2007. By Notice of Filing Transcript issued September 24, 2007, the parties were informed that their proposed recommended orders were due on or before November 5, 2007. Both parties filed proposed recommended orders timely. Both Proposed Recommended Orders have been fully considered in rendering this Recommended Order.

The events at issue in this case were alleged to have taken place during the end of 2004 and early 2005. Therefore, all references to the Florida Statutes will be to the 2004 codification unless otherwise noted.

FINDINGS OF FACT

A. The Parties.

1. Petitioner, the Department of Financial Services (hereinafter referred to as the "Department"), is the agency of

the State of Florida charged with the responsibility for, among other things, the investigation and prosecution of complaints against individuals licensed to conduct insurance business in Florida. Ch. 626, Fla. Stat.

2. Respondent Timothy Michael Crowley was, at the times relevant, licensed in Florida as a life and health (2-18) agent, and a general lines, property and casualty agent. Mr. Crowley's license number is A058537.

3. Mr. Crowley, who is 61 years of age, has been an insurance agent for approximately 30 years. At the times relevant to this matter, Mr. Crowley was employed by Insurance Center of South Florida (hereinafter referred to as "Insurance Center"). Insurance Center is located in Coral Springs, Florida.

4. At all relevant times, Mr. Crowley transacted commercial lines of insurance for Insurance Center.

B. Count I; Xiaoqu Ma and Q-Nails.

5. The Department has abandoned the charges of Count I, involving Xiaoqu Ma and Q-Nails, in Department's Proposed Recommended Order.

6. The evidence concerning Count I failed to prove the factual allegations necessary to support the charges of Count I.

C. Count II; Charles Rosenthal and Cer-Tax, Inc.

7. On or about December 15, 2004, a letter and three forms were faxed from Mr. Crowley on Insurance Center letterhead to Cer-Tax, Inc. (hereinafter referred to as "Cer-Tax"), an accounting business owned and operated by Charles Rosenthal.

8. Insurance Center had been providing office general liability insurance coverage to Cer-Tax for several years. Mr. Crowley's letter was sent to Cer-Tax because it was time for Cer-Tax to renew its insurance.

9. Mr. Crowley stated, in part, the following in his letter, which was dated December 10, 2004, to Cer-Tax:

We are pleased to offer the following quote for the renewal of your expiring office general liability policy.

North Point Insurance Company

\$300,000 General Liability Policy Aggregate
\$300,000 General Liability Per Occurance
[sic]
\$100,000 Damage to Rented Property of Others

This policy is for premises liability only.

Total annual premium \$582.00

This quote is based on the information [sic] provided, subject to loss history verification, a satisfactory inspection and compliance with all recommendations.

In order to bind the coverage we will need a check in the amount of \$582.00 and the enclosed forms signed. You can fax the forms back to me and then please mail the originals with your signature.

Please be sure to read the attached notice of terrorism insurance coverage. This notice is required by Federal Law and must be signed at the time of binding.

Please feel free to call in the event you should have any questions regarding your coverages or the renewal process.

10. The three forms attached to the December 10, 2004, letter for Mr. Rosenthal's signature included: a "Notice-Offer of Terrorism Coverage and Disclosure of Premium" form; an "Applicant Information Section"; and a document titled "Nation Safe Drivers Enrollment Application" (hereinafter referred to as the "Nation's Application"). While Mr. Crowley's letter clearly indicates that all three forms, including the Nation's Application, had to be signed on behalf of Cer-Tax and a total payment of \$582.00 had to be made "[i]n order to bind the coverages," described in the letter as "general liability" coverages, the Nation's Application had nothing to do with the office general liability coverage Cer-Tax desired and Mr. Rosenthal thought he was renewing.

11. In fact, the Nation's Application was for an ancillary insurance coverage or product that provided accidental death benefits and membership in a motor club. Insurance Center had begun selling the Nation Safe Drivers product after Mr. Crowley became employed by Insurance Center.

12. In addition to having no direct relationship to the office general liability coverage Cer-Tax desired and Mr. Rosenthal was told by Mr. Crowley in his December 10, 2004, letter Insurance Center was renewing, there was a separate charge for the Nation Safe Drivers product. The charge was \$100.00 and it was included in the \$582.00 charge Mr. Crowley told Cer-Tax was the total annual premium for Cer-Tax's renewal of its office general liability policy.

