



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

**FILED**

APR 7 2008

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DIVISION OF  
ADMINISTRATIVE  
HEARINGS

IN THE MATTER OF:

MONICA JONES /

Case No. 87529-07-AG

FINAL ORDER

THIS CAUSE came on for consideration and final agency action. On August 2, 2007, an Administrative Complaint was issued by the Department of Financial Services against the Respondent, Monica Jones, alleging that she violated various provisions within Chapter 626, Florida Statutes, by permitting unlicensed individuals to unlawfully engage in insurance transactions. Respondent timely filed a request for a proceeding pursuant to Section 120.57(1), Florida Statutes. Pursuant to notice, the matter was heard before Stuart M. Lerner, Administrative Law Judge, Division of Administrative Hearings, on October 26, 2007.

After consideration of the record and argument presented at hearing, the Administrative Law Judge issued his Recommended Order on January 7, 2008. (Attached as Exhibit A). The Administrative Law Judge recommended that the Department enter a final order suspending Respondent's license as a general lines insurance agent for 24 months.

Both the Petitioner and the Respondent filed exceptions to the Recommended Order. The parties did not file Responses to the other's exceptions. Each exception is addressed below.

## RULINGS ON RESPONDENT'S EXCEPTIONS

1. Respondent excepts to Finding of Fact 4, of the Recommended Order, and states that the Administrative Law Judge erred by making a finding based on hearsay. Further, the Respondent argues that the Finding is immaterial because Gus Jones was not in violation of the Department of Insurance's Final Order suspending his license. This exception is erroneous for a number of reasons. First, the Finding is based on permissible testimony. Here, Petitioner laid a foundation for the evidence by calling a witness, Mr. Raphael Montero, to explain Mr. Gus Jones' disciplinary history with the Department. [Tr. 113-138]. The record also indicates that the Petitioner introduced documents that supplement and corroborate Mr. Montero's testimony as it relates to Mr. Jones' revocation and suspension by the Department. [Petitioner's Ex. 1-3; Tr. 120-127]. Second, the finding on its face is accurate, material, and based on competent substantial evidence. The Respondent argues that Gus Jones was not in violation of the Final Order suspending his license. However, that is not a complete and accurate statement regarding the finding. The finding merely summarizes, in part, a portion of Gus Jones' disciplinary history. This finding is instructive and relevant as it is directly related to pertinent issues in the instant case and establishes that Mr. Jones was unlicensed by the Department at all times germane to this matter. It is well established that the credibility of the witness' testimony and the weight to be given the evidence is the province of the Administrative Law Judge and cannot be overturned unless clearly erroneous or not supported by competent substantial evidence. Brogan v. Carter, 671 So.2d 822 (Fla. 1st DCA 1996). As there is competent substantial

evidence in the record to support the Administrative Law Judge's Finding of Fact 4, this exception is REJECTED.

The Respondent further excepts to Count I, II, and III of the Administrative Complaint. Pursuant to Section 120.57(1)(k), Florida Statutes, "[t]he final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." Here, the exception contains no objections to a single Finding of Fact. As a result, it is not clear what additional findings, if any, that the Respondent excepts to. Consequently, the Department is not required to guess as to the Respondent's intended exceptions to the Recommended Order. Accordingly, the exception is REJECTED.

With respect to Count I, the Respondent recites a number of facts, with no apparent purpose, that contradict the Respondent's view of the record. Specifically, the Respondent draws attention to a visit that Sarah Harrington made to the Maples Insurance Agency ("Agency"). Respondent appears to argue that it is ambiguous as to who at the Agency provided Ms. Harrington with a binder and gave her information about future mailings from Citizens. Lastly, the Respondent suggests that more than one person was involved and that an unidentified woman was working in the Agency. The record, however, is very clear that Ms. Harrington was assisted by Claudia Smith, an unlicensed individual, when she went to the Agency. [Tr. 69-71; Depo. 48-49]. As well, the record is clear that during that visit Ms. Smith provided recommendations and explanations to Ms. Harrington concerning the purchase of homeowners' insurance

coverage. [Tr. 69-71, 73]. The issue, as enunciated in Count I, is that the Respondent provided Claudia Smith with the means to engage in the unlicensed transaction of insurance business in violation of Section 626.621(12), Florida Statutes. The record contains numerous facts that support the Administrative Complaint and the Recommended Order in this regard. Some of these facts include the Respondent's testimony that four people work at the Agency despite the fact that only the Respondent holds an insurance license of any kind. [Depo. 18-19, 20-26]. Second, the Respondent works nine hours per week notwithstanding that the agency is open five days per week from nine a.m. until five p.m. [Depo. 29-31]. The Respondent admitted that she did not know of other licensed individuals working at the agency. [Depo. 18]. Third, the Respondent acknowledged that she was aware that her brother, Gus Jones, Jr., had lost his license with the Department. [Depo. 26]. Fourth, the Respondent permitted all employees of the agency, including Gus Jones Jr., Mary Terrel, and Claudia Smith to sign her name on any documents pertaining to the agency's operations. [Depo. 43, 34-35]. Those documents included insurance applications and binders. [Depo. 45-47]. Fifth, the Respondent did not know and never met any of the victims that are the subject of the Administrative Complaint. [Depo. 42-43]. The totality of the evidence clearly establishes that the Respondent provided Claudia Smith with the means to transact insurance business in violation of the Florida Insurance Code.

