

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ALEX J. CAMPOS,)	
)	
Petitioner,)	
)	
vs.)	Case No. 08-2246
)	
DEPARTMENT OF FINANCIAL)	
SERVICES,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

Pursuant to notice, a due process hearing was held in this case on March 10 and 11, 2009, in Ft. Lauderdale, Florida, before June C. McKinney, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner:	Joel Fass, Esquire Amy Koltnow, Esquire One Financial Plaza 23rd Floor 100 Southeast 3rd Avenue Ft. Lauderdale, Florida 33394
For Respondent:	Mary K. Surles, Esquire Michael H. Davidson, Esquire Florida Department of Financial Services 200 East Gaines Street Room 624 Larson Building Tallahassee, Florida 32399-0333

STATEMENT OF THE ISSUE

Whether Campos' Petition for Termination of Restriction and Prohibition of the January 12, 1995, Final Order should be

granted because Campos has demonstrated that he is rehabilitated, fit, and trustworthy to have those restrictions lifted.

PRELIMINARY STATEMENT

On April 2, 2008, the Department of Financial Services ("Department"), notified Alex Campos ("Petitioner" or "Campos"), of its decision to deny Petitioner's Petition for Termination of Restriction and Prohibition. Petitioner timely requested an administrative hearing regarding the Department's action. On May 9, 2008, the Department forwarded the Petitioner's request to the Division of Administrative Hearings to conduct a formal hearing.

The undersigned granted the Department's Motion in Limine in Support of the Doctrine of Collateral Estoppel. The undersigned's ruling precluded the relitigation of the issues and facts referenced in the May 17, 1999, Final Order and the May 7, 2001, Consent Order.

At the final hearing, Petitioner testified on his own behalf and presented the testimony of Steve Malono, Esquire; Dean White, Senior Vice-President of Transportation at TIG; Richard Parrillo, Sr., CEO of United Auto Insurance Company; and Issac Linsky, Staff Attorney for the United States Justice Department and close friend (through deposition testimony).

Petitioner offered Exhibits 1 through 21, which were received into evidence.

Respondent presented the testimony of one witness, Department Investigator, Susan Jordan. Respondent's Exhibits numbered 1 through 3 were admitted into evidence. The parties stipulated to the submission of Joint Exhibits 1-5, representing excerpts and selected exhibits from the depositions of Peter McDonnell, Raylene Blocker, Frances Silverthorn, Robert Redican, and Roxanne Rehm, which were received into evidence.

Official recognition was taken of the Department's Final Order filed January 12, 1995, In the Matter of Alex J. Campos, DOI Case No. 93-L063SMH, DOAH Case No. 93-1460; the Department's Final Order and Recommended Order filed May 17, 1999, In the Matter of Proposed Acquisition of 100 percent of the Outstanding Stock of Perry & Company, Case No. 26576-98-CO; and the Consent Order filed March 7, 2001, In the Matter of Proposed Acquisition of 100 percent of the Outstanding Stock of Perry & Company, DOI Case Nos. 29086-99-CO and 26576-98-CO, and DOAH Case No. 99-2918.

The hearing was completed on March 11, 2009, and the parties requested that the proposed recommended order deadline be 45 days after the transcript was filed with the Division of Administrative Hearings. On April 2 and 8, 2009, the Transcript, consisting of three volumes, was filed. By mutual

agreement at the hearing, proposed recommended orders were to be filed by May 26, 2009. The undersigned granted Petitioner's Motion for Enlargement of Time to file proposed recommended orders until July 6, 2009. Petitioner requested a second extension, which the Department did not oppose, and both parties were given until July 10, 2009, to file proposed recommended orders. Respondent filed a timely proposed recommended order. Petitioner's proposed recommended order was filed on July 13, 2009. Respondent did not object to the late filing of Petitioner's proposed recommended order and so it is accepted as filed. Both parties' proposed recommended orders have been considered in this matter.

