

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LARRY KRAVITSKY,)	
)	
Petitioner,)	
)	
vs.)	
)	Case No. 09-2300PL
DEPARTMENT OF AGRICULTURE AND)	
CONSUMER SERVICES,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

The case came before Larry J. Sartin, an Administrative Law Judge of the Division of Administrative Hearings, on a stipulated record.

APPEARANCES

For Petitioner:	Larry Kravitsky, <u>pro se</u> 3300 South Ocean Boulevard Apartment 917 Highland Beach, Florida 33487
For Respondent:	David W. Young, Senior Attorney Office of the General Counsel Department of Agriculture and Consumer Services Mayo Building, Suite 520 407 South Calhoun Street Tallahassee, Florida 32399-0800

STATEMENT OF THE ISSUE

The issue in this case is whether an application for a pest control employee-identification card filed by Respondent, Larry Kravitsky, with Petitioner, the Department of Agriculture and

Consumer Services, should be denied for the reasons stated in Administrative Complaint # A61227, BEPC Case # 09-0850.

PRELIMINARY STATEMENT

On or about April 8, 2009, Respondent, the Department of Agriculture and Consumer Services, Bureau of Entomology and Pest Control, issued Administrative Complaint # A61227, BEPC Case # 09-0850, RE: Amended Notice of Denial of Application for Pest Control Employee-Identification Card for Larry Kravitsky Submitted on January 6, 2009. Petitioner's application was denied because of alleged wrongdoing which was the subject of an Administrative Complaint and Settlement Agreement, Notice to Cease and Desist, BEPC Case Number 06-1951, Administrative Complaint Number A47018. The latter Administrative Complaint was the subject of DOAH Case No. 07-5600PL, a case also assigned to the undersigned.

On or about April 10, 2009, Petitioner disputed the facts upon which the Administrative Complaint in this case is based and requested a formal administrative hearing pursuant to Sections 120.569, and 120.57(1), Florida Statutes (2008). On April 29, 2009, the matter was filed by Respondent with the Division of Administrative Hearings requesting that an administrative law judge be assigned to conduct the formal hearing requested by Respondent. The matter was designated DOAH Case No. 09-2300 and was assigned to the undersigned.

In response to an Initial Order entered in this case, Respondent filed Respondent's Response to Initial Order and Motion to Consolidate. In this pleading, Respondent requested that this case be consolidated with DOAH Case No. 07-5600PL. Respondent pointed out in its Motion that the denial of Petitioner's application for the issuance of a pest control employee-identification card in this case is predicated on the alleged wrongdoing in DOAH Case No. 07-5600PL and, therefore, the two cases should be consolidated. Petitioner filed Petitioner's Objection to Respondent's Motion to Consolidate. A motion hearing was conducted by telephone to resolve the issue.

During the motion hearing, both parties agreed that the outcome of this case is dependent upon the decision in DOAH Case No. 07-5600PL. It was agreed, however, that it would be easier for the parties to address the issues raised in this case if the parties knew the outcome of DOAH Case No. 07-5600PL. It was also agreed that there was no need for an evidentiary hearing in this case. Therefore, it was ordered that the Motion to Consolidate would be denied, that no hearing would be held in this case, and that the parties would have 30 days from the entry of the Recommended Order in DOAH Case No. 07-5600PL to file proposed recommended orders and/or written argument in this case. These decisions were memorialized in two Orders entered June 5, 2009.

The Recommended Order in DOAH Case No. 07-5600PL was entered on June 2, 2009. Respondent filed Respondent's Proposed Recommended Order in this case on July 1, 2009. Petitioner has not filed a proposed order or written argument.

All further references to the Florida Statutes in this Recommended Order are to the 2008 edition, unless otherwise noted.

FINDINGS OF FACT

1. Respondent, the Florida Department of Agriculture and Consumer Services, Bureau of Entomology and Pest Control (hereinafter referred to as the "Department"), is charged with the responsibility of administering and enforcing the provisions of Chapter 482, Florida Statutes, the "Structural Pest Control Act." Among other duties, the Department is responsible for issuing pest control employee-identification cards.

2. On or about February 13, 2007, the Department issued an Administrative Complaint and Settlement Agreement, Notice to Cease and Desist, BEPC Case Number 06-1951, Administrative Complaint Number A47018, against Larry Kravitsky (hereinafter referred to as the "Disciplinary Administrative Complaint").

3. It is alleged in Count 1 of the Disciplinary Administrative Complaint that Mr. Kravitsky committed a violation of Section 482.165(1), Florida Statutes (2006), by "practicing pest control in the State of Florida without a Pest

Control Business License" In Count 2 it is alleged that Mr. Kravitsky violated Florida Administrative Code Rule 5E-14.106(1) by "[a]pplying a pesticide in a manner inconsistent with its labeling"

4. On or about February 28, 2007, Mr. Kravitsky disputed the facts upon which the Disciplinary Administrative Complaint is based and requested a formal administrative hearing pursuant to Sections 120.569, and 120.57(1), Florida Statutes. On December 4, 2007, the matter was filed by the Department with the Division of Administrative Hearings requesting that an administrative law judge be assigned to conduct the formal hearing requested by Mr. Kravitsky. The matter was designated DOAH Case No. 07-5600PL and was assigned to the undersigned.

