

STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION

5/21/09
mlh

MARTA COMAS,

Petitioner,

vs.

OFFICE OF FINANCIAL REGULATION,

Respondent.

Agency Administrative Proceeding
No.: 0224-FR-7/08

(DOAH Case No.: 08-4944)

DIVISION OF
ADMINISTRATIVE
HEARINGS

2009 MAY 22 A 10:30

FILED

FINAL ORDER AND NOTICE OF RIGHTS

Petitioner, Marta Comas, ("Petitioner") applied to the Office of Financial Regulation ("Office") for licensure as a mortgage broker in the State of Florida. On August 6, 2008, the Office denied Petitioner's application. Petitioner challenged the denial and the case was referred to the Division of Administrative Hearings ("DOAH"). A hearing was held on December 17, 2008 before Administrative Law Judge ("ALJ") Patricia M. Hart. On February 27, 2009, the ALJ issued her Recommended Order in which she agreed with the Office's conclusion that Petitioner's license application should be denied. Petitioner timely filed exceptions to the Recommended Order on March 12, 2009. After carefully reviewing Petitioner's exceptions, the Office being authorized and directed to administer Chapter 494, Florida Statutes, hereby enters the following Final Order ruling on all exceptions and adopting the ALJ's Recommended Order.

STATEMENT OF THE ISSUE

The issue is whether the Petitioner's application for licensure as a mortgage broker should be granted.

LEGAL STANDARD FOR RULING ON EXCEPTIONS

When reviewing a recommended order, an agency may adopt a recommended order as the final order of the agency. § 120.57(1)(I), Fla. Stat. (2008). However, with respect to a recommended order's conclusions of law or interpretations of administrative rules, in its final order, an agency,

may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact.

Id. With respect to findings of fact,

[t]he agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

Id. Competent substantial evidence is “such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred’ or such evidence as is ‘sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.’” Heifetz v. Dep’t of Bus. Regulation, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985) (quoting De Groot v. Sheffield, 95 So.2d 912, 916 (Fla.1957)). In reviewing findings of fact, the Office has no authorization “to re-weigh the evidence presented, judge the credibility of the witnesses, or otherwise interpret the evidence to fit a desired ultimate conclusion.” Bill Salter Advertising, Inc. v. Dep’t of Transp., 974 So. 2d 548, 551 (Fla. 1st DCA 2008); Rogers v. Dep’t of Health, 920 So.2d 27, 30 (Fla. 1st

DCA 2005). “Neither may an agency's responsibility to determine if substantial evidence supports the administrative law judge's findings of fact be avoided by merely labeling, either by the administrative law judge or the agency, contrary findings as conclusions of law.” Gross v. Dep’t of Health, 819 So. 2d 997, 1001 (Fla. 5th DCA 2002). “In summary, if there is competent substantial evidence to support the findings of fact in the record . . . the agency may not reject them, substitute its findings, or make new findings.” Id.

Regarding the recommended penalty in a recommended order, an agency may accept the recommended penalty, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefore in the order, by citing to the record in justifying the action. § 120.57(1)(l), Fla. Stat. (2008).

Finally, in ruling on a petitioner’s exceptions, the Office “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.” § 120.57(1)(k), Fla. Stat. (2008).

RULINGS ON PETITIONER’S EXCEPTIONS

A. Petitioner’s Exceptions on “Issues”

In her March 12, 2009 exceptions, Petitioner first “excepts to the issues identified in the Proposed Order.” Petitioner submits four additional issues that she believes should have been included in the Recommended Order. In essence, the Petitioner has simply broken down the issue in the case into particular sub-issues that may or may not weigh into the ultimate conclusion as to whether the Petitioner is entitled to licensure as a

Mortgage Broker. These sub-issues identified by the Petitioner are addressed in the ALJ's Findings of Fact and Conclusions of Law to the extent relevant to the ALJ's determination that Petitioner is not entitled to licensure. In her statement of the issue however, the ALJ correctly identified the ultimate issue in the case as, "[w]hether the Petitioner's application for licensure as a mortgage broker should be granted or denied." (Recommended Order, p.1). The Petitioner's exceptions to the issue stated by the ALJ suggest the Petitioner may disagree with particular sub-issues or factors that the ALJ may or may not have taken into consideration in reaching her ultimate conclusion that the application should be denied. However, to the extent Petitioner is raising such arguments, Petitioner does not clearly identify the disputed portion of the Recommended Order by page number or paragraph, does not identify the legal basis for the exception, and does not include appropriate and specific citations to the record. For this reason and since the ALJ has correctly stated the ultimate issue in this case, the Petitioner's exception is REJECTED.

B. Petitioner's Exceptions to Findings of Fact

1. Paragraph number 1 in the Petitioner's exceptions to the Findings of Fact does not state an exception to the Recommended Order. Rather, it merely quotes finding of fact number 24 from the Recommended Order. Accordingly, there is no exception to rule upon.

2. Paragraphs 2 and 3 of the Petitioner's exceptions to the findings of fact each cite findings from the Recommended Order and summarily state, "[t]his behavior does not rise to the level of a violation of clause 6.1.1." The Petitioner does not does not identify the legal basis for the exception. Nor does she include appropriate and specific

citations to the record that would support her position. On the contrary, based on the plain language of clause 6.1.1 of the previous Stipulation and Consent Agreement and the record in this case, the ALJ's findings that the Petitioner violated clause 6.1.1 are amply supported by competent, substantial evidence. Accordingly, these exceptions are REJECTED.