FINDINGS OF FACT

1. In 1993, the Department's predecessor, the Florida Department of Insurance ("DOI") commenced an action against Mr. Campos based on allegations of misconduct while an officer and director of First Miami, then a DOI-licensed insurance company. As a result of that investigation, the DOI subsequently sought an order removing, restricting, or prohibiting Campos from participating in the affairs of Perry & Company ("Perry & Co."), then a DOI-licensed premium finance company, pursuant to Section 624.310, Florida Statutes.

2. On January 12, 1995, the Florida Treasurer and Insurance Commissioner issued a Final Order ("Removal Order")

removing Campos from the affairs of Perry & Co., and prohibiting him from thereafter participating in the affairs of any entity licensed under the Florida Insurance Code. The pertinent language of the Removal Order stated:

. . .the Respondent shall forthwith CEASE any participation in the affairs of any entity licensed, as that term is defined in Section 120.52(9), Florida Statutes, under the Florida Insurance Code, and is PROHIBITED from engaging in such activities. (Emphasis added).

* * *

The Respondent is not eligible for reelection or appointment to any official position to any licensee in this state except upon the written consent of the Department.

3. On February 29, 1996, the Department's Final Order was upheld by the First District Court of Appeal and became effective on March 18, 1996, upon the district court's issuance of its mandate.

2001 Consent Order

4. In 1996, Campos through his company AJC Consulting, Inc. ("AJC") executed and performed under an agreement with Perry & Co., providing consulting and data processing services. Perry & Co. was a premium finance company licensed by the DOI at all times up until about March 7, 2001.

5. In 1998, Perry & Co. requested the Department's approval to change ownership and control of the company. During

the application process, the Department discovered Campos had business activities with Perry & Co.

6. On May 17, 1999, the Department issued its Final Order from an evidentiary hearing held February 18, 1999, pursuant to Section 628.4615(6), Florida Statutes (1999), approving the acquisition of shares of Perry & Co. by Jack Perry contingent upon the issuance of a Consent Order that prohibited Campos from participating in the affairs of Perry & Co. or exercising control over Perry & Co.

7. The Consent Order ("2001 Consent Order") dated March 7, 2001, was issued requiring Perry & Co. to surrender its Florida license. It further stated that pursuant to the 1995 Final Order, Campos "shall not in any way be involved in the provision of any such administrative services unless authorized to do so by subsequent Order of the Department."

8. From 1995 until present Alex Campos was president and co-owner of PC General Agency, Inc. ("PC General"). Since then, he has engaged in regulated business throughout the United States and has been licensed in several capacities in other jurisdictions.

Kenneth I. Tobey, Inc.

9. Kenneth I Tobey, Inc. ("KIT") operated in the states of Oregon and Washington as a licensed managing general agency. On October 18, 2005, KIT was issued a Florida certificate of licensure as a non-resident managing general agent, License No. P007036, by the Department. KIT's non-resident managing general agent license became valid upon issuance.¹

10. While Campos was considering the purchase of KIT in 2006, he became aware of the fact that a Florida non-resident managing general agent license had been issued to KIT by the Department. KIT's then president, Robert Redican, provided Campos a document identified as "license by state." Approximately 11 states were listed with the license number and expiration date on the document. Corresponding to Florida was the following information:

<u>State</u>	<u>License Number</u>	<u>Expiration Date</u>	<u>Notes</u>
Florida	P007036	N/A	Managing General Agent
.			

11. Florida was the only state that had N/A under the Expiration Date column. The other states had dates except two had "perpetual." However, even with that knowledge, Campos failed to contact the Department to inquire about the status of the Florida license issued to KIT or ask the meaning of N/A. Campos testified unconvincingly that he understood the N/A meant not active.

12. On April 30, 2006, Campos executed a "Company Management Agreement" between his company, PC General, and KIT. The agreement allowed PC General to manage and operate KIT's business "in the States of Oregon and Washington and in any other state to which the parties may mutually agree in writing." With the agreement, he took over the management functions and administrative services, which included, but were not limited to: policy processing, customer service type calls, receipt type calls, and the cash processing type transactions of KIT.

13. KIT maintained no office in Florida, conducted no insurance business in Florida, and was never appointed as a managing general agent for any carrier or licensee in the state of Florida.

