

FILED

APR 27 2012



CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

Docketed by EU

IN THE MATTER OF

DOMINICK PAUL BELINCHAK
_____ /

Case No. 115862-11-AG
DOAH No. 11-2793PL

FINAL ORDER

This cause came on for consideration of and final agency action on the Recommended Order entered on January 30, 2012, by Administrative Law Judge Lynne A. Quimby-Pennock after a formal hearing concluded on September 27, 2011. Respondent Dominick Paul Belinchak timely filed exceptions to which the Department timely filed a Response. The Recommended Order, the transcript of proceedings, the admitted exhibits, the exceptions and responses, and applicable law have all been considered in the promulgation of this Final Order.

RULINGS ON THE EXCEPTIONS

Belinchak's first exception contends that the statutory phrase "under the direct supervision and guidance of the supervisory public adjuster" is too vague and ambiguous to be found to require his physical presence when an apprentice public adjuster under apprenticeship to him solicits for or executes a contract for his services as a fully licensed public adjuster. Consequently, he contends, the ALJ erred by finding that he violated Section 626.8651(11), Fla. Stat. because of the lack of his physical presence when his apprentice solicited for and executed a contract with a homeowner

for the public adjusting services of Public Adjuster Hotline (PAH) then owned by Belinchak.

Belinchak misapprehends the ALJ's findings and conclusions. It is clear from the Recommended Order that the lack of Belinchak's physical presence on the occasion in question is but one indicia of his lack of direct supervision of and guidance to his apprentice. Other indicia are that he routinely sent his apprentice out on solicitation runs with pre-signed contracts, indicating that he did not intend to supervise or guide the solicitations or contract executions, that the apprentice was located in Orlando, while Belinchak and PAH were located in Palm Bay, an hour away, thereby making his personal presence on any particular occasion difficult at best, and that Belinchak did not participate in the solicitation or execution in question by any other means such as telephone or text messaging. Thus, the ALJ concluded upon her review of the facts that Belinchak's supervision of his apprentice's work was "minimal at best". (RO, paragraph 4.) In short, the ALJ correctly found as a matter of fact, supported by competent substantial record evidence in the form of the apprentice's testimony (Tr. 108-235), that Belinchak provided no form of direct supervision over or guidance to his apprentice during her solicitation of the homeowner and the subsequent execution of the contract between PAH and the homeowner. Accordingly, this exception is rejected.

Belinchak's second exception is that the element of willfulness was not established by the evidence adduced at the hearing. In so positing, Belinchak's exception goes outside the record and makes arguments based on uncorroborated hearsay. That is an improper method of excepting to a finding of fact or a conclusion of law, and is disregarded. Moreover, the record clearly establishes that Belinchak's

decisions to equip his apprentice with PAH business cards, brochures, a MagicJack telephone service, magnetic car signs with PAH advertising, pre-signed PAH contracts, and instructions to market PAH to various tradespersons when not working on a specific claim, were done intentionally, and not negligently or accidentally. Thus, there is competent substantial evidence in the record to support the Conclusion of Law that his actions in those regards were willful. Accordingly, this exception is rejected.

Therefore, IT IS HEREBY ORDERED that 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.

However, the Department does not concur in the recommended penalty of a seven month suspension. Belinchak violated Sections 626.611(13), 626.621(12), 626.851, Fla. Stat. and Rule 69B-220.051, F.A.C. Rule 69B-231.080 prescribes a six month suspension for violating Section 626.611(3), Fla. Stat.; Rule 69B-231.090 prescribes a six month suspension for violating Section 626.621(12), Fla. Stat.; Rule 69B-231.120 prescribes a six month suspension for willful violations of Insurance Code provisions such as Section 626.8651, Fla. Stat., that are not provided for elsewhere in the Florida Administrative Code, and Rule 69B-231.130 prescribes a six month suspension for the willful violation of department rules such as Rule 69B-220.051(3)(a), F.A.C. All of those suspension periods are prescribed without consideration of the aggravating or mitigating factors set forth in Rule 69B-231.160, F.A.C. The ALJ found the aggravating factor of willfulness to be present in Belinchak's actions, but that factor is already present in two of those instances noted above, so it is disregarded as to those violations. However, as to the violations of Sections 626.611(13) and

626.621(12), Fla. Stat., consideration of the aggravating factor of willfulness is appropriate. In consideration of that factor, and abiding by the "Penalty Per Count" provisions of Rule 69B-231.040, F.A.C., applicable to the one-count Administrative Complaint filed in this action, the imposition of an additional six month suspension period to the standard six month penalty is warranted to enforce the necessity of providing meaningful "direct supervision and guidance" to apprentice public adjusters, rather than, as here, simply using them as commercial marketers with little to no direct supervision or guidance in the solicitation and execution of public adjuster contracts.

IT IS THEREFORE FURTHER ORDERED that Dominick Paul Belinchak's license(s) and eligibility for licensure under the Florida Insurance Code is suspended for a period of 12 months from the date hereof. Pursuant to Section 626.641, Fla. Stat., during the suspension period Belinchak shall not engage or attempt or profess to engage in any transaction or business for which a license or appointment is required under the Florida Insurance Code, or directly or indirectly own, control, or be employed in any manner by any insurance agent or agency or adjuster or adjusting firm.

DONE AND ORDERED this 27th day of April, 2012.




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:

David J. Busch

Dominick Paul Belinchak

ALJ Lynne Quimby-Pennock