REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

FILED
MAR 19 2010
Docketed by

IN THE MATTER OF:

Case No. 94373-09-AG

MITCHELL BRIAN STORFER
_____/

FINAL ORDER

This cause came on for consideration of and final agency action on the Recommended Order submitted on December 31, 2009, by Administrative Law Judge June C. McKinney, pursuant to a formal hearing conducted under the authority of and pursuant to Section 120.57(1), Fla. Stat., on July 22 and 23, 2009. Exceptions were timely filed by both the Respondent Mitchell Brian Storfer and Petitioner Department of Financial Services (Department). Respondent Storfer (Storfer) also timely filed a Response to the Department's exceptions.

The transcript of proceedings, the admitted exhibits, the Recommended Order, the parties' exceptions, the Respondent's Response, and applicable law have all been considered in the promulgation of this Final Order.

RULINGS ON STORFER'S EXCEPTIONS

Respondent Storfer's first exception is directed to Paragraphs 99 through 104 of the Recommended Order wherein Storfer contends that the ALJ erred by failing to consider the mitigating factors found in Rule 69B-231.040 F.A.C. in recommending the revocation of Storfer's licenses and licensure. Although it should have been stated as a

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separate exception, this exception also challenges the recommended penalty, contending that the ALJ erred in calculating the applicable penalty.

With regard to the portion of this exception directed towards the ALJ's consideration of aggravating or mitigating circumstances, the ALJ expressly found that no mitigating factors had been presented, and did not articulate any aggravating factors. The Respondent's exception merely urges a different result than that arrived at by the ALJ after her consideration of those factors, and does not show that there is no substantial competent evidence in the record to support the ALJ's findings. This is simply an invitation to re-weigh the pertinent fact evidence. An agency is not at liberty to do so. *Perdue v. TJ Palm Associates, Ltd.*, 755 So.2d 660 (Fla. 4th DCA 1999); *Heifetz v. Department of Business Regulation, Div. of Alcoholic Beverages and Tobacco*, 475 So.2d 1277 (Fla. 1st DCA 1985); *Holmes v. Turlington*, 480 So.2d 150 (Fla. 1st DCA 1985); *Howard Johnson v. Kilpatrick*, 501 So.2d 61 (Fla. 1st DCA 1987); *Nat. Ins. Serv. v. Fla. Unemp. App. Com'n*, 495 So.2d 244 (Fla. 2nd DCA 1986); *Groves-Watkins Const. v. Dept. of Transp.*, 511 So.2d 323 (Fla. 1st DCA 1987); *United Health v. Dept. of Health & Rehab.*, 511 So.2d 684 (Fla. 2nd DCA 1987); *Greseth v. Dept. of Health & Rehab. Serv.*, 573 So.2d 1004 (Fla. 4th DCA 1991); *Asphalt Pavers, Inc. v. State, Dept. of Transp.*, 602 So.2d 558 (Fla. 1st DCA 1992); *Dept. of Business and Pro. Reg. v. McCarthy*, 638 So.2d 574 (Fla. 1st DCA 1994); *Brown v. Crim. Just. Stand. & Training*, 667 So.2d 977 (Fla. 4th DCA 1996); *DHRS v. Yhap*, 680 So. 2d 559 (Fla. 1st DCA 1996); *Prysi v. Department of Health*, 823 So.2d 823, (Fla. 1st DCA 2002); *Rogers v. Dep't. of Health*, 920 So.2d 27 (Fla. 1st DCA 2005); *Richardson v. Florida Parole*

Com'n, 924 So.2d 908 (Fla. 1st DCA 2006). Accordingly, this portion of the exception is rejected.

