

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL)
SERVICES,)
)
Petitioner,)
)
vs.) Case No. 07-0687PL
)
COURTNEY PRINCE WALKER,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on March 19, 2007, via video-teleconference in Tallahassee and Orlando, Florida, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Bruce Pelham, Esquire
Department of Financial Services
612 Larson Building
200 East Gaines Street
Tallahassee, Florida 32399-0333

For Respondent: Thomas D. Sommerville, Esquire
Muller & Sommerville, P.A.
1150 Louisiana Avenue, Suite 2
Post Office Box 2128
Winter Park, Florida 32790-2128

STATEMENT OF THE ISSUES

Whether Respondent, a licensed general lines agent, committed the offenses alleged in the Administrative Complaint and, if so, what penalties should be imposed.

PRELIMINARY STATEMENT

On November 27, 2006, Petitioner, the Department of Financial Services (the "Department"), filed an Administrative Complaint against Respondent, Courtney Prince Walker, alleging that Respondent had violated Subsections 626.611(7), (9), (11), and (14) and Subsection 626.621(3), Florida Statutes (2006). Respondent timely challenged the allegations of the Administrative Complaint, and the matter was referred to the DOAH and scheduled for hearing.

Count I of the Administrative Complaint alleged certain facts pertaining to a plea of nolo contendere entered by Respondent in 2005 to a charge of false and fraudulent motor vehicle insurance application, which is a third-degree felony pursuant to Section 817.236, Florida Statutes (2005). Count I charged Respondent with the following violations of the Florida Insurance Code: "demonstrated lack of fitness or trustworthiness to engage in the business of insurance," in violation of Subsections 626.611(7) and (9), Florida Statutes (2006); and "having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by

imprisonment of one year or more under the law of the United States of America or of any state thereof or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases," in violation of Subsection 626.611(14), Florida Statutes (2006).

Count II of the Administrative Complaint alleged that Respondent failed to notify the Department within 30 days of doing so that she had entered a plea of nolo contendere in the criminal proceeding as required by Subsection 626.621(11), Florida Statutes (2006), and, therefore, further, demonstrated lack of fitness or trustworthiness to engage in the business of insurance, in violation of Subsection 626.611(7), Florida Statutes (2006).

Count III of the Administrative Complaint alleged that Respondent listed with the Department a business address at an agency with which she was no longer employed. Count III charged Respondent with the following violations of the Florida Insurance Code: failure to "notify the department in writing within 60 days after a change of name, residence address, principal business street address, or mailing address," in violation of Section 626.551, Florida Statutes (2006); and "violation of any lawful order or rule of the department,

commission, or office," in violation of Subsection 626.621(3), Florida Statutes (2006).

At the final hearing, the Department presented the testimony of Betty Jane Hotaling and offered six exhibits, which were accepted into evidence.

Respondent did not personally appear at the hearing or testify, presented no witnesses, and offered no exhibits into evidence.

A Transcript of the proceedings was filed on April 17, 2007. The Department timely filed its Proposed Recommended Order on April 26, 2007. Respondent did not file a proposed recommended order as of the date of this Recommended Order.

FINDINGS OF FACT

1. The Department is a licensing and regulatory agency of the State of Florida charged with, among other duties, the responsibility and duty to enforce the provisions of the Florida Insurance Code, which consists of Chapters 624 through 632, 634, 635, 636, 641, 642, 648, and 651, Florida Statutes (2006). See § 624.307(1), Fla. Stat. (2006).

2. Respondent has been licensed in the State of Florida as a general lines (property and casualty) insurance agent since January 2001, with license identification number D063850.

3. On or about February 17, 2005, State Attorney Lawson Lamar filed a one-count information in the Circuit Court of the

Ninth Judicial Circuit, Orange County, charging Respondent with making a false and fraudulent motor vehicle insurance application, a third degree felony pursuant to Section 817.236, Florida Statutes (2005). Respondent was accused of having predated an application for insurance in order to illegally collect insurance proceeds. On or about October 25, 2005, Respondent entered a plea of nolo contendere to the charge. Adjudication of guilt was withheld, and Respondent was placed on probation for a period of 18 months and ordered to perform 50 hours of community service and pay restitution to the victim.