14. From April 30, 2006, until the date KIT filed for bankruptcy on October 18, 2006, PC General managed KIT, Inc.'s Washington and Oregon offices through the "Company Management Agreement." As trustee, Campos signed the October 16, 2006, Bankruptcy Petition as manager of, and on behalf of, KIT when it was filed. Soon thereafter, Petitioner was removed and replaced with an independent trustee since he also served in the capacity as a creditor.

15. Campos neither requested nor obtained written consent from the Department to enter into and perform under the "Company Management Agreement" with KIT. Campos' relationship with KIT,

a Florida licensee, allowed him to be a part of KIT's business affairs.

GetAutoInsurance.com

16. On April 13, 2005, Campos became the owner and president of GetAutoInsurance.com, LLC, a Georgia corporation. That entity is the registered owner of the domain name "GetAutoInsurance.com."

17. Campos maintained and operated the internet website. Petitioner entered into contracts with different companies throughout the country that provide insurance products. GetAutoInsurance.com partners with the companies that are licensed insurance agencies. The website provides technology that allows each partner to market and distribute insurance via the internet.

18. The website works by a customer entering a zip code on the GetAutoInsurance.com World Wide Web address and then the customer clicks on the tab "Start Quote." That customer receives a quote from a partner entity for an insurance product. Each partner compensates Campos a one-time \$5.00 quote fee per customer. Florida customers are neither restricted from using the GetAutoInsurance.com website nor from getting quotes for insurance from Florida partner companies.

19. On or about May 5, 2005, Campos executed a Marketing Master agreement between GetAutoInsurance.com and Esurance Inc.

The terms of the agreement required Esurance pay Campos a one-time quote fee of \$5.00 for each unique visitor quote.² The Market Master Agreement neither restricted the kinds of insurance products Campos could be compensated for by soliciting on behalf of Esurance via GetAutoInsurance.com nor limited the customers to those outside of Florida.

20. Under the general provision section, the Marketing Master Agreement provides:

Esurance and [GetAutoInsurance.com LLC] recognize and agree that both Parties are operating independently and neither party shall be construed as an agent, partner or joint venture of the other Party.

21. On or about October 9, 2008, Susan Jordan ("Jordan") went to www.GetAutoinsurance.com. The GetAutoInsurance.com website did not describe policy benefits or coverage terms, quote premiums for insurance products or provide assistance to customers with completing insurance applications on its homepage. However, the homepage did state:

* * *

When you're driven to buy auto insurance, or maybe just to make sure you're getting the best deal, doesn't it make sense to take the internet highway instead. . . .

You have already taken the on ramp to get here and now you are really just a few minutes away from competitive quotes, no matter where you live. Getting quotes with GetAutoInsurance.com is the fast, easy and no cost way that you can do anytime or

anywhere.

The professionals at GetAutoInsurance.com have been meeting the Insurance needs of thousands of customers nationwide for years and we can do the same for you. And our service doesn't stop at the sale. We're here for you when you need to make a change to your policy or coverage. And, unlike others, if you have a claim, we're here to help there too. Don't know what to do-- don't know where to go for repairs--all you need to do is steer your computer to GetAutoInsurance.com and we'll introduce you to one of our network associates.

And, if we can't do it online--we have a toll free number to call and we'll do our best to be helpful.

Isn't it time to take GetAutoInsurance.com for a test drive? It's simple - enter your zip code above and we'll show you the roadmap to low cost, quality auto insurance.

22. While on the homepage, Jordan entered a Florida zip code and pressed start quote. She followed the prompts that appeared on each succeeding webpage and was able to complete an application for health insurance as a Florida resident. Jordan also obtained an online health insurance quote, which provided her an offer to enter into a given insurance contract at a given price, for that policy. Jordan did not provide a credit card number to complete the application and obtain a policy.

23. Subsequently, Jordan received a United Healthcare letter by email dated October 9, 2008, with an application for health insurance. The letter stated:

Thank you for choosing eHealthInsurance to assist you with your health insurance purchase.

To date we have helped more than a million people obtain health insurance for themselves and their families, and we are very qualified and ready to assist you.

