

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL)
SERVICES,)
)
Petitioner,)
)
vs.) Case No. 08-6223PL
)
DAVID RANDALL WOODARD,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on March 11, 2009, in Tampa, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: William Gautier Kitchen, Esquire
Division of Legal Services
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399-0333

For Respondent: David R. Woodard, pro se
9712 White Barn Way
Riverview, Florida 33569

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent, David Randall Woodard ("Woodard"), violated provisions of Chapter 626, Florida

Statutes (2008),¹ and, if so, what penalty or sanction should be imposed.

PRELIMINARY STATEMENT

On November 5, 2008, Petitioner, Department of Financial Services (the "Department"), issued a four-count Administrative Complaint alleging certain violations of the statutes and rules governing general lines insurance agents. Woodard timely requested a formal administrative hearing to contest the allegations in the Administrative Complaint. The request for hearing was duly forwarded to the Division of Administrative Hearings ("DOAH") on December 15, 2008, and assigned to the undersigned Administrative Law Judge. At the final hearing, the Department relied upon the testimony of Cynthia Ann Bundy, Joseph Perez, and Woodard. The Department offered two exhibits into evidence, each of which was admitted without objection. Woodard testified on his own behalf and offered one exhibit into evidence (which was admitted).

The parties advised the undersigned that a transcript would be ordered of the final hearing. They were given ten days from the date the transcript was filed at DOAH to submit proposed recommended orders. The Transcript was filed on April 2, 2009, and the Department filed a Proposed Recommended Order on April 7, 2009. As of the date of this Recommended Order, Respondent has not filed a post-hearing submission.

FINDINGS OF FACT

1. The Department is the government agency responsible for enforcing the statutory provisions of Chapter 626, Florida Statutes, relating to general lines insurance agents.

2. Woodard, at all times relevant to this proceeding, was a general lines insurance agent and was operating an insurance business known as Trinity Insurance, Inc. ("Trinity"). Woodard was the responsible agent for Trinity.

3. On April 26, 2006, Joseph Perez purchased a workers' compensation insurance policy (through Trinity) from Summit Insurance Company. Perez paid Trinity a down payment of \$3,327.20 by way of a check. Woodard remitted a check from Trinity to Summit Insurance Company in connection with Perez' workers' compensation insurance. The check from Trinity was returned for insufficient funds. As a result, Perez did not have the workers' compensation coverage he believed he had purchased.

4. Thereafter, Woodard repaid Perez the premium that Perez had initially paid to Trinity. However, the first repayment check sent from Woodard to Perez was also returned for insufficient funds. Ultimately, Woodard repaid all of Perez' premium down payment.

5. On May 14, 2007, Senia Lewis purchased homeowners' insurance (through Trinity) from Citizens Property Insurance

Corporation ("Citizens"). The insurance premium invoice received by Lewis included a processing fee of \$60. The processing fee was a charge, by Woodard, of \$20 per page for notarizing Lewis' signature on three forms. The processing fee was retained by Woodard and was not made part of the premium payment made to Citizens.

6. In October 2006, Denise and Steven Russell obtained a mortgage from Wells Fargo Financial. A Wells Fargo employee, Matt Jackson, arranged for the purchase of homeowners' and flood insurance from Citizens (through Trinity). Wells Fargo gave Trinity a check in the amount of \$3,178 as payment of the premium for the insurance. However, in December 2006, the Russells were notified that their insurance had been rescinded because Citizens had not received a premium payment from Trinity.

7. Woodard was arrested and plead nolo contendere to a misdemeanor charge relating to the transaction with the Russells. As part of his plea, Woodard repaid the Russells the amount of their premium.

8. In July 2006, Lance and Cindy Bundy paid \$1,576 to Trinity to acquire homeowners' insurance on their new home. Woodard sent Citizens a check in the sum of \$1,226 to secure the desired insurance.

9. In October 2006, the Bundys were notified that their insurance policy was being cancelled for non-payment of the premium. Trinity had not paid Citizens on a timely basis, resulting in cancellation of the policy.

10. Woodard made restitution to the Bundys, but not for the entire amount of their premiums. However, inasmuch as the Bundys had insurance for a short period of time, they were generally satisfied with the amount of the reimbursement from Woodard.