13. The actual cost of the office general liability insurance policy was \$482.00, a fact which was not explained by Mr. Crowley to Mr. Rosenthal. Even if Mr. Rosenthal had paid more attention to the documents he was told to sign, it is unlikely that Mr. Rosenthal or any other reasonable person would have concluded that he was paying for anything other than the renewal of Cer-Tax's office general liability insurance policy. Nor should Mr. Rosenthal, given Mr. Crowley's explanation, have reasonably concluded that the Nation Safe Drivers product was a policy separate from the one he thought he was purchasing.

14. As instructed in the December 10, 2004, letter from Mr. Crowley, on or about December 16, 2004, Mr. Rosenthal signed the three documents where they had been marked with an "x" in a circle. Mr. Rosenthal also included his birth date on the Nation's Application. The forms and a check for \$582.00 payable to Insurance Center were returned to Insurance Center.

15. Insurance Center, while informing Mr. Rosenthal and Cer-Tax that it was selling Cer-Tax an insurance product from North Pointe Insurance Company, actually sold two separate products: an office general liability policy from North Pointe Insurance Company; and a Nation Safe Drivers product providing accidental death benefits and membership in a motor club. The latter product was not one which Cer-Tax was aware it was purchasing or one that it desired.

16. While Mr. Rosenthal is an educated accountant, authorized to represent clients before the Internal Revenue Service, he is not an insurance agent. Mr. Rosenthal, given the representations in Mr. Crowley's December 10, 2004, letter, acted reasonably in following Mr. Crowley's instructions and in not inquiring further about the Nation's Application.

D. Count III; Selma Schevers and Realty Unlimited, Inc.

17. On or about December 10, 2004, a document and three forms were faxed by Mr. Crowley to Realty Unlimited, Inc. (hereinafter referred to as "Realty Unlimited"), and Selma Schevers, the owner of Realty Unlimited.

18. Mr. Crowley stated, in part, the following in the document:

Insurance Company:
National Insurance Company---Rated A+ by
A.M. Best Co.

Business Personal Property

Business property - \$25,000.00 per location
#1 & #2, Location #3 \$40,000 special form
including theft valued on a replacement cost
basis. \$500 deductible
Theft sublimit [sic] \$25,000
Including wind/hail 2% deductible or \$1,000
whichever is greater

Any other peril deductible - \$1,000

Business income \$100,000 per location
payable 1/3 over 90 days

Commercial General Liability Coverage

General Aggregate:	\$2,000,000
Per Occurrence:	\$1,000,000
Products and Completed Operations:	\$Excluded
Personal Injury:	\$1,000,000
Advertising Injury:	\$Excluded
Fire Damage Leagal [sic] Liability:	\$100,000
Medical Payments:	\$5,000

Deductible \$500 per claim - Occurrence Basis

Professional Liabilty

General Aggregate: None
Included in General Liability

Total Annual Premium \$5190.00

. . . .

Please sign the two applications, terrorism
form, and the Nations enrollment form.
Please fax back to me with your check and be
sure to mail the original signatures to me.

Also please sign this form and return the original to me to authorize me to sign your name to the premium finance agreement.

X _____

I will bind your coverages as soon as I receive your check and the faxed signed forms. I will then send you a certificate of insurance showing all the coverages are in effect.

Please call should you have any questions about your coverages or what needs to be signed.

19. One of the forms sent to Ms. Schevers was a Nation's Application identical to the one sent to Cer-Tax. While Ms. Schevers could not remember seeing the Nation's Application, she did identify her date of birth written on the application as being in her handwriting.

20. While Mr. Crowley's letter, unlike the one sent to Cer-Tax, identifies the Nation's Application, his letter only describes the insurance Realty Unlimited was interested in purchasing, which was business general liability insurance, and fails to explain what the Nation's Application is for.

21. Mr. Crowley indicates in the document that he will "bind your coverages as soon as I receive your check and the faxed signed forms," which included the Nation's Application.

22. Mr. Crowley also suggested in the document that the "Total Annual Premium" of \$5,190.00 was for the business general liability insurance. He failed to inform Realty Unlimited that

the \$5,190.00 premium included an additional charge of \$200.00 for Nation Safe Drivers coverage, coverage which had not been requested by Realty Unlimited and was unwanted coverage.

