

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LOANWELL FINANCIAL CORPORATION,)
)
 Petitioner,)
)
 vs.) Case No. 08-5983
)
 DEPARTMENT OF FINANCIAL)
 SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Administrative Law Judge (ALJ) Daniel Manry conducted the final hearing of this case for the Division of Administrative Hearings (DOAH) on January 5, 2009, in St. Petersburg, Florida.

APPEARANCES

For Petitioner: Michael L. Banner, pro se
Loanwell Financial Corporation
13700 58th Street, North, Suite 207
Clearwater, Florida 33760

For Respondent: Regina Keenan, Esquire
Department of Financial Services
612 Larson Building
200 East Gaines Street
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

The issue is whether Respondent should withdraw its approval of a continuing education course that Petitioner offers to life, health, and variable annuity insurance agents.

PRELIMINARY STATEMENT

Respondent filed a Notice of Intent to Withdraw Approval of Continuing Education Course on November 6, 2008, which was amended on March 3, 2009, pursuant to an order granting a stipulated motion to amend the Notice of Intent. Petitioner timely requested an administrative hearing.

At the hearing, Respondent presented the testimony of one witness and submitted nine exhibits for admission into evidence. Petitioner testified and submitted 10 exhibits for admission into evidence. The identity of the witnesses and exhibits, and the rulings regarding each, are set forth in the one-volume Transcript filed with DOAH on March 20, 2009.

Respondent timely filed its Proposed Recommended Order (PRO) on March 30, 2009. Petitioner did not file a PRO.

FINDINGS OF FACT

1. Respondent is the state agency responsible, in relevant part, for regulating continuing education courses for insurance licensees, pursuant to Chapters 626 and 627, Florida Statutes (2008).¹ Petitioner provides a course entitled, Reverse Mortgages, identified in the record by course number I.D. 64231 (the course). On June 12, 2008, Respondent approved the course for two hours of continuing education credit for licensed life, health, or variable annuity insurance agents.

2. The course content addresses reverse mortgages rather than insurance. A reverse mortgage is a financing device. It is a special type of home loan that converts a portion of the equity in a home into cash. Unlike a traditional home equity loan or second mortgage, no repayment is required until the borrowers no longer use the home as their principal residence.

3. References to life insurance in the course pertain to the use of a reverse mortgage as a funding mechanism for life insurance. The course does not have significant intellectual or practical content to enhance and improve the insurance knowledge of licensees who participate in the course. The course is not a formal program of learning which contributes directly to the professionalism, ethics, or competence of a licensee acting under the scope of his or her license.

4. Respondent has statutory authority to regulate continuing education courses for insurance licensees. Respondent does not have statutory authority to regulate lending and financing, including financing through reverse mortgages.

5. Withdrawal of approval for continuing education credit does not prevent an insurance agent from taking the course in addition to the required continuing education. If an insurance agent conducts financial transactions in conjunction with an insurance transaction, the agent should be sufficiently educated

to avoid a breach of the fiduciary duty owed to the insurance consumer.

6. Petitioner presented evidence of courses that Respondent has approved for continuing education, and those courses do not address insurance topics. Respondent approved those courses pursuant to rules that provide partial credit for certain non-insurance topics, such as communication or time management.² Respondent is currently seeking to amend the rule to remove the partial credit provision because that provision is not consistent with national standards.

CONCLUSIONS OF LAW

7. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57(1). DOAH provided the parties with adequate notice of the final hearing.

8. Respondent has the burden of proof. Respondent must show by clear and convincing evidence that the course does not meet the requirements of the laws and regulations charged in the Amended Notice of Intent and that the proposed penalty is reasonable. Department of Banking and Finance, Division of Securities and Investor Protection, v. Osborne Stern and Company, 670 So. 2d 932, 935 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

9. For reasons stated in the Findings of Fact, Respondent satisfied its burden of proof. Respondent showed by clear and convincing evidence that the course does not "enhance and improve the insurance knowledge of participants" and "does not contribute to the professionalism, ethics, or competence of [an insurance] licensee" within the meaning of Florida Administrative Code Rule 69B-228.080(1)(c).


10. The course does not comply with the requirements of Florida Administrative Code Chapter 69B-228. Withdrawal of approval is the appropriate penalty pursuant to Florida Administrative Code Rule 69B-228.210(3).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that Respondent enter a final order withdrawing approval of the course.

DONE AND ENTERED this 16th day of April, 2009, in
Tallahassee, Leon County, Florida.



DANIEL MANRY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of April, 2009.

ENDNOTES

^{1/} References to subsections, sections, and chapters are to Florida Statutes (2008), unless stated otherwise.

^{2/} Fla. Admin. Code R. 69B-228.080(4).

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.