

FILED  
STATE OF FLORIDA  
OFFICE OF FINANCIAL REGULATION PM 1:58



DIVISION OF  
ADMINISTRATIVE  
HEARINGS

**GEORGE SPIVAK,**  
Petitioner,

vs.

**OFFICE OF FINANCIAL REGULATION,**  
Respondent.

**Agency Administrative Proceeding**  
**No.: 0238-FR-9/08**

**DOAH Case No.: 09-1515**

**FINAL ORDER AND NOTICE OF RIGHTS**

The Office of Financial Regulation ("Office"), being authorized and directed to administer and enforce Chapter 494, Florida Statutes, and having reviewed the record and Recommended Order in this case, hereby enters this Final Order.

**STANDARD OF REVIEW**

The actions that an agency may take in response to a recommended order are provided in Section 120.57(1)(l), Florida Statutes:

- (l) The agency may adopt the recommended order as the final order of the agency. The agency in its final order 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. The 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. The agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.

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 that 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, an agency is not authorized “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 1008); 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.

#### STATEMENT OF THE ISSUE

The Office adopts and incorporates in this Final Order the Statement of the Issue contained in the Recommended Order as if fully set forth herein.

#### PRELIMINARY STATEMENT

The Office adopts and incorporates in this Final Order the Preliminary Statement contained in the Recommended Order as if fully set forth herein.

#### FINDINGS OF FACT

1. The Office is the agency charged with the administration and enforcement of Chapter 494, Florida Statutes.

2. The Administrative Law Judge in this case entered his Recommended Order on June 9, 2009.

3. The Recommended Order advised all parties of their right to submit exceptions within 15 days of the date of the Recommended Order.

4. Neither party filed exceptions to the Recommended Order.

5. 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

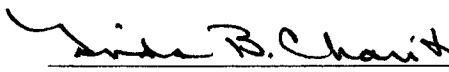
6. As the agency charged with the administration and enforcement of Chapter 494, Florida Statutes, upon the entry of the Administrative Law Judge's Recommended Order, the Office has jurisdiction over this matter.

7. 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 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 19<sup>th</sup> day of August, 2009, in Tallahassee, Leon County, Florida.

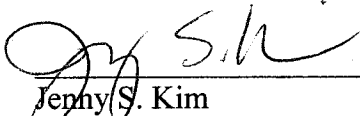
  
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LINDA B. CHARITY, Acting Commissioner  
Office of Financial Regulation

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 Stuart M. Lerner, Administrative Law Judge, Division of Administrative Hearings, DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, and George Spivak, Petitioner, 118 Cassilly Way, Jupiter, Florida 33458, by U.S. Mail, on this 20th day of August, 2009.

  
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