

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL)
SERVICES,)
)
Petitioner,)
)
vs.) Case Nos. 10-2442
) 10-2443
ALBERTO LUIS SOTERO AND)
FACLONTRUST GROUOP, INC.,)
)
Respondents.)
_____)

RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton, II, of the
Division of Administrative Hearings, heard this case on
August 10, 2010, at the Division of Administrative Hearings,
1230 Apalachee Parkway, The DeSoto Building, Tallahassee,
Florida.

APPEARANCES

For Petitioner: James A. Bossart, Esquire
Department of Financial Services
612 Larson Building
200 East Gaines Street
Tallahassee, Florida 32399-0333

For Respondent: Daniel C. Brown, Esquire
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STATEMENT OF THE ISSUES

A. Does Petitioner, Department of Financial Services (DFS), have authority to determine if Respondent, Alberto Luis Sotero (Mr. Sotero) and Respondent, FalconTrust Group, Inc. (FalconTrust), wrongfully took or withheld premium funds owed an insurance company while a civil action between the insurance company and Mr. Sotero and FalconTrust pends in Circuit Court presenting the same issues?

B. Should the insurance agent license of Mr. Sotero be disciplined for alleged violations of Sections 626.561(1), 626.611(7), 626.611(10), 626.611(13), and 626.621(4), Florida Statutes (2007)?¹.

C. Should the insurance agency license of FalconTrust be disciplined for alleged violations of Section 626.561(1), 626.6215(5)(a), 626.6215(5)(d), 626.6215(5)(f), and 626.6215(5)(k), Florida Statutes?

PRELIMINARY STATEMENT

On April 16, 2010, DFS filed Administrative Complaints against Mr. Sotero and FalconTrust, each with one Count alleging violations of Chapter 656, Florida Statutes (2007) governing the business of insurance.² Mr. Sotero and FalconTrust both requested administrative hearings to dispute the charges. DFS referred the cases to the Division of Administrative Hearings (DOAH) on May 6, 2010.

DOAH consolidated the cases and set them for Final Hearing to be held August 10, 2010. The hearing was held as noticed. The court reporter filed the Transcript on August 25, 2010. All parties submitted Proposed Recommended Orders and supporting Memoranda of Law. The parties asked for and were granted leave to file responses to each other's post-hearing filings, which extended the time for issuance of the Recommended Order. The parties filed responses.

At the final hearing DFS submitted the following exhibits into evidence: Petitioner's Exhibits 1, 2, 3, 4, 6, 8, 9, 10, 11, 12, 13, and 14. DFS presented testimony from Scott T. Bothwell, an employee of Zurich American Insurance Company.

Mr. Sotero and FalconTrust entered the following exhibits into evidence: Respondents' Exhibits C, F, G, L, H, and M. Mr. Sotero was the sole witness for himself and FalconTrust.

FINDINGS OF FACT

Based on the testimony and other evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. Mr. Sotero is licensed by DFS as an insurance agent in Florida and has been at all times material to this matter. He holds license number A249545.

2. FalconTrust is licensed by DFS as an insurance agency in this state and has been at all times material to this matter. It holds license number L014424.

3. Mr. Sotero is an officer and director of FalconTrust and held these positions at all times material to this proceeding. Mr. Sotero also controlled and directed all actions of FalconTrust described in these Findings of Fact.

4. Zurich American Insurance Company is a commercial property and casualty insurance company.

5. FalconTrust Commercial Risk Specialists, Inc., and Zurich-American Insurance Group entered into an "Agency-Company Agreement" (Agency Agreement) that was effective January 1, 1999. The Agency Agreement bound the following Zurich entities, referred to collectively as Zurich: Zurich Insurance Company, U.S. Branch; Zurich American Insurance Company of Illinois; American Guarantee and Liability Insurance Company; American Zurich Insurance Company; and Steadfast Insurance Company. The Agreement specified that FalconTrust was an "independent Agent and not an employee of the Company [Zurich.]". . . .

