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REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

Docketed by: SS

DIVISION OF
ADMINISTRATIVE

IN THE MATTER OF: HEARINGS

Case No. 89909-07-AG

KATHERINE ANN FITZGERALD /

FINAL ORDER

This cause came on for consideration of and final agency action on the Recommended Order filed on January 18, 2008, by Administrative Law Judge Daniel Manry (ALJ), pursuant to a formal hearing conducted on August 23 and September 24, 2007, recommending dismissal of all charges against Respondent Katherine Ann Fitzgerald (Fitzgerald). A copy of that Recommended Order is attached as Exhibit A. The Department of Financial Services (Department) timely filed exceptions to the Recommended Order, and the Respondent timely filed a response to those exceptions. The Recommended Order, the transcript of proceedings in the formal hearing, the exhibits introduced into evidence, the Department's exceptions, the Respondent's responses thereto, and applicable law have all been considered during the promulgation of this final order.

RULINGS ON THE DEPARTMENT'S EXCEPTIONS

The Department's first exception is to Paragraph 14 of the Findings of Fact. The Department argues that for various reasons Paragraph 14 should be modified. However, the Department suggests no particular modification. The lack of a particular, suggested modification renders it impossible to state, as required by Section

120.57(1)(l), Fla. Stat., that the suggested modification is as or more reasonable the Finding of Fact being modified. Accordingly, this exception must be rejected.

The Department's second exception is directed to the content of Paragraph 60 of the Conclusions of Law, which the Department urges should be rejected. However, the Department apparently fails to realize that from Paragraph 54 through and including Paragraph 75 of the Conclusions of Law, the ALJ was discussing the hypothetical presence of matters that were not alleged in the Administrative Complaint. In short, in those Paragraphs, including Paragraph 60, the ALJ was surmising as to a possible result had certain (absent) allegations been made. As those allegations were not made, all the discussion in all those Paragraphs is hypothetical and academic, and has no force or effect on the remainder of the Recommended Order, including the ultimate recommendation of dismissal. Likewise, any exceptions to any of those paragraphs, including Paragraph 60, are hypothetical and academic, and have no bearing on remainder of the Recommended Order, including the ultimate recommendation of dismissal. Accordingly, this exception is rejected.

The Department's third exception is directed to the recommendation of dismissal, arguing, essentially, that the recommendation is "logically disjunctive". The correctness or incorrectness of that argument aside, it is unsupported by reference to the record or an identifiable legal basis as required by Section 120.57(1)(k), Fla. Stat. Nothing in Chapter 120 Fla. Stat., authorizes or allows exceptions to be based on an assertion that a recommendation of dismissal "seems logically disjunctive", without more.

Additionally, because the exception to the recommendation of dismissal would have the effect of increasing the recommendation of dismissal to the ultimate penalty of

revocation, the agency must review the complete record, and make particular citation thereto in order to justify its departure from the recommendation of dismissal. Section 120.57(1)(k), Fla. Stat. The instant exception makes no representation that the Department has reviewed the complete record, nor does it include citations thereto in support of the proposed departure from the recommendation of dismissal. Accordingly, this exception is rejected.

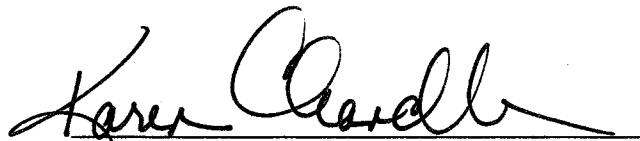
Having reviewed the Recommended Order, the transcript of proceedings, the exhibits entered into evidence, the Department's exceptions, and applicable law,

IT IS HEREBY ORDERED that the ALJ's Findings of Fact are adopted as the Department's Findings of Fact in this cause, and that the ALJ's Conclusions of Law are adopted as the Department's Conclusion of Law in this cause, except to note that the ALJ's discussion of un-alleged document deficiency and un-alleged omissions, and the potential consequences flowing therefrom, found in Paragraphs 54-75 of the Conclusions of Law in the Recommended Order, is hypothetical and had no bearing on the actual disposition of this cause. To that extent, those Conclusions of Law are not adopted by the Department.

IT IS FURTHER ORDERED the Administrative Complaint filed in this cause is hereby dismissed.

DONE AND ORDERD this ^{April} ~~16th~~ 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, 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.