23. While Ms. Schevers, on behalf of Realty Unlimited, signed some of the forms sent to her by Mr. Crowley, she did not sign the Nation's Application. She returned the signed forms on or about December 10, 2004, with a down payment of \$1,480.00, which Mr. Crowley had indicated was acceptable.

24. The down payment from Realty Unlimited was divided by the Insurance Center, with \$1,280.00 being applied toward the business general liability insurance desired by Realty Unlimited and \$200.00 applied in full payment for Nation Safe Drivers coverage despite the fact that Ms. Schevers had not signed the Nation's Application.

25. Insurance Center, while informing Ms. Schevers and Realty Unlimited that it was selling Realty Unlimited an insurance product from National Insurance Company, actually sold two separate products: a business general liability insurance policy from National Insurance Company; and a Nation Safe Drivers product providing accidental death benefits and membership in a motor club. The latter product was not one which Realty Unlimited was aware it was purchasing, one that it desired, or one for which Ms. Schevers even signed an application. Nor was it one, assuming Ms. Schevers saw the

Nation's Application, Ms. Schevers should have realized was not part of the insurance product she wished to purchase.

E. Counts IV and V.

26. The Department has abandoned the charges of Counts IV and V at hearing and in Department's Proposed Recommended Order.

27. No evidence concerning Counts IV and V was presented at hearing to support the charges of these Counts.

F. Aggravating/Mitigating Factors; Prior Disciplinary Action Against Mr. Crowley.

28. In addition to this disciplinary matter, an Administrative Complaint (hereinafter referred to as the "1997 Administrative Complaint") was issued against Mr. Crowley on or about April 2, 1997.

29. The charges of the 1997 Administrative Complaint, which included allegations of wrong-doing similar to those at issue in this case, were resolved by a Consent Order issued pursuant to a Settlement Stipulation for Consent Order.

30. Among other things, the Consent Order ordered that Mr. Crowley cease and desist from using any methods or practices in the business of insurance which would constitute the act or practice of "sliding."

G. Aggravating/Mitigating Factors; Reimbursement of Premiums.

31. The premiums paid by Cer-Tax and Realty Unlimited have been refunded by Mr. Crowley and Insurance Center.

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 (2007).

B. The Burden and Standard of Proof.

33. The Department seeks to impose penalties against Mr. Crowley through the Administrative Complaint that include mandatory and discretionary suspension or revocation of his license. Therefore, the Department has the burden of proving the specific allegations of fact that support its charges by clear and convincing evidence. See 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 Pou v. Department of Insurance and Treasurer, 707 So. 2d 941 (Fla. 3d DCA 1998).

34. What constitutes "clear and convincing" evidence was described by the court in Evans Packing Co. v. Department of

Agriculture and Consumer Services, 550 So. 2d 112, 116, n. 5

(Fla. 1st DCA 1989), 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).

See also In re Graziano, 696 So. 2d 744 (Fla. 1997); In re Davey, 645 So. 2d 398 (Fla. 1994); and Walker v. Florida Department of Business and Professional Regulation, 705 So. 2d 652 (Fla. 5th DCA 1998)(Sharp, J., dissenting).

C. The Department's Charges.

35. Section 626.611, Florida Statutes, mandates that the Department suspend or revoke the license of any insurance agent if it finds that the agent has committed any of a number of acts specified in that Section.

36. Section 626.621, Florida Statutes, gives the Department the discretion to suspend or revoke the license of any insurance agent if it finds that the agent has committed any of a number of acts specified in that Section.

37. The Administrative Complaint in this case contains five counts. The allegations of three of those counts (Counts I, IV, and V) were not proved by clear and convincingly evidence. In the remaining two counts (Counts II and III) it is alleged that Mr. Crowley violated the following statutory provisions: Sections 626.611(7), (8), and (9); 626.621(2) and (6); and 626.9541(1)(z)2. and 3., Florida Statutes.

38. Section 626.611, Florida Statutes, provides, in pertinent part, the following:

The department shall . . . 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:

. . . .

(7) Demonstrated lack of fitness or trustworthiness to engage in the business of insurance.