6. The Agency Agreement also stated:

All premiums collected by you [Falcontrust] are our [Zurich's] property and are held by you as trust funds. You have no interest in such premiums and shall make no deduction therefrom before paying same to us [Zurich] except for the commission if any authorized by us in writing to be deducted by you and

you shall not under any circumstances make personal use of such funds either in paying expense or otherwise. If the laws or regulations of the above state listed in your address require you to handle premiums in a fiduciary capacity or as trust funds you agree that all premiums of any kind received by or paid to you shall be segregated held apart by you in a premium trust fund account opened by you with a bank insured at all times by the Federal Deposit Insurance Corporation and chargeable to you in a fiduciary capacity as trustee for our benefit and on our behalf and you shall pay such premiums as provided in this agreement. (emphasis supplied.)

The Agency Agreement commits Zurich to pay FalconTrust commissions "on terms to be negotiated" It requires FalconTrust to pay "any sub agent or sub producer fees or commissions required."

7. The Agency Agreement also provides:

Suspension or termination of this Agreement does not relieve you of the duty to account for and pay us all premiums for which you are responsible in accordance with Section 2 and return commissions for which you are responsible in accordance with Section 3 [the Commission section.]

8. The Agency Agreement was for Mr. Sotero and Falcontrust to submit insurance applications for the Zurich companies to underwrite property and casualty insurance, primarily for long-haul trucking.

9. The Agency Agreement and all the parties contemplated that Mr. Sotero and FalconTrust would deduct agreed-upon

commissions from premiums and remit the remaining funds to Zurich. On September 14, 2000, Zurich and Mr. Sotero amended the Agency Agreement to change the due date for premium payments and to replace FalconTrust Group, Inc. (FalconTrust) for FalconTrust Commercial Risk Specialists, Inc., and to replace Zurich-American Insurance Group and Zurich Insurance Company, U.S. Branch, with Zurich U.S.

10. Mr. Sotero and Zurich's authorized agent, Account Executive Sue Marcello, negotiated the terms of the commission agreement as contemplated in the Agency Agreement.

11. Mr. Sotero confirmed the terms in a July 20, 1999, letter to Ms. Marcello. The parties agreed on a two-part commission. One part was to be paid from the premiums upon collection of the premiums. The second part, contingent upon the program continuing for five years, was to be paid by Zurich to Mr. Sotero and FalconTrust. The total commission was 20 percent. FalconTrust and Mr. Sotero were authorized to deduct 13 percent of the commission from premiums before forwarding them to Zurich. The remaining seven percent Zurich was to pay to Mr. Sotero and FalconTrust at the end of the program or after the fifth year anniversary date. The letter spelled out clearly that Zurich would hold the money constituting the seven percent and was entitled to all investment income earned on the money.

12. The passage describing the arrangement reads as follows:

Our total commission is 20 percent however Zurich will hold and retain the first 7 percent commission where they are entitle [sic] to earn investment income. I understand that FalconTrust will not benefit from this compounded investment income. However you mentioned you would increase our initial commission that is set at 13 percent currently from time to time depending on FalconTrust reaching their goals, but it will never exceed a total commission of 20 percent. It is to our understanding that the difference will be paid at the end of the program or after the fifth year anniversary date being 12/31/2005, but not earlier than five years. I do understand that if Zurich and/or FalconTrust cancels the program on or before the fourth year being 12/31/2004 that we are not entitle [sic] to our remaining commission that you will be holding. If the program is cancelled after 12/31/2004 by FalconTrust and/or Zurich it is understood that all commission being held will be considered earned. (emphasis added.)

13. Until the program ended, the parties conducted themselves under the Agency Agreement as described in the letter. At some point the parties agreed to decrease the percentage retained by Zurich to five percent and increase the percentage initially paid to and kept by FalconTrust to 15 percent.

14. During the course of the relationship FalconTrust produced approximately \$146,000,000 in premiums for Zurich. At all times relevant to this matter, all premium payments, except

for the portion deducted by sub-agents and producers before forwarding the payments to Mr. Sotero and FalconTrust were deposited into a trust account.

15. The various sub-agents of FalconTrust collected premiums and forwarded them to FalconTrust, after deducting their commissions, which were a subpart of the FalconTrust 13 percent commission. FalconTrust in turn forwarded the remaining premium funds after deducting the portion of its 13 percent left after the sub-agent deduction. This was consistent with the Agency Agreement and accepted as proper by Zurich at all times. All parties realized that the held-back seven percent, later five percent, was money that Zurich would owe and pay if the conditions for payment were met. The parties conducted themselves in keeping with that understanding.