In calculating the applicable penalty, only the single, highest penalty per proven infraction in each count may be used. [Rule 69B-231.040, F.A.C.] The highest penalty applicable to the allegations proven in Count One of the Administrative Complaint, prior to consideration of aggravating or mitigating factors, is a six month suspension for violation of Section 626.9451(1)(a)1., Fla. Stat, and the highest penalty applicable to the proven allegations in Count Two of the Administrative Complaint, prior to consideration of aggravating or mitigating factors, is a twelve month suspension for violation of Section 626.9541(1)(e)1., Fla. Stat. *See*, Rules 69B-231.100(1) and (5), F.A.C. Therefore, the proper penalty to be imposed here, prior to consideration of aggravating or mitigating circumstances is an eighteen (18) month suspension. The ALJ expressly found that no mitigating factors had been presented, and did not articulate any aggravating factors. Accordingly, this portion of the exception is granted, in part, and the penalty of revocation is amended to an eighteen (18) month suspension, prior to consideration of aggravating factors. The matter of aggravating factors is addressed later herein.

Storfer's second exception takes issue with the Finding of Fact in Paragraph 4 of the Recommended Order, which found that there was no testimony showing that Storfer had submitted individual cases to the insurance companies for review and assistance in selecting an appropriate product for those individuals seeking to purchase an annuity, even though he had that option. Storfer initially contends that there is no record evidence to support that finding. That is the same as saying that there is no evidence to

support a finding that there was no evidence, which is the logical fallacy of using a negative to prove a negative. Either there is testimony in the record establishing that Storfer utilized the option in question, or there isn't. Storfer's exception points to no testimony showing that he exercised the option in question, and the record shows no such testimony. Accordingly this portion of the exception is rejected.

Storfer further excepts to this same Finding of Fact on the basis that no law or statute requires the exercise of the option in question. While that is true, the absence of such a law or statute is inapposite to the ALJ's finding that the option existed and that Storfer did not take advantage of it. The ALJ did not find that Storfer violated a law or statute by not exercising the option to ask the various companies for assistance in selecting suitable products for various individuals; she merely found that Storfer had that option but did not exercise it. There is competent substantial evidence in the record to support the challenged finding in this regard. Accordingly, this second exception is rejected.

Storfer's third exception is directed to all of the Conclusions of Law contained in Paragraphs 82 through 104 of the Recommended Order, on the sole basis the ALJ did not mention Section 627.4554, Fla. Stat., (2007), and recognize it as a statute specific to annuity sales to senior citizens, and therefore controlling over what he purports are more general statutes dealing with the sale of annuity products.

A review of that statute, and Storfer's exception based thereon, shows that it is Storfer's contention that he met each of the statute's "reasonability" requirements related to making "'reasonable" attempts to obtain information form the prospective senior annuity purchaser, and having a "reasonable" basis for recommending any

particular product to a senior purchaser. Storfer contends that his actions should have measured by those standards, and not found wanting.

Storfer's exception misses the point. Storfer was not charged with a "reasonableness" failure under Section 627.4554, Fla. Stat. Rather, he was charged with misrepresentation of the annuity products he sold to the Grubicys and to Kikuko West, as well as contravening West's express non-purchase instructions, in violation of various other statutory provisions expressly set forth in the Administrative Complaint. As the Administrative Complaint did not allege a violation of any provision of Section 672.4554, Fla. Stat., it is inapposite to the facts of this case, and cannot control the result.

In the instance of the Grubicys, Storfer knowingly selected for them an annuity product index-linked to the stock market, even in the face of their *verbal and written instructions* to select a product not in any way linked to the stock market. The ALJ found that Storfer had made material misrepresentations to the Gubicys about the nature of the product sold to them. Those misrepresentations are governed by particular statutory standards, such as those found in Sections 626.9541(1)(a)1., Fla. Stat.

In the instance of Kikuko West, Storfer was specifically told by West, after much discussion about her goals and purchase options to satisfy those goals, *not* to process West's application for purchase of an American Equity Insurance policy recommended by Storfer, because West had read the applicable brochure which advertised a much lower interest rate than was her stated objective. Despite that express instruction, Storfer later processed the application, and, without her knowledge or consent, withdrew funds from West's Suntrust account to pay for the American Equity Insurance

policy. Acting in direct conflict to West's express instructions, processing her application, and surreptitiously withdrawing her monies to pay for the product violated Section 626.9541(1)(e)1, Fla. Stat. As aforestated, Section 627.4554, Fla. Stat., was not charged in the Administrative Complaint. Accordingly, this exception is rejected.