3. In paragraph 4, Petitioner recites certain portions from Findings of Fact 26 and 27 of the Recommended Order and argues, "[t]his factor was not given is proper weight" by the ALJ. Even if the Office were inclined to agree, which it is not, the Office has no authority, "to re-weigh the evidence presented, judge the credibility of the witnesses, or otherwise interpret the evidence to fit a desired ultimate conclusion." Bill Salter Advertising, Inc. v. Dep't of Transp., 974 So.2d 548, 551 (Fla. 1st DCA 2008). Accordingly, this exception is REJECTED.

4. Petitioner's paragraphs 5 and 6 each again request essentially that the Office reweigh the evidence presented because, in her view, Petitioner's testimony regarding her apologies to her victims at the hearing was "uncontroverted." With respect to this testimony the ALJ found,

Other than her testimony about the November 2008 conversation with Mr. Mazis, Mrs. Comas presented no evidence with respect to her apology to him or to any acknowledgment she made to him that she had acted improperly in the Sipple transaction. Mrs. Comas's letter of apology to Ms. Sipple consisted primarily of her attempts to cast her actions in the Sipple transaction in a light favorable to herself, to excuse her actions as efforts to assist Ms. Sipple, and to blame others, including Ms. Sipple, for the incident.

Recommended Order, ¶¶ 28, 29. The ALJ clearly found Petitioner's testimony not credible on this issue. Even if the Office were inclined to disagree with that evaluation, which it is not, it may not, "re-weigh the evidence presented, judge the credibility of the

witnesses, or otherwise interpret the evidence to fit a desired ultimate conclusion,” as suggested by the Petitioner. Bill Salter Advertising, Inc., 974 So. 2d at 551. Accordingly, these exceptions are REJECTED.

5. Petitioner’s paragraph 7 of her exceptions to the findings of fact does not identify the disputed portion of the Recommended Order by page number or paragraph, nor does it identify the legal basis for the exception. The objection appears to be that the Recommended Order “is silent on the issue of restitution,” yet the argument presented in the exception is based on the Petitioner’s testimony that, “I didn’t steal the money,” and, “I’m not a thief, and that’s why I fought it so hard, because I know I didn’t steal the money.” The paragraph is internally inconsistent making it impossible to decipher the actual nature of the exception. The Office is not inclined to guess at the nature of the exception. Since the Petitioner has not identified a disputed portion of the Recommended Order by page number or paragraph, the exception is REJECTED.

C. Petitioner’s Exception to the Conclusions of Law

In her exception to the Conclusions of Law, Petitioner argues in essence that she is in fact rehabilitated and thus she is entitled to licensure. She suggests several factors demonstrate her rehabilitation. She further seems to argue that the denial is based on a policy that bars her from ever becoming relicensed. These arguments are simply without merit. In fact, the ALJ specifically considered the possibility of rehabilitation but found, “[b]ased on the findings of fact herein, Mrs. Comas failed to establish that she is rehabilitated even though it has been almost 10 years since the acts underlying the revocation of her mortgage broker's license were committed.” Recommended Order, ¶ 46. The factors upon which the ALJ based this determination are supported by

competent, substantial evidence. Accordingly, Petitioner's exception to the Conclusions of Law is REJECTED.

FINDINGS OF FACT

1. The Office adopts and incorporates by reference the Findings and Fact set forth in the Recommended Order into this Final Order. (Exhibit A.)

CONCLUSIONS OF LAW

2. The Office adopts and incorporates by reference the Conclusions of Law set forth in the Recommended Order into this Final Order. (Exhibit A.)

FINAL ORDER

Having reviewed the record and ruled on each of the exceptions filed by Petitioner in this matter, the recommendation in the Recommended Order is hereby adopted and it is accordingly ORDERED that Petitioner's application to be licensed as a mortgage broker in the State of Florida is DENIED.

DONE and ORDERED this 21ST day of May, 2009, in Tallahassee, Leon County, Florida.


ALEX HAGER, Acting Commissioner
Office of Financial Regulation

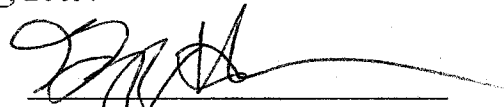
NOTICE OF RIGHTS TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE

AGENCY CLERK, OFFICE OF FINANCIAL REGULATION, LEGAL SERVICES OFFICE, SUITE 526, FLETCHER BUILDING, 200 E. GAINES STREET, TALLAHASSEE, FLORIDA 32399-0379, AND A COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY SECTION 35.22, FLORIDA STATUTES, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 301 MARTIN LUTHER KING, JR., BOULEVARD, TALLAHASSEE, FLORIDA 32399-1850, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Patricia M. Hart, Administrative Law Judge, Division of Administrative Hearings, DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, and O. Frank Valladares, Esq., Counsel for Marta Comas, Law Offices of Frank Valladares and Associates, 3147 49th Street North, St. Petersburg, Florida 33710, by U.S. Mail, on this 21st day of May, 2009.



Gregg Riley Morton
Assistant General Counsel