16. Mr. Sotero and FalconTrust described the practice this way in their Third Amended Complaint in a court proceeding about this dispute: "In accordance with the Commission Agreement, Zurich held the contingency/holdback commission and received investment income thereon." (Emphasis supplied.)

17. In 2006 Zurich decided to end the program. In a letter dated December 8, 2006, Tim Anders, Vice President of Zurich, notified Mr. Sotero that Zurich was terminating the Agency-Company Agreement of January 1, 1999. The letter was specific. It said Zurich was providing "notification of

termination of that certain Agency-Company Agreement between Zurich American Insurance Company, Zurich American Insurance Co. of Illinois, American Guarantee and Liability Insurance Co., American Zurich Insurance Company, Steadfast Insurance Company . . . and FalconTrust Grup, Inc. . . ., dated January 1, 1999," Mr. Sotero wrote asking Zurich to reconsider or at least extend the termination date past the March 15, 2007, date provided in the letter. Zurich agreed to extend the termination date to April 30, 2007.

18. At the time of termination FalconTrust had fulfilled all of the requirements under the Agency-Agreement for receipt of the held-back portion of the commissions. Mr. Sotero asked Zurich to pay the held-back commission amounts. He calculated the amount to exceed \$7,000,000. Zurich did not pay the held-back commission amounts.

19. As the program was winding down and the termination date approached, FalconTrust continued to receive premiums. As the Agency Agreement and negotiated commission structure provided, FalconTrust deducted its initial commission from the premium payments. But, reacting to Zurich's failure to begin paying the held back commission amounts, Mr. Sotero engaged in "self help." He deducted at least \$6,000,000 from the premium payments from customers, received and deposited in the trust account. He took the money as payment from Zurich of earned and

held back commissions.³ Nothing in the Agency Agreement or negotiated commission agreement authorized this action.

20. In March of 2007, Mr. Sotero and FalconTrust also brought suit against Zurich in the Circuit Court for the Eleventh Judicial Circuit, Miami, Florida. The issues in that proceeding include whether Mr. Sotero and FalconTrust wrongfully took premiums and how much Zurich owes them for commissions. As of the final hearing, that cause (Case Number 07-6199-CA-01) remained pending before the court and set for jury trial in August 2010. There is no evidence of a final disposition.

21. But the court has entered a partial Summary Judgment determining that FalconTrust wrongfully took premium funds for the commissions that it maintained Zurich owed. The court's Order concludes that the issue is not whether Zurich owed money to FalconTrust, but whether FalconTrust was entitled to take the funds when it did. Like the undersigned, the court determines that it was not.

22. Between December 8, 2006, the date of the cancelation letter, and April 30, 2007, the program termination date, Mr. Sotero and FalconTrust did not remit to Zurich any of the approximately \$6,000,000 in premium payments received. Despite not receiving premiums, Zurich did not cancel or refuse to issue the policies for which the premiums taken by Mr. Sotero and FalconTrust were payment. The policies remained in effect.

CONCLUSIONS OF LAW

23. The Division of Administrative Hearings has jurisdiction over the subject matter and of the parties to this action in accordance with Sections 120.569 and 120.57(1), Florida Statutes (2010).

24. As the Petitioner, DFS must prove the material allegations by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Company, Inc., 670 So. 2d 932 (Fla. 1996), and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). Clear and convincing evidence must be credible. The memories of witnesses must be clear and not confused. The evidence must produce a firm belief that the truth of allegations has been established. Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983). Evidence that conflicts with other evidence may be clear and convincing. The trier of fact must resolve conflicts in the evidence. G.W.B. v. J.S.W. (in Re Baby E.A.W.), 658 So. 2d 961, 967 (Fla. 1995).

DFS Authority to Proceed

25. Mr. Sotero and FalconTrust maintain that DFS may take no action in this proceeding until final disposition of the circuit court action between FalconTrust and Zurich. They rely on Russell v. Florida Department of Insurance, 668 So. 2d 276 (Fla. 2d DCA 1996) (Russell) for this argument. In Russell, an administrative law judge issued a Recommended Order concluding

that the Department of Insurance should dismiss its complaint seeking to suspend Russell's insurance agent's license.