5. An evidentiary hearing was held in DOAH Case No. 07-5600PL on December 18, 2008.

6. On June 2, 2009, a Recommended Order was entered in DOAH Case No. 07-5600PL. The Findings of Fact, Conclusions of Law, and recommendation in that case are hereby incorporated by reference into this Recommended Order. In the Recommended Order Mr. Kravitsky was found to have violated Section 482.165, Florida Statutes, and Florida Administrative Code Rule 5E-14.106(6), as alleged in the Disciplinary Administrative Complaint. On July 14, 2009, a Final Order was entered by the Department in the disciplinary Administrative Complaint case.

The Findings of Fact and Conclusions of Law set forth in the Recommended Order were adopted "in their entirety" and Mr. Kravitsky was ordered to pay a fine of \$4,000.00.

7. On or about January 6, 2009, subsequent to the issuance of Disciplinary Administrative Complaint and prior to the entry of the Recommended Order in DOAH Case No. 07-5600PL, Mr. Kravitsky applied with the Department for a pest control employee-identification card.

8. By Administrative Complaint # A61227, BEPC Case # 09-0850, the Department notified Mr. Kravitsky that his January 6, 2009, application for a pest control employee-identification card was being denied based upon the following:

- 1) A copy of an Administrative Complaint and Settlement Agreement against Larry Kravitsky dated February 13, 2007, Administrative Complaint Number A47018, BEPC Case Number 06-1951 is attached hereto as Exhibit A. The factual allegations against Mr. Kravitsky in Exhibit A are incorporated by reference herein.

- 2) Based on the factual allegations in Exhibit A, Larry Kravitsky practiced pest control on or about June 5, 2006, in the State of Florida without a pest control business license and without an identification card in violation of Section 482.165(1), Florida Statutes.

- 3) Based on the factual allegations in Exhibit A, Larry Kravitsky applied a pesticide on or about June 5, 2006, in a manner inconsistent with its labeling in violation of Section 5E-14.106(1), Florida Administrative Code.

4) The Department is authorized by Florida Statutes, Section 482.161(1)(a) to deny the application for licensure of an identification cardholder for the violation of any provision of Chapter 482, Florida Statutes or of any rule adopted by the Department pursuant to Chapter 482, Florida Statutes.

5) The alleged violations against Larry Kravitsky set forth in Exhibit A were tried in an administrative hearing on December 8, 2008, before Honorable Larry Sartin Administrative Law Judge in Division of Administrative Hearings (DOAH) Case Number 07-5600. A Recommended Order has not yet been issued in that case.

9. Mr. Kravitsky disputed the foregoing allegations and requested a formal administrative hearing. His request was filed with the Division of Administrative Hearings and designed DOAH Case No. 09-2300.

CONCLUSIONS OF LAW

A. Jurisdiction.

10. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2009).

B. The Burden and Standard of Proof.

11. Mr. Kravitsky, as the applicant for a pest control employee identification card, has the ultimate burden of proving his entitlement thereto by the preponderance of the evidence.

See Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); and Pou v. Department of Insurance and Treasurer, 707 So. 2d 941 (Fla. 3d DCA 1998). The Department, however, has the burden of proving that its rationale for the denial of Mr. Kravitsky's application is factually sound. The Department met its burden, while Mr. Kravitsky did not.

D. Mr. Kravitsky's Application.

12. Section 482.161, Florida Statutes, provides the Department's authority with regard to the issuance of pest control employee-identification cards. In pertinent part, the Department is granted the following authority:

(1) The department may . . . deny the application for licensure or licensure renewal of, a licensee, certified operator, limited certificateholder, identification cardholder, or special identification cardholder or any other person . . . in accordance with chapter 120, upon any of the following grounds:

(a) Violation of any provision of this chapter or of any rule of the department adopted pursuant to this chapter.

. . . .

13. It has been found in DOAH Case No. 07-5600PL that Mr. Kravitsky is guilty of violating Section 482.165(1), Florida Statutes (2006), and Florida Administrative Code Rule 5E-14.106(1), a Department rule adopted pursuant to Chapter 482,

Florida Statutes.

14. Although the Department has issued an "Administrative Complaint" in this case which suggests that the Department is seeking to take disciplinary action against Mr. Kravitsky for the same violations found in DOAH Case No. 07-5600PL, in fact the Department is exercising its regulatory authority over the issuance of pest control licenses.

RECOMMENDATION

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

RECOMMENDED that a final order be entered by the Department of Agriculture and Consumer Services denying the application for a pest control employee-identification card filed by Larry Kravitsky due to his violation of Section 482.165, Florida Statutes, and Florida Administrative Code Rule 5E-14.106(6), as alleged in the Disciplinary Administrative Complaint and found in DOAH Case No. 07-5600PL.

DONE AND ENTERED this 10th day of August, 2009, in
Tallahassee, Leon County, Florida.



LARRY J. SARTIN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of August, 2009.

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 these cases.