



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

**FILED**

JUL 29 2008

IN THE MATTER OF

Docketed by: ASB

VICTORIA NOLEN COLON

CASE NO: 87294-07-AG

DIVISION OF ADMINISTRATIVE HEARINGS

FINAL ORDER

**FILED**  
 DATE July 31, 2008

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 Robert E. Meale (hereinafter referred to as "ALJ"), after a formal hearing conducted pursuant to Section 120.57(1), Florida Statutes. No exceptions were filed.

PRELIMINARY STATEMENT

At issue in the instant matter is whether Respondent sold ancillary insurance products to customers without adequate disclosure in violation of Section 626.9541(1)(z) and 626.621(6), Florida Statutes. Based upon the evidence presented and testimony of witnesses, the ALJ recommended the Department of Financial Services enter a final order finding Victoria Nolen Colon guilty of one count of violating Sections 626.9541(1)(z) 2. and 3. and 626.621(6), Florida Statutes. Considering Section 69B-231.100 and 69B-231.160. Florida Administrative Code, the ALJ further recommended a thirty day suspension of Respondent's license and appointment as a general lines agent.

ANALYSIS

Florida Administrative Code Rule 69B-231.040, states that the Department is authorized to find multiple grounds exist under Section 626.611 and 626.621, Florida Statutes 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. Further the Rule provides that 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."

Florida Administrative Code Rule 69B-231.160 provides that the Department shall consider certain aggravating and mitigating factors and apply them to the total penalty in reaching the final penalty assessed against a licensee. After consideration and application of these factors, the Department shall, if warranted, either decrease or increase the penalty to any penalty authorized by law. While it provides for discretion in decreasing or increasing the penalty, the Rule does not provide any limitation as to the amount of time the Department may decrease or increase the penalty.

In the instant case, the ALJ concluded that the specific statute at issue in regards to penalty is section 626.9541(a)(z) 2. and 3., Florida Statutes. Further, the ALJ concluded that the statute best defining the wrongful acts and omissions is Section 626.621(6), Florida Statutes, which references Section 626.9541. Moreover, the ALJ concluded that violation of these statutes provides the ground for discipline. What the ALJ failed to account for is the fact that the single violation of sliding found in this case demonstrates a lack of fitness and trustworthiness to engage in the business of insurance within the meaning of Section 626.611(7), Florida Statutes. Sliding also constitutes a dishonest practice in the conduct of business under Petitioner's license within the meaning of Section 626.611(9), Florida Statutes. As such, there are multiple grounds for disciplinary action against the licensee in this case. See Thomas v. Department of Insurance and Treasurer, 559 So.2d 419, 421 (Fla. 2d DCA 1990), rev denied, 570 So.2d 1307 (1990), (holding that sliding violated sections 626.611(5), (7) and (9) and 621.621(6), Florida Statutes).

Florida Administrative Code Rule 69B-231.080 establishes penalties for violation of Section 626.611, Florida Statutes. If it is found that a licensee has violated Section 626.611(7),

the Rule provides for a six month suspension. Likewise, the rule provides for a nine month suspension for violation of Section 626.611(9), Florida Statutes. Florida Administrative Code Rule 69B-231.080 establishes penalties for violation of Section 626.621(6), Florida Statutes where a licensee is found to have engaged in unfair methods of competition or in an unfair or deceptive act or practice as defined in subsection 626.9541(1), Florida Statutes. The penalty for violation of subsection 626.9541(1)(z) is a six month suspension. Based on the foregoing, the highest penalty per count to be considered in disciplinary action against the licensee in the instant case is nine months. Therefore, the appropriate total penalty in the instant case is nine months.

With respect to aggravating circumstances in the instant case, the Department considered the willfulness of Respondent's conduct, the degree of actual injury to the victim, the motivation for commission by the licensee and the financial gain to the licensee. The Department also considered as a mitigating circumstance, the fact that Respondent has had no prior disciplinary action imposed over a fifteen year period. Accordingly, based upon the consideration of these factors, the total adjusted penalty is seven months.

NOW THEREFORE, after careful consideration of the transcript of proceedings, the exhibits introduced into evidence, the Proposed Recommended Orders submitted by the parties, and the Recommended Order entered by the Administrative Law Judge, 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 and incorporated herein by reference as the Department's Findings of Fact.
2. The Conclusions of Law reached by the Administrative Law Judge are adopted in part and rejected in part as follows. The Department rejects Conclusion of Law 39. The

remainder of the Conclusions of law reached by the Administrative Law Judge are adopted in full and incorporated herein by reference as the Department's Conclusions of Law.

3. The Recommendation made by the Administrative Law Judge is REJECTED by the Department. Based upon Victoria Nolen Colon's violation of Sections 626.611 (7) and (9), 626.9541(1)(z) 2. and 3. and 626.621(6) Florida Statutes, her license and appointment as a general lines agent, license no. A192887, and her eligibility for licensure, are hereby suspended for a period of seven months from the date of this Order.

DONE and ORDERED this 29th day of July, 2008.



Tammy Teston  
Tammy Teston  
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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