26. Russell involved money that Mr. Russell received from Principal Mutual Life Insurance Company in excess of commissions owed him. Over the years, Russell had received multiple commission advances from Principal with the express and repeated approval of Principal's officers. When Principal assigned a new commissions technician to Russell's account, Russell requested advances from her. The new technician was not aware of the previous practice, the approval of the officers, or the way in which the advances had been made. To grant Russell's request she devised a method of adding money to his commission statement and forcing the computer system to make payments of unearned money. She was diverting Principal's funds to Russell.

27. Russell had no reason to question the means by which the new technician provided the money advanced. He reasonably assumed that the payments had been approved by Principal's officers as his previous payments had been. Department of Insurance and Treasurer v. Russell, Case No. 94-0810 (Division of Administrative Hearings, Recommended Order, December 2, 1994); Dep't of Ins. Amended Final Order April 18, 1996. The findings of fact included a determination that Russell had no reason to know that he had no right to the money he received or

that he knowingly or wrongfully sought to obtain payments to which he was not entitled.

28. When Principal learned what the new technician had been doing, it terminated Russell's contracts and filed a civil suit against him seeking return of the money. Russell counterclaimed. The Department filed an administrative complaint against Russell. After a final hearing, the Administrative Law Judge found the facts described above and that Russell did not repay Principal when it demanded repayment, because he was awaiting the outcome of the civil suit. The administrative law judge determined that the facts did not establish any of the violations charged. The Recommended Order recommended that the Department dismiss its complaint.

29. The Department's Final Order accepted the Order's Findings of Fact but rejected the conclusion. The Final Order concluded instead that Russell had converted and failed to return funds belonging to an insurer in violation of Sections 626.561, 626.611, and 626.621, Florida Statutes (1993). These are all statutes involved in this case and not materially different from the 2009 versions that govern here. The facts are, however, different. The court reversed the Department's Final Order saying: "The findings of fact do not support this legal conclusion. Accordingly, we reverse." Russell 668 So. 2d at 277. Although the court stated that the Department could

file another complaint if the trial court determined that Russell improperly took or kept the money, the pending trial court action was not the reason for reversal.

30. Mr. Sotero and FalconTrust argue that Russell held that only a court can interpret terms of the contract and that DFS has no authority to act against their licenses until the circuit court action results in a final determination of whether the moneys taken were premiums. This is not Russell's holding. The decision was based on the fact. However, those facts are very different from the facts here. The court did not make a jurisdictional determination or decide that DFS could never act on a set of facts if there was a legal proceeding involving them pending. Russell does not require dismissing the complaint.

31. Sotero and FalconTrust also cite Webb v. Dep't of Prof'l Regulation, 595 So. 2d 1103 (Fla. 5th DCA 1992) in support for their argument that the Department lacks authority to determine if the moneys that they kept were premiums, not commissions to which they were entitled. Webb does not support the argument. Like Russell, the holding in Webb is specific to the facts of the case. Webb involved a fee dispute between an engineer and client. The court reversed the decision because the undisputed facts established a fee dispute that did not amount to misconduct. The opinion did not hold that only courts could determine the meaning of the contract between the engineer

and the client or that facts giving rise to a fee dispute could never be a disciplinary offense. The other authorities relied upon by Sotero and FalconTrust similarly depend upon specific facts and the authority of specific agencies. They do not support the theory that actions which may be the subject of a contractual dispute may never be the basis for a disciplinary action.

The Charges

32. DFS charges Mr. Sotero with violations of Sections 626.561(1), 626.611(7), 626.611(10), 626.611(13), and 626.621(4), Florida Statutes. DFS charges FalconTrust with violations of Sections 626.561(1), 626.6215(5)(a), 626.6215(5)(d), 626.6215(5)(f), and 626.6215(5)(k), Florida Statutes. All of these charges rest on the claim that after receiving Zurich's December 8, 2006, notice of termination, Mr. Sotero and FalconTrust withheld as payment for held-back commissions the moneys insurance customers paid for premiums. DFS proved that claim with clear and convincing evidence.

33. Mr. Sotero and FalconTrust argue that the funds were commissions, not premiums. The facts do not support that argument. The funds were premiums. The facts show that Zurich held back years' worth of commissions as agreed among the parties. The facts also show that Zurich was to pay the held-back commission amounts under certain conditions.