Storfer's fourth exception takes issue with the Conclusions of Law expressed in Paragraphs 82 through 98 of the Recommended Order on the basis that Florida case law imposes a duty on those who enter into a contract, including an insurance contract, to read and know the contents of the same, and that one cannot escape the consequences of signing a contract by asserting a failure to read before signing. However a review of that case law shows that this tenet of contract law is applicable only to an insured's contractual relationship with his or her insurance company. As was pointed out by the court in *Thomas v. Dept. of Ins. and Treasurer*, 559 So.2d 419 (2nd DCA 1990), that case law "does not concern the customer's relationship with the insurance agent or the agent's statutory responsibilities to the customer and the general public." The court then went on to hold the agent in question responsible for misrepresentations made to the insured. So it is here. The material facts pertinent to this cause are related to the relationship between the annuity purchaser and the agent, not the purchaser and the insurance company. The case law cited by Storfer in support of this exception is therefore inapposite and not controlling. Instead, *Thomas, supra*, controls. Accordingly, this exception is rejected.

Storfer's fifth exception, directed to the Findings of Fact in Paragraphs 17 and 36 of the Recommended Order, regarding conflicting evidence relative to the disclosure of monthly caps in the annuity policy in question is, again, merely an invitation to the

Department to re-weigh conflicting evidence in favor of Storfer. It is well established that that an agency is not at liberty to re-weigh fact evidence. *See, Perdue v. TJ Palm Associates, Ltd., supra*; *Heifetz v. Department of Business Regulation, Div. of Alcoholic Beverages and Tobacco*, *supra*, and the other cases cited in the rejection of this same invitation in the first exception. Accordingly, this exception is rejected.

Storfer's sixth exception, directed to Findings of Fact in Paragraphs 19, 26, and 36 of the Recommended Order, again asks the Department to re-weigh fact evidence. Because an agency is not allowed that liberty, as established by the afore-cited case law, this exception is rejected.

Storfer's seventh exception challenges the Finding of Fact in Paragraph 22 of the Recommended Order on the basis that the Grubicy annuities were not invested in the stock market. Nothing in Paragraph 22 suggests that those annuities were invested in the stock market. The challenged finding of fact simply states that the Grubicys expressly stated that they wanted their annuity to be free from market risk. By linking their annuities to a stock market index, Storfer linked their annuities to the performance of the stock market and its attendant risks, which is precisely what the Grubicys told Storfer they wanted to avoid. There is competent substantial evidence in the record to support the challenged finding. Accordingly, this exception is rejected.

Storfer's eighth exception takes issue with the Finding of Fact in Paragraph 16 of the Recommended Order, and seemingly does so on the basis that the Allianz policy principal was "protected", as if "protection" of the principal was the Grubicys' sole objective in purchasing the annuities in question. The record clearly shows that the Grubicys wanted to receive *income,* which is a return of interest earned by the principal,

from their annuity, not to merely re-cycle their principal. Had "protection" been their sole objective, the Grubicys could have attained that objective by putting the same amount of money into a savings account. Moreover, the ALJ noted the conflicts in testimony regarding what the Grubicys told Storfer relative to their investment objectives, and resolved those conflicts in favor of the Grubicys. It is the function of a hearing officer to consider all the evidence presented and resolve all conflicts therein. *Walker v. Board of Professional Engineers*, 946 So.2d 604 (Fla. 1st DCA 2006); *Heifetz v. Department of Business Regulation, Div. of Alcoholic Beverages and Tobacco, supra.* The ALJ resolved the evidentiary conflicts at issue, and there is competent substantial evidence in the record to support the challenged finding, so this exception is rejected.