4. The evidence presented was insufficient to demonstrate that Respondent failed to inform the Department of her nolo contendere plea as required by Subsection 626.621(11), Florida Statutes (2006), or that she listed with the Department a business address at an agency with which she was no longer employed in violation of Section 626.551, Florida Statutes (2006).

CONCLUSIONS OF LAW

5. The Division of Administrative Hearings has jurisdiction of the parties to and the subject of this proceeding. § 120.57(1), Fla. Stat. (2006).

6. License revocation and discipline proceedings are penal in nature. The burden of proof on the Department in this proceeding was to demonstrate the truthfulness of the

allegations in the Administrative Complaint by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

7. The "clear and convincing" standard requires:

[T]hat the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony 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 a 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).

The findings in this case were made based on the standard set forth in Osborne Stern and Ferris.

8. Section 626.611, Florida Statutes (2006), provides for compulsory discipline of a license as follows, in relevant part:

The department shall deny an application for, 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.

* * *

(9) Fraudulent or dishonest practices in the conduct of business under the license or appointment.^[1]

* * *

(14) Having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

9. Section 626.621, Florida Statutes (2006), provides for the discretionary discipline of a license as follows, in relevant part:

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:

(1) Any cause for which issuance of the license or appointment could have been refused had it then existed and been known to the department.

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

* * *

(8) Having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

* * *

(11) Failure to inform the department in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or of any state thereof, or under the law of any other country without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the case.

10. Count I of the Amended Administrative Complaint alleged that Respondent's plea established the following violations of the Florida Insurance Code:

(a) Demonstrated lack of fitness or trustworthiness to engage in the business of insurance. [§§ 626.611(7) and (9), Fla. Stat. (2006)];

(b) Having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases. [§ 626.611(14), Fla. Stat. (2006)].

11. The Department established by clear and convincing evidence that Respondent pled nolo contendere to a felony involving fraud in an application for motor vehicle insurance, a crime directly relating to Respondent's insurance license and the conduct of the business of insurance. It is concluded that Respondent's criminal record establishes her lack of fitness or trustworthiness to engage in the business of insurance.

12. Florida Administrative Code Rule 69B-231.150 provides, in relevant part:

(3) If a licensee is not convicted of, but has been found guilty of or had pleaded guilty or nolo contendere to, a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country, which is a crime involving moral turpitude or is a crime involving breach of trust or dishonesty, the penalties are as follows:

(a) If the conduct directly relates to activities involving the business of insurance, the penalty shall be revocation. . . .

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that:

The Department enter a final order finding Respondent guilty of violating Subsections 626.611(7) and (14), Florida Statutes (2006), as alleged in Count I of the Administrative Complaint, and revoking Respondent's licensure.

DONE AND ENTERED this 16th day of May, 2007, in Tallahassee, Leon County, Florida.

S

LAWRENCE P. STEVENSON
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of May, 2007.

ENDNOTE

1/ A single act or criminal conviction may demonstrate "lack of fitness or trustworthiness" under Subsection 626.611(7), F.S. (2006), but is insufficient to prove "fraudulent or dishonest practices," which implicates multiple acts. Weiner v. Department of Insurance and Treasurer, 689 So. 2d 1211, 1214 (Fla. 1st DCA 1997). Thus, the allegations here are

insufficient to establish a violation of Subsection 626.611(9), Florida Statutes (2006).

COPIES FURNISHED:

Bruce Pelham, Esquire
Department of Financial Services
612 Larson Building
200 East Gaines Street
Tallahassee, Florida 32399-0333

Thomas D. Sommerville, Esquire
Muller & Sommerville, P.A.
1150 Louisiana Avenue, Suite 2
Post Office Box 2128
Winter Park, Florida 32790-2128

Daniel Sumner, General Counsel
Department of Financial Services
The Capitol, Plaza Level 11
Tallahassee, Florida 32399-0300

Honorable Alex Sink, Chief Financial Officer
Department of Financial Services
The Capitol, Plaza Level 11
Tallahassee, Florida 32399-0300

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.