34. Mr. Sotero and FalconTrust may be right that those conditions all occurred and Zurich owed them over \$7,000,000 in commissions. That, however, is an obligation of Zurich to pay money to Mr. Sotero and FalconTrust. The documents and the practice of the parties in the course of their relationship do not support the conclusion that Mr. Sotero and FalconTrust were authorized to deduct the held-back commissions from premium payments they received from insurance customers. Fortunately for the customers, Zurich did not choose to deny or cancel coverage because it had not received premiums. All that remains is application of the elements of the various charges to the facts.

Charges Against Mr. Sotero

35. Section 626.561(1), Florida Statutes, makes all premiums received by insurance agents and agencies trust funds, requires agents to keep the funds in a separate account, and requires agents to pay the funds to the insurer or insured entitled to the funds. The funds that Mr. Sotero and FalconTrust collected after receiving the December 8, 2006, letter from Zurich were premium funds to which Zurich was entitled. Mr. Sotero did not pay them to Zurich as required. DFS proved a violation of Section 626.561(1), Florida Statutes, by clear and convincing evidence.

36. The alleged violations of Section 626.611(7), (10), and (13), Florida Statutes, require specific intent on the part of the licensee. See Bowling v. Department of Insurance, 394 So. 2d 165 (Fla. 1st DCA 1981). Clear and convincing evidence establishes that Mr. Sotero and FalconTrust intended to take the premium funds to pay the commissions they believed they were owed. Their rationalization for taking the money does not change the fact that they knew the funds were premiums and that the agreement, as memorialized in Mr. Sotero's letter, only permitted taking the initial commission percentage before forwarding the remaining money to Zurich.

37. Section 626.611(7), Florida Statutes, permits DFS to deny, suspend, or revoke the license of any insurance agent who has demonstrated a lack of fitness or trustworthiness to engage in the business of insurance. Mr. Sotero resorted to self-help when he concluded that Zurich was unlikely to pay the held-back commissions. In doing so he put his personal financial interests ahead of the interests of the insurance customers who depended on him to forward their premium payments to Zurich. This action demonstrated a lack of fitness or trustworthiness to engage in the business of insurance. DFS proved this charge by clear and convincing evidence.

38. Section 626.611(10), Florida Statutes, permits DFS to deny, suspend, or revoke the license of any insurance agent who

misappropriates, converts or unlawfully withholds money belonging to an insurer received in the conduct of business under the insurance license. The premiums received after the December 8, 2006, letter were premium moneys belonging to Zurich. Mr. Sotero deliberately and willfully took them and converted them to his own use. DFS proved this charge by clear and convincing evidence.

37. Section 626.611(13), Florida Statutes, permits DFS to deny, suspend, or revoke the license of any insurance agent who willfully fails to comply with or willfully violates any rule of DFS or any provision of Florida's insurance code. As set forth in this Recommended Order, Mr. Sotero deliberately and willfully violated several provisions of Florida's insurance code. DFS proved this charge by clear and convincing evidence.

38. Section 626.621(4), Florida Statutes, permits DFS to deny, suspend, or revoke the license of any insurance agent who fails or refuses "upon demand, to pay over to any insurer he or she represents or has represented any money coming into his or her hands belonging to the insurer." DFS did not prove by clear and convincing evidence that Zurich demanded money coming into Mr. Sotero's hand that belonged to Zurich. Consequently DFS did not prove this charge by clear and convincing evidence.

Charges Against Falcontrust

39. Section 626.561(1), Florida Statutes, makes all premiums received by insurance agents and agencies trust funds, requires agents to keep the funds in a separate account, and requires agents to pay the funds to the insurer or insured entitled to the funds. The funds that Mr. Sotero and FalconTrust collected after receiving the December 8, 2006, letter from Zurich were premium funds to which Zurich was entitled. FalconTrust did not pay them to Zurich as required. DFS proved a violation of Section 626.561(1) by clear and convincing evidence.

40. Section 626.6215(5), Florida Statutes, permits DFS to suspend, deny, or revoke an insurance agency license if the agency or its majority owner commits any of several listed acts "with such frequency as to have made the operation of the agency hazardous to the insurance-buying public or other persons." The acts charged here are:

(a) Misappropriation, conversion, or unlawful withholding of moneys belonging to insurers or insureds or beneficiaries or to others and received in the conduct of business under the license.

