

FILED

APR 30 2012



CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

Docketed by ADD

IN THE MATTER OF:

ANGELA LAURA HABER

Case No. 104466-09-AG

FINAL ORDER

This cause came on for consideration of and final agency action on the Recommended Order rendered on February 1, 2012, after a formal hearing conducted on November 16, 2011 by Administrative Law Judge Lisa Shearer Nelson (ALJ). Both parties timely filed exceptions to the Recommended Order, and the Department filed a Response to Haber's exceptions. The Recommended Order, the transcript of testimony, the admitted exhibits, the parties' exceptions, the Department's Response and applicable law have all been considered in the promulgation of this Final Order.

RULINGS ON THE EXCEPTIONS AND RESPONSE

The Department's sole exception is to note that its exhibits 10 through 16 were also entered into evidence. The record so reflects. Accordingly, this exception is accepted, and page three of the Preliminary Statement in the Recommended Order is so amended.

Respondent Haber's first exception argues that the ALJ erred in equating Haber's *nolo contendere* plea to a conviction. That argument has no merit. Sections 626.611 and 626.621, Fla. Stat., equate *nolo contendere* pleas with convictions by prescribing the same disciplinary measures for each. The ALJ did not err by following those statutory dictates in that regard. Accordingly, this exception is rejected.

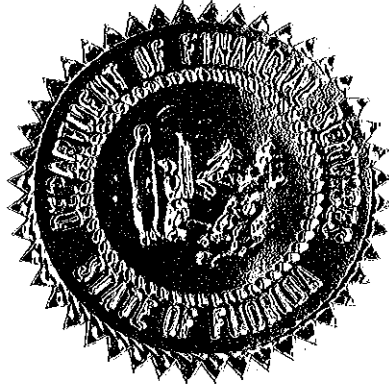
Respondent Haber's second exception is to the ALJ's observation that Haber has not had her civil rights restored, arguing that because they had not been removed it was not possible to have them restored. While a *nolo contendere* plea such as that entered by Haber does not have the effect of removing civil rights, the ALJ's observation does not alter the rationale behind the applicable penalty because the restoration of civil rights is a mitigating factor. Its absence in this case serves as a neutral factor, neither aggravating nor mitigating the applicable penalty of revocation. Accordingly, this exception is rejected.

Respondent Haber's third exception centers upon what her lawyers told her about their conversations with an unidentified Department employee regarding the effect of a *nolo contendere* plea on Haber's license. Allegedly, that unidentified representative told Haber's lawyer that such a plea would have no adverse effect upon Haber's license. No other evidence supports that allegation. Such testimony is uncorroborated hearsay, upon which a factual finding cannot be based. [Section 120.57(1)(c), Fla. Stat.] Additionally, such a statement, if made, was a mistaken statement about the law, to which the doctrine of equitable estoppel is inapplicable. *Associated Industries Insurance Company, Inc. v. State, Dept. of Labor and Employment Security*, 923 So.2d 1252 (Fla. 1st DCA 2006). Accordingly, this exception is rejected.

Therefore, IT IS HEREBY ORDERED that the Findings of Fact and Conclusions of Law in the Recommended Order are adopted as the Department's Findings of Fact and Conclusions of Law, and that all licenses held by Respondent Angela Laura Haber under the Florida Insurance Code are hereby revoked. During the period of revocation,

Respondent Haber shall not engage in any transaction or business for which a license or appointment under the Florida Insurance Code is required, or directly or indirectly own, control, or be employed in any manner by any insurance agent or agency or adjuster or adjusting firm. [Section 626.641, Fla. Stat.]

DONE AND ORDERED this 29th day of April, 2012.



A handwritten signature in black ink, appearing to read "R. C. Kneip".

Robert C. Kneip, 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, Fla. R. App. P. Review proceedings must be instituted by filing a petition or notice of appeal with Julie Jones, DFS Agency Clerk, Department of Financial Services, 612 Larson Building, 200 East Gaines Street 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. Filing may be accomplished via U.S. Mail, express overnight delivery, or hand delivery, facsimile transmission, or electronic mail.

Copies to:

Donald E. Pinaud, Jr.
Robert Alan Fox
ALJ Lisa Shearer Nelson