



**FILED**

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NOV 17 2009

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

2009 NOV 30

Docketed by

SS

DIVISION OF  
ADMINISTRATIVE  
HEARINGS

IN THE MATTER OF

HENRY SYMEON DEMAYO

CASE NO: 74314-04-AG

FINAL ORDER

THIS CAUSE came on before Alex Sink, as Chief Financial Officer, for consideration of and final agency action on a Recommended Order and Order Correcting Error in Recommended Order dated August 19, 2009 entered by Administrative Law Judge, Larry J. Sartin. (See Exhibit A) On April 21, 2004, a seven-count Administrative Complaint was filed and on December 12, 2008, the Petitioner filed Department of Financial Services' Motion to Amend Administrative Complaint which was subsequently granted by order on December 22, 2008. A formal hearing was conducted on March 18 and 19, 2009, pursuant to Section 120.57(1), Florida Statutes, in Tallahassee, Florida. At the commencement of the hearing, the Petitioner, the Department of Financial Services ("Department"), dismissed Count VII of the Administrative Complaint. Both Petitioner and Respondent filed a Proposed Recommended Order ("PRO"). Because Petitioner's PRO only discussed Counts I, III and IV of the Administrative Complaint (as amended) and requested that any penalty imposed be based on the violations contained in those three counts, the Administrative Law Judge in issuing the Recommended Order only considered Counts I, III, and IV of the amended Administrative Complaint. On September 3, 2009, the Petitioner filed exceptions.

## RULINGS ON PETITIONER'S EXCEPTIONS

### Exception 1:

The Petitioner asserts that the Preliminary Statement should be corrected to reflect that pages 12-17, 19-47 and 49-86 of the Department's Exhibit No. 2 were entered into evidence and that the Department's Exhibit No. 7 was not entered into evidence. A review of the transcript supports Petitioner's position and therefore, Petitioner's exception is accepted and the record is corrected to reflect the above.

### Exception 2:

The Petitioner also takes exception to paragraphs 57 and 60 of the Conclusions of Law section and asserts that Rule Chapter 69B-231, Florida Administrative Code, does not apply to surplus lines agents. Pursuant to Rule 69B-231.020(2), Florida Administrative Code, surplus lines agents are not governed by Rule Chapter 69B-231, F.A.C. Therefore, Petitioner's exception is accepted. Accordingly, Paragraphs 57 and 60 of the Conclusions of Law are rejected and struck from the Recommended Order and are substituted with:

57. Rule Chapter 69B-231, Florida Administrative Code, provides guideline penalties for violations of Chapter 626, Florida Statutes. However, pursuant to Rule 69B-231.020, Florida Administrative Code, this rule chapter does not apply to surplus lines agents.

As a result of the above analysis, it has been determined that the substituted Conclusion of Law is as or more reasonable than that which was rejected.

## FINDINGS OF FACT

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.

### CONCLUSIONS OF LAW

As discussed above, Conclusion of Law Paragraphs 57 and 60 are hereby rejected and struck from the Recommended Order because Rule Chapter 69B-231, Florida Administrative Code, is not applicable to this case and does not govern the penalty determination. These Conclusions of Law are substituted with:

57. Rule Chapter 69B-231, Florida Administrative Code, provides guideline penalties for violations of Chapter 626, Florida Statutes. However, pursuant to Rule 69B-231.020, Florida Administrative Code, this rule chapter does not apply to surplus lines agents.

This substituted Conclusion of Law is as or more reasonable than that which was rejected.

Conclusion of Law Paragraph 58 contains a scrivener's error and is corrected to reflect Section 626.936(1), Florida Statutes in lieu of Section 626.961(1), Florida Statutes. Conclusion of Law Paragraph 59 contains a scrivener's error and is corrected to reflect Section 626.936(2), Florida Statutes, in lieu of Section 626.961(2), Florida Statutes. The Conclusions of Law as reached by the Administrative Law Judge are adopted as modified and incorporated herein by reference as the Department's Conclusions of Law.

### RECOMMENDED PENALTY

The Administrative Law Judge recommends that Respondent's license be suspended for a thirty (30) day period and that a \$2500.00 fine be imposed. The Petitioner requested that a six (6) month suspension and \$20,000.00 fine be imposed.

The record reflects that Respondent violated Sections 626.935(1)(e), 626.935(1)(i), 626.935(1)(j), 626.935(2), and 626.621(2), Florida Statutes, in Count I and 626.935(1)(d), 626.935(1)(i), 626.935(1)(j), 626.935(2), and 626.621(2), Florida Statutes, in Count III. Sections 626.936(1) and (2), Florida Statutes, outline the monetary fines that may be imposed when a

surplus lines agent fails to file a report or an affidavit in a timely manner (up to \$50.00 per day) and/or fails to pay the taxes or service fees as required (up to \$500.00 per day).

The provisions of Sections 626.936(1) and (2), Florida Statutes, in conjunction with the Findings of Fact Paragraphs 10-20, and 21-23 support the imposition of a larger fine. Based on the above analysis and a complete review of the record, it is concluded that the Administrative Law Judge's recommended penalty should be accepted in part and rejected in part and a suspension of thirty (30) days and a \$20,000 fine be imposed.

Therefore, after review of the record, including admitted exhibits, witness testimony and Respondent's testimony, and being otherwise fully apprised in all material premises,

IT IS HEREBY ORDERED that the Findings of Fact and the Conclusions of Law reached by the Administrative Law Judge are ADOPTED as modified and incorporated herein by reference as the Department's Findings of Fact and Conclusions of Law.

IT IS HEREBY FURTHER ORDERED that the Recommendation made by the Administrative Law Judge is MODIFIED and a suspension period of thirty (30) days and a fine of \$20,000 is imposed.

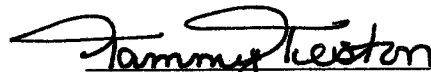
ACCORDINGLY, it is ORDERED that Respondent's, HENRY SYMEON DEMAYO'S, license(s) and eligibility for licensure as an insurance agent are hereby SUSPENDED for a period of thirty (30) days, effective immediately upon issuance of this Final Order. Pursuant to Section 626.651, Florida Statutes, the suspension of Respondent's license(s) and eligibility is applicable to all licenses and eligibility held by 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, Respondent's licensure shall not be reinstated except upon request for such reinstatement, and the Respondent shall not engage in the transaction of insurance until his licensure is reinstated. The Department shall not grant reinstatement if it finds that the circumstance or circumstances for which the Respondent's licenses were suspended still exist or are likely to recur.

DONE and ORDERED this 17<sup>th</sup> day of November, 2009.



  
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 Tracey Beal, DFS Agency Clerk, Department of Financial Services, 612 Larson Building, 200 E. Gaines Street, Tallahassee, Florida 32399-0390 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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