Storfer's ninth exception is directed to Paragraph 19 of the Recommended Order, which found as a fact that the Allianz Masterdex 10 policy provided for surrender penalties on a fifteen year declining sale. Storfer contends that there is no competent evidence to support that finding. Although not a model of clarity, an examination of the Allianz policy (Department's Exhibit 27) seems to indicate that there is a ten year declining surrender penalty. There is no witness testimony on the subject. Thus, a review of the entire record shows no competent substantial evidence to support the fifteen year figure. To that extent, the exception is granted, and the reference to a fifteen year declining surrender penalty is modified to state a ten year surrender penalty. However, this modification does not change the finding that the Grubicys were told that their policy would mature in five years, which was a misrepresentation of the policy's ten year maturity term. *See*, Endnote five of the Recommended Order.

Storfer's tenth exception takes issue with the use of hearsay evidence in Paragraphs 32 though 35 of the Recommended Order. However, an examination of the record shows no objection was made to the testimony in question. Un-objected to hearsay may be used to support a finding of fact, just as any other evidence can be so utilized, limited only to its rational, persuasive power. *Tallahassee Furniture Co. Inc. v. Harrison*, 583 So.2d 744 (Fla. 1st DCA 1991), rev. den. 595 So.2d 558; *Tri-State Systems, Inc. v. Dept. of Transportation*, 500 So.2d 212 (Fla. 1st DCA 1986) rev. den. 506 So.2d 1041; *Rinker Materials Corp. v. Hill,* 471 So.2d 119 (Fla. 1st DCA 1985). Moreover, the testimony in question was not being asserted to establish the truth of any matter, but to explain the witnesses' state of mind and subsequent conduct, a recognized exception to the hearsay rule. Sections 90.803(3)1., and 2., Fla. Stat. Accordingly, this exception is rejected.

Storfer's eleventh exception is directed to the Conclusion of Law announced in Paragraph 96 of the Recommended Order regarding misrepresentations relative to the monthly cap on losses and the processing of the West application, and for brevity's sake incorporates the entirety of his fifth exception. This exception is rejected for the same reasons expressed in rejecting the fifth exception.

Storfer's twelfth exception is directed to the Conclusions of Law in Paragraphs 96 and 97 of the Recommended Order relative to conflicting evidence regarding downside monthly caps and application processing. Again, Storfer invites the Department to re-weigh the evidence and come to conclusions different than those reached by the ALJ. Again, for the reasons stated in rejecting those same invitations, above, this exception is rejected.

Storfer's thirteenth exception also asks the Department to re-weigh the evidence, makes no reference to any page or paragraph of the record, and sets forth no legal basis for the exception, all contrary to Section 120.57(1)(k), Fla. Stat. Additionally, the exception raises a constitutional issue over which the Department has no jurisdiction. It is well settled that an administrative agency lacks the authority to entertain and resolve constitutional issues. *Key Haven Associated Enters. v. Board of Trustees of the Internal Improvement Trust Fund*, 427 So.2d 153, 157-158 (Fla. 1982); *Metropolitan Dade County v. Department of Commerce*, 365 So.2d 432 (Fla. 3rd DCA 1978); *Hays v. State Dept. of Business Regulation, Div. of Pari-Mutuel Wagering*, 418 So.2d 331 (Fla. 3rd DCA 1982); *Palm Harbor Special Fire Control District v. Kelly*, 561 So.2d 249 (Fla. 1987); *Sarnoff v. Florida Dept. of Highway Safety and Motor Vehicles*, 825 So.2d 351 (Fla. 2002); *Lennar Homes, Inc. v. Department of Business and Professional Regulation, Division of Florida Land Sales, Condominium and Mobile Homes*, 888 So.2d 50 (Fla. 1st DCA 2004); *Florida Hosp. v. Agency for Health Care Administration*, 823 So.2d 844 (Fla. 1st DCA 2002);*Cook v. Florida Parole and Probation Com'n.*, 415 So.2d 845 (Fla. 1982). Accordingly, this exception is rejected.