Enclosed you will find the application you submitted on our website along with a checklist to help you complete your application. Please follow the checklist and return your application and any necessary payment to eHealthInsurance. Upon receipt, we will process your application and forward it to your chosen health insurance carrier for review. . .

* * *

You can log into our website (www.ehealthinsuranc.com) as a "Returning Customer" at any time to view the benefits you have chosen and also check the status of your application. . .

The signature block of the letter read:

Gary Matalucci
Vice President of Customer Care
eHealthInsurance Services
Florida License No. L049392

24. The attached application identified the carrier as Golden Rule Insurance Company. Robert S. Hurley, eHealthInsurance Services, Inc., is listed as the "Licensed Broker," Broker No. 2668300 and Florida Agent No. E133984. But for Jordan going the www.GetAutoInsurance.com website, she would not have had contact with the two Florida licensees.

25. On May 11, 2006, Campos filed a Petition for Termination of Restriction and Prohibition of the Removal Order with the Department. He sought to be eligible for licensure under the Florida Insurance Code and/or affiliated with a Florida licensee. On April 2, 2008, by letter the Department denied Campos' petition based on its determination that Campos was not fit or trustworthy for licensure in Florida. The Department used numerous representative examples for the basis of its denial decision.

26. On or about November 13, 2008, the undersigned granted the Department's Motion for Leave to Amend the Department's April 2, 2008, denial letter. The amendment provides the following additional ground for denial:

Despite being removed, by the Department's January 12, 1995 Final Order, from the affairs of Petty & Company, a premium finance company at all relevant times licensed by the Florida Department of Insurance, you, Alex J. Campos, through execution of and performance under that certain Agreement between Perry & company and AJC Consulting, Inc., dated May 1, 1996, and accompanying addenda dated May 1, 1998, did participate in the affairs of Perry & Company, contrary to the prohibitions and restrictions of the Department's Final Order dated January 12, 1995.

27. Prior to the hearing, the parties narrowed the issues to three as the grounds of denial of Campos' petition: (1) Campos violated the 1995 Final Order by entering into a

subsequent consulting agreement with Perry & Co., then a Florida licensed premium finance company; (2) Campos' involvement with KIT violated the 1995 Final Order because KIT had previously applied for and received a Florida managing general's agent's license; and (3) Campos through his ownership and involvement in GetAutoInsurance.com transacted insurance business from Florida residents without proper licensure.

Campos' Character

28. Campos is a self-educated business entrepreneur with expertise in computer information systems. He has been involved in the insurance industry since 1988. He recognizes the need for companies to be well-capitalized and to operate within its means.

29. Since the 2001 Consent Order, Campos has focused his business predominately in Texas. He ran All American General Agency in Texas with Dick Perry and Jack Perry.³ All American General Agency is not active today. Campos also owns One World Mortgage Corporation that has a mortgage license in Florida.

30. Campos testified that since the effective date of the 1995 Final Order, he believes he has acted within the law and within the spirit of the Removal Order.

31. Mr. White testified that Perry & Co. and Campos managed the premium finance companies properly while he developed TIG's non-standard automobile insurance line out of

Texas. He explained that out of all the hundreds of premium finance companies he had dealt with over the years that Perry & Co. and Campos "did it the way it was supposed to be done." He further testified that Campos told him up front about his problems in Florida and his association with First Miami.

32. White was so pleased with Campos' services that he hired Campos' company, PC Group, to run his managing general agency, which Campos was still operating at the time of the hearing. White hasn't had any complaints about Campos and thinks Campos is known for the "best system out there."

33. Mr. Parrillo has known Campos for 15 years. He has not had any business transactions with Campos. However, in his personal experience of dealing with Campos, he has never had any problems.

34. Mr. Lidsky testified that he knows Campos because he has been a close friend of his father's for a number of years and a business associate. Lidsky and his wife started a nonprofit charitable organization, Hope for Vision, which raises funds for retinal degenerative disease research. Campos has been generous in his contributions and fundraising for the organization since its formation and has volunteered his time.

CONCLUSIONS OF LAW

35. The Division of Administrative Hearings has personal and subject matter jurisdiction in this proceeding pursuant to

Sections 120.569 and 120.57(1), Florida Statutes (2009).