(8) Demonstrated lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license or appointment;

(9) Fraudulent or dishonest practices in the conduct of business under the license or appointment.

. . . .

39. Based upon the Department's Proposed Recommended Order, it appears that the Department has abandoned the charge that Mr. Crowley violated Section 626.611(9), Florida Statutes. It is also concluded that this violation was not proved clearly and convincingly.

40. Section 626.621(2) and (6), Florida Statutes, provides:

The department may, in its discretion, deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, adjuster, customer representative, service representative, or managing general agent, and it may 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 under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

(2) Violation of any provision of this code or any other law applicable to the business of insurance in the course of dealing under the license or appointment.

. . . .

(6) In the conduct of business under the license or appointment, engaging in unfair methods of competition or in unfair or deceptive acts or practices, as prohibited under part IX of this chapter, or having otherwise shown himself to be a source of injury or loss to the public interest.

41. Section 626.9541(1)(z), Florida Statutes, is contained within Chapter 626, Part IX, Florida Statutes. This statutory

provision defines "unfair methods of competition and unfair or deceptive accts or practices," including the one at issue in this proceeding:

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.- The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

. . . .

(z) *Sliding*. Sliding is the act or practice of:

. . . .

2. Representing to the applicant that a specific ancillary coverage or product is included in the policy applied for without an additional charge when such charge is required; or

3. Charging an applicant for a specific ancillary coverage or product, in addition to the cost of the insurance coverage applied for, without the informed consent of the applicant.

42. Based upon the Department's Proposed Recommended Order, it appears that the Department has abandoned the charge that Mr. Crowley did not comply with Section 626.954(1)(z)2., Florida Statutes. It is also concluded that this violation was not proved clearly and convincingly.

D. Summary of Counts II and III.

43. Summarizing the charges against Mr. Crowley, the Department has charged him with four offenses:

a. Demonstrating lack of fitness or trustworthiness;

b. Demonstrating lack of knowledge and technical competence;

c. Violating provisions of the insurance code by committing an unfair or deceptive act or practice--"sliding," by falsely selling the Nation Safe Drivers coverage to Cer-Tax and Realty Unlimited without the informed consent of either business; and

d. Engaging in unfair methods of competition or in unfair or deceptive acts or practices in the conduct of his insurance business, as prohibited under part IX of this chapter, or having otherwise shown himself to be a source of injury or loss to the public interest

44. All of Mr. Crowley's violations arise from the allegation that he has committed "sliding" as defined in Section 626.9541(1)(z), Florida Statutes. Based upon the facts of this case, it has been proved clearly and convincingly that Mr. Crowley did commit "sliding."

45. Mr. Crowley should have explained to Cer-Tax and Realty Unlimited that they were being sold, in addition to the business liability insurance they sought, a product of Nation Safe Drivers, that the product was optional and that there was an additional, independent charge for the product. See Thomas v. Department of Insurance and Treasurer, 559 So. 2d 419 (Fla. 2d DCA 1990). Mr. Crowley did neither.

46. More significantly, instead of explaining the transactions clearly to Cer-Tax and Realty Unlimited, Mr. Crowley suggested in the explanatory letters he sent to both businesses, that they would have to execute the Nation's Application in order to obtain the coverages they actually sought and that there was only one total premium being charged. Neither suggestion was true: they were not required to purchase the Nation Safe Drivers coverage in order to obtain the insurance they desired; and the premium quoted actually was two premiums.

47. Mr. Crowley's conduct fits the definition of Section 626. 9541(1)(z), Florida Statutes, in that he is guilty of "[c]harging an applicant for a specific ancillary coverage or product, in addition to the cost of the insurance coverage applied for, without the informed consent of the applicant."

48. Mr. Crowley's suggestion that the application of Thomas would prohibit any sale of an ancillary product by fax or mail. This argument is rejected. Mr. Crowley not only failed to explain the products being sold to Cer-Tax and Realty Unlimited, he implied that there Cer-Tax and Realty Unlimited were only purchasing the one product they had requested. He could have avoided these conclusions by simply explaining the letters he sent to both customers that the Nation's Application was for a separate product that was not required in order to

purchase the business liability insurance they had sought and that there was a separate charge for the Nation Safe Drivers policy. This he did not do.