Storfer's fourteenth exception, other than offering the correct but immaterial observation that Robert West, Kikuko West's husband was not an annuity purchaser, again merely argues for a re-weighing of the evidence relative to Ms. West's use of written material to assist her in her testimony in an inferential light favorable to him and against Kikuko West. Once again, it is well established that an agency cannot do so. Only if there is *no* competent substantial evidence in the record may an agency reject or

modify an ALJ's findings of fact on an evidentiary basis. [Section 120.57(1)(l), Fla. Stat.] Accordingly, this exception is rejected.

Storfer's fifteenth exception, again, expressly recognizes a conflict in the evidence relative to the role of broker Kevin Kretzmar played in the West transaction, and asks the Department to re-weigh it in a light favorable to him. Again, for the reasons repeatedly stated in rejecting similar previous exceptions, this cannot be done. Accordingly, this exception is rejected.

Storfer's sixteenth exception argues that a Finding of Fact made in Paragraph 46 of the Recommended Order is "vague", regarding the annuity's guaranteed growth for income. "Vagueness" is not a recognized legal basis to overturn a Finding of Fact. Only if there is *no* competent substantial evidence in the record may an agency reject or modify an ALJ's findings of fact on an evidentiary basis. Section 120.57(1)(l), Fla. Stat. Accordingly, this exception is rejected.

Storfer's seventeenth exception, again, asks the Department to re-weigh the evidence relative to a Finding of Fact announced in Paragraph 49 of the Recommended Order. Again, Storfer does not contend that there is no competent substantial evidence in the record to support the challenged finding. This type of exception must be rejected. Only if there is *no* competent substantial evidence in the record may an agency reject or modify an ALJ's findings of fact on an evidentiary basis. [Section 120.57(1)(l), Fla. Stat.] Accordingly, this exception is rejected.

Storfer's eighteenth exception, again, asks the Department to re-weigh conflicting evidence considered and resolved by the ALJ in Paragraph 54 of the Findings of Fact and in Endnote 16 of the Recommended Order. As repeatedly stated, It is the function

of a hearing officer to consider all the evidence presented and resolve all conflicts therein. *Walker v. Board of Professional Engineers*, supra; *Heifetz v. Department of Business Regulation, Div. of Alcoholic Beverages and Tobacco, supra.* Only if there is *no* competent substantial evidence in the record may an agency reject or modify an ALJ's findings of fact on an evidentiary basis. [Section 120.57(1)(l), Fla. Stat.] Accordingly, this exception is rejected.

Storfer's nineteenth exception is directed to Findings of Fact in Paragraphs 55, and 59 of the Recommended Order. Essentially, Storfer contends that he did not process the American Equity Annuity application, but that Kevin Kretzmar did so, and withdrew funds from West's SunTrust brokerage account to pay for that purchase, contrary to West's instructions. However, this exception overlooks the Findings of Fact in Paragraph 45 of the Recommended Order, that Kretzmar was a broker brought into the American Equity Annuity transaction by Storfer via a speakerphone call, because Storfer did not have a broker's license and therefore could not accommodate the transaction in question, and that West thought, under the circumstances, that Kretzmar worked for Storfer as his assistant. Moreover, the ALJ found that Storfer did not make it plain to West that Kretzmar was a broker working for another entity, and was not Storfer's assistant. As it was Storfer who selected and brought Kretzmar into the transaction without explaining to West that Kretzmar was a broker who worked independently of Storfer, it was incumbent on Storfer, as West's fiduciary, to issue express, written instructions to Kretzmar not to proceed with any purchase utilizing West's SunTrust monies, so as to better protect those monies. This he apparently failed to do, for no such written instructions were introduced or testified about at the hearing.

Moreover, the ALJ rejected Storfer's post- transaction created "client notes" about that matter as being self-serving and not credible. [Endnote 18 of the Recommended Order.]

Further, there was no controversy about Storfer being in control of submitting the actual American Equity application to the insurance company, a function not needed to be performed by Kretzmar, whose role was limited to arranging for a transfer of money out of the SunTrust brokerage account to pay for the American Equity annuity. (Tr. 276-277, 279, 282). Thus, both Storfer and Kretzmar had to be intimately involved in the decision to proceed with the American Equity purchase, with Storfer submitting the annuity contract application to the carrier, and Kretzmar transferring the payment monies, all contrary to West's instructions to Storfer. Accordingly, there being substantial competent evidence to support the challenged findings, this exception is rejected.