* * *

(d) Violation of any provision of this code or of any other law applicable to the business of insurance in the course of dealing under the license.

* * *

(f) Failure or refusal, upon demand, to pay over to any insurer he or she represents or has represented any money coming into his or her hands belonging to the insurer.

* * *

(k) Demonstrated lack of fitness or trustworthiness to engage in the business of insurance arising out of activities related to insurance or the insurance agency.

41. FalconTrust's willful and deliberate decision to take premium funds to pay the held-back commissions that it maintained Zurich owed establishes by clear and convincing evidence that FalconTrust committed each of the offenses described in subsections (a), (d), (f), and (k). The only remaining question is whether FalconTrust committed the offenses "with such frequency as to have made the operation of the agency hazardous to the insurance-buying public or other persons."

42. There are a number of ways to analyze this element. Mr. Sotero and FalconTrust take the position that this case involves a single incident that cannot amount to frequent violations. DFS does not address the issue, and only alleged one Count in its Administrative Complaint. Recurrence implies more than one action. The magnitude of the amount of premium payments involved makes it plausible to conclude that the single action of taking over \$6,000,000 in premium payments establishes a violation. In addition the money FalconTrust took likely

represented premium payments of several insurance customers received and taken over a period of days. Taking premiums of a number of customers or taking premiums on a number of days could establish frequent violations. But evidence on this subject does not establish how many customer policies or how many premium payments were involved. Consequently, DFS did not prove the several charged violations of Section 626.6215(5) by clear and convincing evidence.

Penalty

43. Under Florida Administrative Code Rule 69B-231.040(1)(a), the penalty per count cannot exceed the highest penalty for any violation found under the count.

44. Mr. Sotero's violation of Section 626.611(10) is punishable with a 12-month suspension per violation. This is the highest penalty for any violation by Mr. Sotero established in this case.

45. Florida Administrative Code Rule 69B-231.160 lists aggravating and mitigating factors that may be considered. The following aggravating circumstances are present: willfulness of the licensee's conduct, motivation of the licensee, and financial gain to the licensee. The only mitigating circumstance is the lack of previous disciplinary orders or warnings.

46. In consideration of the facts and all the aggravating and mitigating circumstances, a suspension of Mr. Sotero's license for nine months is appropriate in light of the deliberate, willful nature of his actions and the amount of premium moneys that he took.

47. FalconTrust's violation of Section 626.561(1) is punishable with a nine-month suspension per violation. Fla. Admin. Code R. 69B-231.110. This is the highest penalty for any violation by FalconTrust established in this case. The discussion of aggravating and mitigating factors above applies equally to determining the penalty for FalconTrust.

48. In consideration of the facts and all of the aggravating and mitigating circumstances, a suspension of FalconTrust's license for nine months is also appropriate in light of the deliberate, willful nature of the actions and the amount of premium moneys taken.

49. DFS also asks that reinstatement of the licenses for Mr. Sotero and FalconTrust be made contingent upon a satisfactory accounting of the premium funds. Putting aside the questions about the existence of statute or rule authority for imposing this requirement, the evidence does not permit a determination of the precise amounts involved since some amount, albeit less than \$1,000,000 applying the 15 percent initial

commission, could have been kept as earned commissions not payment of held back commissions.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Financial Services suspend the license of Adalberto L. Sotero for nine months and suspend the license of FalconTrust Group, Inc. for nine months.

DONE AND ENTERED this 15th day of October, 2010, in Tallahassee, Leon County, Florida.



JOHN D. C. NEWTON, II
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of October, 2010.

ENDNOTES

^{1/} All references to Florida Statutes are to the 2007 statutes unless otherwise noted.

^{2/} At the Final Hearing DFS withdrew one charge against each Respondent and amended some of the statutes cited in the Administrative Complaint against FalconTrust.

^{3/} The evidence is not clear about the exact amount that was for the initial commission, 15 percent at that time, and how much was for the held back commissions. But it was clear that Mr. Sotero and FalconTrust withheld millions of premium dollars beyond the amount that would have paid the 15% commission they were entitled to withhold.

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.