36. Because Petitioner has petitioned to terminate the Removal Order, he bears the ultimate burden of proving, by a preponderance of the evidence, that he is qualified and should be granted the privilege for which he has applied. See Department of Banking and Finance Division of Securities and Investor Protection v Osborne Stern and Company, 670 So. 2d 932, 934 (Fla. 1996); and Haines v Department of Children and Families, 983 So. 2d 602, 605 (5th DCA 2008) (An agency has broad discretion in determining the fitness of applicants who seek to engage in an occupation the conduct which is a privilege rather than a right.).

37. This is a de novo proceeding for the purpose of formulating agency action, and not to determine whether the agency's decision was correct at the time that it made the decision, but to determine whether the Department's expressed allegations and concerns for Petitioner's denial are valid.

38. Petitioner asserts that after his removal from his position at Perry & Co. he has not had any ownership interest in any Florida licensee, rendered any opinions to any Florida licensee, nor engaged in any insurance transactions in Florida.

39. Petitioner presented his employment history and the testimony of White and Parrillo to attest to his character and

reputation in the insurance industry since the 1995 Removal Order. Lidsky also testified as a character witness to establish that Campos has a generous nature and participates in philanthropic activities. The character evidence presented was not compelling enough to demonstrate to the undersigned that Campos is now fit and trustworthy to be relicensed by the Department, especially in light of the seriousness of his violations of Florida law which gave rise to the 1995 Final Order and the 2001 Consent Order.

40. The Department also contends that Campos has not complied with all the terms and conditions of the 1995 Final Order and 2001 Consent Order prohibiting his participation in the affairs of any Florida licensee. "Participate" is defined in the *American Heritage Dictionary, Second College Edition* as "to take part; join or share with others." *American Heritage* defines "affairs" as "business." The evidence establishes that Campos' management functions and administrative services including policy processing under the "Company Management Agreement" were actions that both had a part and shared in the business of KIT. Petitioner further participated in KIT's business affairs by serving as the manager and trustee when signing KIT's Bankruptcy Petition.

41. Campos' testimony that his understanding that KIT's "N/A" listing for the expiration date meant not active was not

convincing and did not excuse Campos from his prohibition under the Removal Order. Further, after being given a "license by state document" that specifically listed Florida, Campos failed to make any effort to contact the Department to check on KIT's licensure status. The request of the status from KIT's president was not due diligence with Campos' controversial history with the Department. Moreover, the Perry & Co. case was similar to KIT's and Campos had been specifically forewarned as recent as the 2001 Consent Order to request written permission from the Department when dealing with a Florida licensee. The record is clear that KIT obtained a Florida license in 2005 and Campos started participating in the business affairs of the Florida licensee, KIT, in 2006.

42. The Department also denied Campos' Petition based on his management and operation of www.GetAutoInsurance.com.

43. Section 624.10, Florida Statutes (2008), provides in pertinent part:

624.10 Transacting insurance.--"Transact" with respect to insurance includes any of the following, in addition to other applicable provisions of this code:

- (1) Solicitation or inducement.
- (2) Preliminary negotiations.
- (3) Effectuation of a contract of insurance.
- (4) Transaction of matters subsequent to effectuation of a contract of insurance and arising out of it.

44. Section 626.112, Florida Statutes, (2008), provides in pertinent part:

626.112 License and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents.--

(1)(a) No person may be, act as, or advertise or hold himself or herself out to be an insurance agent, insurance adjuster, or customer representative unless he or she is currently licensed by the department and appointed by an appropriate appointing entity or person.

(b) Except as provided in subsection (6) or in applicable department rules, and in addition to other conduct described in this chapter with respect to particular types of agents, a license as an insurance agent, service representative, customer representative, or limited customer representative is required in order to engage in the solicitation of insurance. For purposes of this requirement, as applicable to any of the license types described in this section, the solicitation of insurance is the attempt to persuade any person to purchase an insurance product by:

1. Describing the benefits or terms of insurance coverage, including premiums or rates of return;
2. Distributing an invitation to contract to prospective purchasers;
3. Making general or specific recommendations as to insurance products;
4. Completing orders or applications for insurance products;

5. Comparing insurance products, advising as to insurance matters, or interpreting policies or coverages; or

6. Offering or attempting to negotiate on behalf of another person a viatical settlement contract as defined in s. 626.9911.