Storfer's twentieth exception is to Paragraph 59 of the Recommended Order, which he contends is too vague to support a finding of fact. An examination of that paragraph clearly shows that it is a summation of the fact evidence already specifically found in preceding paragraphs. Storfer also, by reference, incorporates his fourth exception. Because there is substantial competent evidence in the record to support the challenged summary finding, and for the reasons set forth in the rejection of his fourth exception, this exception is rejected.

For the sake of brevity, Storfer incorporates his nineteenth exception into his twenty first exception directed to the Conclusion of Law announced in Paragraph 96 of the Recommended Order, and contends that the evidence relied upon by the ALJ did not meet the clear and convincing standard because of conflicts, and invites the

Department to re-weigh the evidence. For the reasons expressed in rejecting the nineteenth exception, and for the reasons and on the authorities exhaustively recited above regarding an ALJ's duty to resolve conflicts in evidence and the agency's inability to re-weigh that evidence, this exception is rejected.

Storfer's twenty second exception is directed to Paragraphs 96 and 97 of the Conclusions of Law relative to disclosure of monthly loss caps, and, like so many of his others, merely re-argues the evidence, and asks the Department to re-weigh the same in a light favorable to him. For the reasons and on the authorities exhaustively recited above regarding an ALJ's duty to resolve conflicts in evidence and the agency's inability to re-weigh that evidence, this exception is rejected.

Storfer's twenty third exception raises constitutional issues beyond the Department's jurisdiction to resolve. *Department of Revenue v. Young American Builders*, 330 So.2d 864 (Fla. 1st DCA 1976); *Key Haven Associated Enters. v. Board of Trustees of the Internal Improvement Trust Fund*, 427 So.2d 153, 157-158 (Fla. 1982); *Gulf Pines Memorial Park, Inc. v. Oaklawn Memorial Park, Inc.*, 361 So.2d 695, 699 Fla. (1978); *Rice v. Department of Health and Rehabilitative Services*, 386 So.2d 844, 848 (Fla. 1st DCA 1989). As to any contentions of constitutional infirmity, it is well settled that an administrative agency lacks the authority to entertain and resolve constitutional issues. *Metropolitan Dade County v. Department of Commerce*, 365 So.2d 432 (Fla. 3rd DCA 1978); *Hays v. State Dept. of Business Regulation, Div. of Pari-Mutuel Wagering*, 418 So.2d 331 (Fla. 3rd DCA 1982); *Palm Harbor Special Fire Control District v. Kelly*, 561 So.2d 249 (Fla. 1987); *Sarnoff v. Florida Dept. of Highway Safety and Motor Vehicles*, 825 So.2d 351 (Fla. 2002); *Lennar Homes, Inc. v.*

Department of Business and Professional Regulation, Division of Florida Land Sales, Condominium and Mobile Homes, 888 So.2d 50 (Fla. 1st DCA 2004). Accordingly, this exception is rejected.

RULINGS ON THE DEPARTMENT'S EXCEPTIONS AND STORFER'S RESPONSES

The Department's first exception is directed to the Conclusion of Law announced in Paragraph 98 of the Recommended order wherein the ALJ reached the conclusion that the Department had not proved the allegations in Count III of the Administrative Complaint by clear and convincing evidence. Essentially, the exceptions invites the Department to re-weigh the evidence on the basis that the fact evidence material to the issues in question in Count III clearly and convincingly proved the Department's case. While it is true, as the Department contends, that any case has evidence that is material, and other evidence that is immaterial to the matters at issue, ferreting out the material facts from the immaterial facts is the exclusive province of the ALJ. To hold otherwise would allow an agency to re-weigh the evidence, and in its opinion decide which evidence was material and which was immaterial to the proof of its own allegations, thus completely supplanting the ALJ. That is not permissible. *See, Walker v. Board of Professional Engineers, supra*; *Heifetz v. Department of Business Regulation, Div. of Alcoholic Beverages and Tobacco, supra*, and the many other cases cited in rejecting many of the Respondent's similar exceptions. Accordingly, this exception must be, and is, rejected.