Again, with respect to Count II, the Respondent recites a number of facts without referring to a solitary disputed finding. Count II of the Administrative Complaint involves Monica Barranco's visit to Agency to clear up a matter concerning her friend's automobile policy. The victim, Ms. Barranco, met with both Claudia Smith and Gus

Jones. [Tr. 21-22, 26, 43-45]. The Respondent argues that providing information and a policy to Ms. Barranco does not constitute engaging in insurance transactions. However, pursuant to Section 626.7315, Florida Statutes and Rule 69B-222.060, Florida Administrative Code, advising as to insurance needs or insurance matters is not permissible by unlicensed personnel. The Respondent attempts to cloak Claudia Smith and Gus Jones' activities under the guise of clerical duties that are exempt from licensure pursuant to Section 626.0428(1), Florida Statutes. However, the record clearly demonstrates that Mary Terrel, Claudia Smith, and Gus Jones all acted in the capacity of an insurance agent in attempting to resolve Ms. Barranco's concerns. [Depo. 63-73]. Further, when the Respondent was asked what she knew about Ms. Barranco's insurance transaction at the Agency, the Respondent answered "I don't know anything about it." [Depo. 64]. Here, the entirety of the record establishes that Ms. Smith and Mr. Jones were providing all the services of a general lines agent and were not subject to the supervision of Monica Jones.

Lastly, with respect to Count III, the Respondent argues that the victim, Marvin Mercier only came to the Agency to sign an application and pay a premium. [Petitioner's Ex. 11]. However, the record is unambiguous that Ms. Smith solicited the sale of insurance to Mr. Mercier and bound the coverage in violation of Rule 69B-222.060, Florida Administrative Code and Sections 626.7315 and 626.0428(2), Florida Statutes. [Petitioner's Ex. 11]. Further, Mr. Mercier testified that the preparation and purchase of an insurance binder occurred on a Saturday, Ms. Jones' day off, and he confirmed that Ms. Jones was not present and he never met her. [Petitioner's Ex. 11; Tr. 49-50, 52-54; Depo. 73-74]. Thus, the evidence demonstrates, clearly and

convincingly, that the Respondent provided Ms. Smith with the means to engage in insurance transaction in violation of the Florida Insurance Code.

Therefore, to summarize, the Respondent provided no exceptions to the Findings of Fact other than an exception to Finding of Fact 4. The Respondent's challenges to Counts I-III are argued without any reference whatsoever to the Findings of Fact. As stated in the foregoing review, there is competent substantial evidence to support each of the counts in the Administrative Complaint. Accordingly, none of the Findings of Fact will be disturbed and Respondent's exceptions/arguments are REJECTED.

2. The Respondent also makes a general exception to all Conclusions of Law that support the determination that clear and convincing evidence has been established to demonstrate that Respondent violated the Florida Insurance Code by assisting unlicensed personnel in the unlawful engagement in insurance transactions. Again, the Respondent fails to state with particularity any Conclusions of Law that she deems inaccurate. Therefore, pursuant to Section 120.57(1)(k), Florida Statutes, and the reasons expressed in the previous discussion, the Respondent's general exceptions to the Conclusions of Law are REJECTED.

3. The Respondent also makes a general objection to Petitioner's Exhibit 14 by arguing that Rule 1.330, Florida Rules of Civil Procedure, does not permit the admittance of Petitioner's Exhibit 14. Rather, the Respondent contends that the Rule permits the admittance of deposition testimony only to the extent permissible under the rules of evidence. Although the Respondent has correctly stated the provisions of the Rule, the Respondent failed to acknowledge that Rule 1.330(a), Florida Rules of Civil Procedure, clearly permits deposition testimony to be used at hearing under the facts

presented in this case. Further, Section 90.803(18)(a), Florida Statutes, provides a hearsay exception for statements that are offered as admissions against a party opponent. Likewise, relevant case law provides that deposition testimony is admissible if the party against whom the deposition testimony is offered had the opportunity to develop the testimony by direct, cross, or redirect testimony. Motel 6, Inc. v. Roger Dowling, 595 So.2d 260 (Fla. 1<sup>st</sup> DCA 1992). Here, the record is clear that the Petitioner put the Respondent on notice that the deposition could be used for any reason. [Depo. 6]. Despite this warning, it appears that the Respondent's counsel conducted neither a cross-examination of the Respondent nor attempted to cure the record or rebut the Respondent's damaging admissions. Of important note, the Respondent's counsel stated at hearing that he intended to file a motion with respect to the admittance of the deposition. However, to date, the Respondent has filed neither a motion nor a Proposed Recommended Order in this matter. As such, the Respondent has not been prejudiced and has had ample opportunity to perfect the record in this regard. Therefore, none of the Findings of Fact will be disturbed, and it is found that the deposition was properly admitted.