45. The Department argues that Petitioner illegally solicited insurance by distributing an invitation to contract for insurance online to Jordan and other Florida residents who had unrestricted access to Petitioner's website GetAutoInsurance.com. The Department's position is that the website is transacting insurance when it attracts members of the public interested in insurance to go on Petitioner's website, and get passed on for a \$5.00 fee, to an insurer interested in selling insurance pursuant to Section 626.112(1)(b), Florida Statutes.

46. In support of this argument, the Department cites National Fed. of Ret. Per. v Dept. of Ins., 553 So. 2d 1289 (Fla. 1st DCA 1989). The court held that inviting prospective members to inquire further about supplemental Medicare insurance by providing an informational pamphlet constituted unlicensed transacting of insurance through solicitation and inducement, in violation of insurance laws. Id.

47. Petitioner describes his website as a portal that only generates insurance leads for agents and carriers who are

authorized to transact insurance. Campos further considers the website a referral that does not require licensing under Section 626.112(8), Florida Statutes (2008).

48. Both the Department and Campos have merit in their positions regarding GetAutoInsurance.com. However, the undersigned is convinced that the Department's position is more persuasive in that it is more aligned with the plain or ordinary definitions of "solicitation" and "inducement."

49. "Solicit" is defined in *American Heritage* as to "entice," which is defined as "to attract by arousing hope or desire." *American Heritage* also defines "induce" as "to lead" or "to bring about the occurrence of; cause."

50. By reading Section 624.10(1), Florida Statutes, alone as a matter of law, it is clear that the facts of this matter come within the plain meaning of "solicitation" and "inducement." Creating GetAutoInsurance.com and putting up the website on the internet is distribution in and of itself and the Petitioner would not have had the website if he was not attempting to attract people to it for a purpose. And, with the website, Petitioner is inviting interested people to get a quote, which leads to an insurance contract.

51. Moreover, specific language on the home page even entices the potential customers to action as an inducement with terms such as "And our service doesn't stop at a sale. **We're**

here for you when you need to make a change in your policy or coverage. And, unlike others, if you have a claim, **we're here to help** there too. . ." (Emphasis added). Since, all zip code entries forward the customers to another website, it is the homepage of GetAutoInsurance that attracts and serves as a drawing force inviting or inducing potential customers to start the process of getting insurance. Moreover, but for GetAutoInsurance.com making available and connecting Jordan to United Healthcare and eHealthinsurance Jordan would not have had contact with the two Florida licensees.

52. The record demonstrates Petitioner has also failed to meet his burden to show that he performed his duties in all business undertakings without reproach. Instead, the evidence establishes that Campos' actions continue to violate the 1995 Removal Order and Petitioner has not been rehabilitated and reformed as to now be deemed fit and trustworthy of licensure by the Department.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED the Department of Financial Services enter a final order finding that Alex Campos violated the terms of a 1995 Removal Order entered by the Department of Financial

Services and denying his Petition to Terminate the Restriction and Prohibition.

DONE AND ENTERED this 18th day of September, 2009, in Tallahassee, Leon County, Florida.



JUNE C. McKINNEY
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of <September, 2009.

ENDNOTE

¹ A license issued by the Department is a separate and distinct privilege independent of an insurance carrier's appointment. Section 616.15(9), Florida Statutes(2005), provides:

(9) "License" means a document issued by the department or office authorizing a person to be appointed to transact insurance or adjust claims for the kind, line, or class of insurance identified in the document.

² The agreement defines unique visitor quote as "the aggregate of all quotes provided by Esurance to a unique visitor who has come to Esurance site through a link on [www.GetAutoInsurance.com]."

³ Campos testified that Jack Perry is the same individual that he worked with in the Perry & Co. case which resulted in the

2001 Consent Order. He testified that he became president of the company again after the company surrendered its license to Florida.

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.