49. It has been proven, therefore, clearly and convincingly that Mr. Crowley, committed sliding as defined in Section 626.9541(1)(z)3., Florida Statutes. This constituted a violation of Section 626.621(6), Florida Statutes.

50. Mr. Crowley's actions in dealing with Cer-Tax and Realty Unlimited demonstrated a lack of fitness or trustworthiness, in violation of Section 626.611(7), Florida Statutes.

51. Mr. Crowley's actions demonstrated a lack of knowledge and technical competence in his suggestion that he was unaware that his actions in dealing with Cer-Tax and Realty Unlimited were not improper and did not constitute sliding as defined in Section 626.611(8), Florida Statutes

51. Finally, it is concluded that, by committing sliding as defined in Section 626.9541(1)(z)3., Florida Statutes, Mr. Crowley violated Section 626.621(6), Florida Statutes, by "engaging in unfair methods of competition or in unfair or deceptive acts or practices, as prohibited under part IX of this chapter, or having otherwise shown himself to be a source of injury or loss to the public interest."

E. Penalty.

52. Florida Administrative Code Rule Chapter 69B-231 provides guideline penalties for violations of Sections 626.611 and 626.621, Florida Statutes. The Department has only pursued penalties for the violations of Section 626.611(7) and (8), Florida Statutes, in its Proposed Recommended Order.

53. Florida Administrative Code Rule 69B-231.080 provides the following penalty guidelines for the violations proved in this case: a suspension of six months for a violation of Section 626.611(7), Florida Statutes; and a suspension of six months for a violation of Section 626.611(8), Florida Statutes.

54. Florida Administrative Code Rule 69B-231.040, provides the following with regard to the calculation of the appropriate penalty where multiple violations are found:

(1) Penalty Per Count.

(a) The Department is authorized to find that multiple grounds exist under Sections 626.611 and 626.621, F.S., for disciplinary action against the licensee based upon a single count in an administrative complaint based upon a single act of misconduct by a licensee. However, for the purpose of this rule chapter, only the violation specifying the highest stated penalty will be considered for that count. The highest stated penalty thus established for each count is referred to as the "penalty per count."

(b) The requirement for a single highest stated penalty for each count in an administrative complaint shall be applicable

regardless of the number or nature of the violations established in a single count of an administrative complaint.

(2) Total Penalty. Each penalty per count shall be added together and the sum shall be referred to as the "total penalty."

(3) Final Penalty. The final penalty which will be imposed against a licensee under these rules shall be the total penalty, as adjusted to take into consideration any aggravating or mitigating factors, provided however the Department shall convert the total penalty to an administrative fine and probation in the absence of a violation of Section 626.611, F.S., if warranted upon the Department's consideration of the factors set forth in rule subsection 69B-231.160(1), F.A.C.

55. Florida Administrative Code Rule 69B-231.160 provides the following relevant aggravating and mitigation factors:

(1) For penalties other than those assessed under Rule 69B-231.150, F.A.C.:

- (a) Willfulness of licensee's conduct;
- (b) Degree of actual injury to victim;
- (c) Degree of potential injury to victim;
- (d) Age or capacity of victim;
- (e) Timely restitution;
- (f) Motivation of agent;
- (g) Financial gain or loss to agent;
- (h) Cooperation with the Department;
- (i) Vicarious or personal responsibility;
- (j) Related criminal charge; disposition;
- (k) Existence of secondary violations in counts;
- (l) Previous disciplinary orders or prior warning by the Department; and
- (m) Other relevant factors.

56. In this case, the highest prescribed disciplinary action is a twelve-month suspension (a six-month suspension for two counts).

57. While the Department has reasonably argued that there are aggravating circumstances and Mr. Crowley has pointed out the mitigating factor that Cer-Tax and Realty Unlimited were reimbursed the premiums they were charged, thus depriving Mr. Crowley of any monetary gain therefrom, the Department has not requested that the aggregate penalty of twelve months be increased.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered by the Department finding that Timothy Michael Crowley violated the provisions of Chapter 626, Florida Statutes, described, supra; dismissing all other charges; and suspending his license and appointment for a period of twelve months.

DONE AND ENTERED this 27th day of November, 2007, 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 27th day of November, 2007.

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.