11. Woodard does not dispute the basic facts surrounding each of the above-described transactions. He says none of the cancellations or rescissions of insurance policies was intended. Rather, Woodard failed to properly manage the accounts of Trinity and allowed checking accounts to be overdrawn. However, when a check was drawn on an overdrawn account, the result would be detrimental to clients who had placed their trust in Woodard.

12. Woodard says that out of 350 clients handled by his company, these four are the only complaints that have been made. Nonetheless, each of the complaints is legitimate.

13. Woodard has a fiduciary responsibility to his clients and is bound by law to provide all services for which the clients pay. It is not acceptable to violate the fiduciary relationship by failing to procure insurance coverage as contracted for by a client.

14. Woodard is not currently engaged in the practice of insurance sales. His license is active, but is currently in a pending status awaiting payment of fees or completion of continuing education courses. Woodard is presently not using his license actively in the sale of insurance, but uses the license in order to access certain information he may not otherwise be able to obtain. At this time, Woodard is working for a company as a software developer.

15. Trinity Insurance, Inc., is no longer engaged in business.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes.

17. Petitioner has the burden of proof in this matter. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). The standard of proof for a licensure revocation case is clear and convincing evidence. Osborne Stern and Co., Inc. v. Department of Banking and Finance, 647 So. 2d 245, 248 (Fla. 1st DCA 1994).

18. Clear and convincing evidence is an intermediate standard of proof, which is more than the "preponderance of the evidence" standard used in most civil cases, but less than the "beyond a reasonable doubt" standard used in criminal cases.

See State v. Graham, 240 So. 2d 486 (Fla. 2nd DCA 1970). Clear and convincing evidence has been defined as evidence which:

[R]equires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)

(citations omitted).

19. Section 626.611, Florida Statutes, states in relevant part:

Grounds for compulsory refusal, suspension, or revocation of agent's, title agency's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.--

The department shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, title agency, adjuster, customer representative, service representative, or managing general agent, and it shall suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist:

* * *

(2) Material misstatement, misrepresentation, or fraud in obtaining the license or appointment or in attempting to obtain the license or appointment.

* * *

(7) Demonstrated lack of fitness or trustworthiness to engage in the business of insurance.

(8) Demonstrated lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license or appointment.

* * *

(13) Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of this code. . . .

20. Section 626.561, Florida Statutes, is entitled

Reporting and Accounting for Funds and states in pertinent part:

(1) All premiums, return premiums, or other funds belonging to insurers or others received by an agent, insurance agency, customer representative, or adjuster in transactions under the license are trust funds received by the licensee in a fiduciary capacity. An agent or insurance agency shall keep the funds belonging to each insurer for which an agent is not appointed, other than a surplus lines insurer, in a separate account so as to allow the department or office to properly audit such funds. The licensee in the applicable regular course of business shall account for and pay the same to the insurer, insured, or other person entitled thereto.

21. Petitioner has proven by clear and convincing evidence that Woodard failed to maintain the integrity of premiums or funds entrusted to him by clients. The funds were commingled with Woodard's business account and, albeit unintentionally, when the business account was overdrawn, the clients' funds were affected.

22. Petitioner has, therefore, met its burden of proof in this matter to show that Woodard demonstrated a lack of fiscal fitness to engage in the business of insurance sales. Whether Woodard has, as he claims, made changes to insure against such financial failures in the future, is not relevant. Petitioner has proven that for the time period in question Woodard's business skills were lacking.

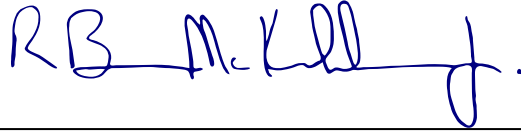
23. Woodard's shortcomings resulted in a failure to provide the services for which his clients contracted in good faith.

RECOMMENDATION

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

RECOMMENDED that a final order be entered by Petitioner, Department of Financial Services, revoking the general lines insurance agent's license of Respondent, David Randall Woodard.

DONE AND ENTERED this 15th day of April, 2009, in
Tallahassee, Leon County, Florida.



R. BRUCE MCKIBBEN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of April, 2009.

ENDNOTE

^{1/} Unless specifically stated otherwise herein, all references
to the Florida Statutes shall be to the 2008 version.

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.