The Department's second exception takes issue with the penalty recommended by the ALJ. For the reasons expressed in response to the portion of Storfer's first exception that also challenged the recommended penalty, this exception is granted in

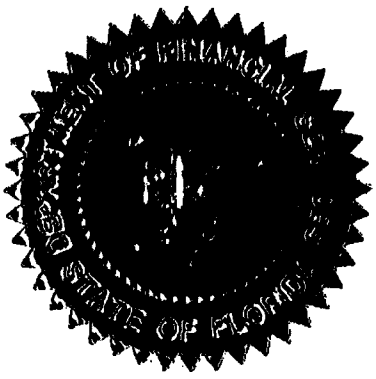
part and the penalty is modified to an eighteen (18) month suspension, prior to consideration of aggravating factors.

The Department's third exception argues that the ALJ should have found aggravating factors, and enhanced the recommended penalty accordingly. Evidently, the ALJ reasoned that because the recommended penalty was revocation it was unnecessary to find any aggravating factors so as to enhance the revocation. A review of the complete record, however, reveals the following aggravating factors: Storfer's misconduct was willful in that he purposefully undertook to perform as he did and was not merely negligent (Tr. 238-397); Storfer conducted the sale of the annuity products personally, and therefore was personally responsible for his misconduct (Tr. 104,-112; Depo. Celina Grubicy 19-33; Depo. Alberto Grubicy 6-18); Storfer's misconduct had the potential to cause great financial harm to the victims relative to their retirement needs (Depo. Celina Grubicy 29-30, Tr. 134); the victims of Storfer's misconduct were elderly [West was seventy-five at the time (Tr. 96), and the Grubicys were in their sixties (Depo. Celina Grubicy 14, 36]; and, Storfer's victims had an obvious and substantially limited command of the English language (West is native Japanese, and the Grubicys are native to Argentina, all considered English as their second language (Tr. 13-14, Depo. Celina Grubicy 93-94,106; Depo. Alberto Grubicy 4-5) which rendered them more dependent on Storfer's oral representations about the annuity products he sold to them than would otherwise have been the case. Each of those five aggravating factors is cause for a three month enhancement of the standard penalty, bringing the total penalty to a suspension in excess of twenty four months resulting in a revocation. [Section 626.641, Fla. Stat.; Rule 69B-231.040(2)(d), F.A.C.]

Therefore, in consideration of all of the above:

IT IS HEREBY ORDERED THAT except with regard to the explanation of the penalty hereby imposed and the modification to the Finding of Fact regarding the declining surrender charge in Paragraph 19 of the Recommended Order, the Findings of Fact and Conclusions of Law set forth in the Recommended Order are adopted as the Department's Findings of Fact and Conclusions of Law, and that all licenses and eligibility for licensure under the Florida Insurance Code of Mitchell Brian Storfer are hereby revoked. [Section 626.651(1), Florida Statutes.] No application for licensure from Mitchell Brian Storfer shall be entertained by this Department for a period of at least two years from the date hereof, or from the date of a final court order pursuant to judicial review of this Final Order. Pursuant to Section 626.641, Florida Statutes, during the period of revocation Mitchell Brian Storfer shall not engage in or attempt or profess to engage in any transaction or business for which a license is required under the Florida Insurance Code, or directly or indirectly own, control, or be employed in any manner by any insurance agent, agency, or adjusting firm.

DONE AND ORDERED this 19th day of March 2010.



Daniel Y. Sumner
Deputy Chief of Staff

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 Julie Jones, DFS Agency Clerk, at 612 Larson Building, 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 to:

ALJ June C. McKinney
David Bush, Esq.
Douglas J. Kress, Esq.