#### RULINGS ON PETITIONER'S EXCEPTIONS

The Petitioner excepts to the Penalty Recommendation stating that it departs from the requirements of Chapter 69B-231, Florida Administrative Code. Specifically, the Petitioner's took issue with the Administrative Law Judge's suggestion that Respondent's actions caused no actual harm to the victims. The Petitioner's objection is well-taken as the evidence is plainly to the contrary. The testimony of Ms. Barranco was that her friend suffered a \$7,500 loss as result of Ms. Jones' actions.

[Recommended Order paragraph 37; Tr. 42-43]. The Petitioner further argues that the evidence did not demonstrate that the Respondent "cooperated with the Department" within the meaning of Rule 69B-231.160(1)(h), Florida Administrative Code. The Petitioner posits that a licensee's testimony at hearing, in addition to active participation of a licensee in discovery, would constitute "cooperation." Clearly, that interpretation was neither intended by the Rule, nor a reasonable reading of it. To permit such an interpretation would render the rule meaningless as every licensee would be entitled to mitigation by participating in any way at hearing or during discovery. As such, it appears that a modification of the Administrative Law Judge's Conclusion of Law 66 is necessary to conform the Conclusion to the evidence presented in this case. Therefore, Conclusion of Law 66 is rejected, and the following paragraph is substituted and states as follows:

66. The evidence demonstrates that one mitigating factor exists in this case. The Respondent's unblemished disciplinary record does not contain any previous disciplinary orders or prior warnings by the Department.

The above substituted finding was made after a review of the entire record. This Conclusion of Law is as or more reasonable than the Hearing Officer's Conclusion of Law.

Therefore, upon careful consideration of the entire record, the submissions of the parties, and being otherwise fully advised in the premises, it is ORDERED:

1. The Findings of Fact of the Administrative Law Judge are adopted as the Department's Findings of Fact.

2. The Conclusions of Law of the Administrative Law Judge are adopted, to the extent modified herein, as the Department's Conclusions of Law.



3. The Administrative Law Judge's recommendation that the Department enter a Final Order suspending the Respondent's license(s) and eligibility for licensure in the State of Florida for twenty-four (24) months is approved and accepted as being the appropriate disposition of this case.

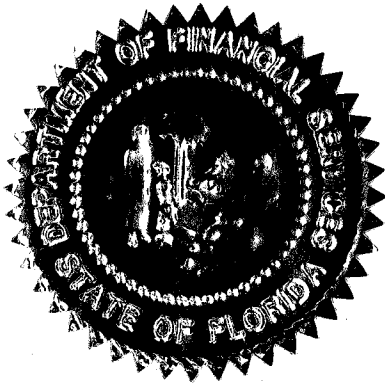
ACCORDINGLY, it is ORDERED that Respondent's, MONICA JONES', license(s) and eligibility for licensure are hereby SUSPENDED for twenty-four (24) months effective immediately upon issuance of this Final Order. Pursuant to Section 626.651, Florida Statutes, the suspension of Respondent's license(s) and eligibility for licensure is applicable to all licenses and eligibility held by the Respondent under the Florida Insurance Code. Pursuant to Section 626.641(4), Florida Statutes, the Respondent shall not engage in or attempt or profess to engage in any transaction or business for which a license or appointment is required under the Insurance Code or directly or indirectly own, control, or be employed in any manner by any insurance agent or agency or adjuster or adjusting firm during the period of suspension. Pursuant to Section 626.641(1), Florida Statutes, the Respondent's licensure shall not be reinstated except upon written request for such reinstatement, and the Respondent shall not engage in the transaction of insurance until her licensure is reinstated. The Department shall not grant reinstatement if it finds that the circumstance or circumstances for which Respondent's licenses were suspended still exist or are likely to recur.

#### NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order is entitled to seek review of the 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 200 East Gaines Street, Tallahassee, FL 32399-0333, and a copy of the same and the filing fee with the appropriate District Court of Appeal within thirty (30) days of the rendition of this Order.

DONE and ORDERED this 7<sup>th</sup> day of April, 2008.



  
KAREN CHANDLER  
Deputy Chief Financial Officer

**COPIES FURNISHED TO:**

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