

**FILED**

AUG 23 2012



CHIEF FINANCIAL OFFICER  
JEFF ATWATER  
STATE OF FLORIDA

Docketed by EU

STATE OF FLORIDA  
DEPARTMENT OF FINANCIAL SERVICES

IN RE: THE MATTER OF  
JEFFREY CARL PELLET

Case No. 119645-11-AG

FINAL ORDER

This cause came on for consideration of and final agency action on the Recommended Order filed on July 11, 2012 after a formal administrative hearing held on April 17, 2012 by Administrative Law Judge Claude B. Arrington (ALJ). Petitioner Pellet filed exceptions, unsigned by his counsel and thereby calling into question their efficacy as being filed contrary to the signature requirement of Section 120.569 (2)(e), Fla. Stat., and filed the same with the Division of Administrative Hearings rather than with this Department, despite the plain directions contained in the Recommended Order that exceptions are to "be filed with the agency that will issue the Final Order in this case". The Respondent Department of Financial Services timely filed responses to the exceptions. The Recommended Order, the transcript of proceedings, the admitted exhibits, the unsigned exceptions and the responses thereto, and applicable law have all been considered in the promulgation of this Final Order.

## RULINGS ON THE EXCEPTIONS

The Petitioner asks for a *de novo* review of the Final Order, but cites to no statutory, rule, or other authority for such review; indeed, there is none. The formal hearing, itself, is a *de novo* review of intended agency action. Section 120.57 (1)(k), Fla. Stat. Therefore, this request must be denied.

The Petitioner's first exception is not directed to a finding of fact or a conclusion of law, but merely to the ALJ's "framing of the issues", and fails to identify a legal basis for the exception. Therefore, this exception need not be ruled upon and is summarily rejected. Section 120.57(1)(k), Fla. Stat.

The Petitioner's second exception likewise is not directed to a finding of fact or conclusion of law and fails to identify a legal basis for the same. Moreover, the ALJ's statement that he lacks the authority to rule upon a constitutional challenge to a statute is a correct statement of the law. Therefore, this second exception need not be ruled upon and is summarily rejected.

The Petitioner's third exception takes issue with Paragraph 7 of the Recommended Order wherein the ALJ found newly-enacted Section 626.207, Fla. Stat. applicable to Petitioner. Petitioner argues that the Department is estopped from applying that new legislation to him. However, Petitioner offers no legal basis for that argument. Moreover, when the legislature enacts new legislation the agencies charged with the administration of that legislation must adjust to the new legislation, and applications are evaluated by the law in effect at the time the application is acted upon. *Lavernia v. Department of Professional Regulation*, 616 So.2d 53 (Fla. 1DCA 1993),

rev. den. 624 So.2d 267; *Agency For Health Care Administration v. Mount Sinai Medical Center*, 690 So.2d 689 (Fla. 1DCA 1997) Accordingly, this exception is rejected.

The Petitioner's fourth exception is not directed to a finding of fact or a conclusion of law and provides no legal basis in support thereof. Moreover, there is no recognized legal requirement that the Department evaluate the truthfulness of allegations made prior to initiating an investigation. It is the purpose of the investigation to ascertain the truthfulness of the allegations. Accordingly, this exception is rejected.

The Petitioner's fifth exception takes issue with the completeness of the ALJ's account of the extensive subpoena litigation earlier initiated by the Petitioner in this cause, but states no legal basis for the exception and makes no showing how a more "complete" accounting would change any finding of fact or conclusion of law. Accordingly, this exception is rejected.

The Petitioner's sixth exception includes no legal basis in support thereof and merely, once again, quarrels with the completeness of the ALJ's recitation of events without any showing of how a more "complete" recitation would change any finding of fact or conclusion of law. Accordingly, this exception is rejected.

The Petitioner's seventh exception concedes the truthfulness of the statement made in Paragraph 12 of the Recommended Order, which merely recites the indisputable appellate history of Petitioner's peripheral litigation, and then unaccountably objects to the same without any supporting legal basis. Accordingly, this exception is rejected.

The Petitioner's eighth exception takes issue with the Finding of Fact that his extensive litigation which, unsuccessfully at every step, challenged the Department's

discovery subpoenas, impeded the Department's investigation of this matter. However, the record fully supports that Finding of Fact, and the exception is bereft of a supporting legal basis. Accordingly, this exception is rejected.

The Petitioner's ninth exception challenges the Conclusion of Law in Paragraph 20 that his resistance to the Department's subpoena impeded its investigation, noting that all reviewing judicial authorities ruled against that resistance. The exception offers no legal supporting basis, and the record fully supports the conclusion that Petitioner's resistance impeded the Department's investigation. Accordingly, this exception is rejected.

The Petitioner's tenth exception takes issue with Paragraph 23 of the Conclusions of Law wherein the ALJ concluded that he had willfully failed to comply with a valid subpoena. Given the undisputed and indisputable litigation history of Petitioner's resistance to a subpoena found valid by a magistrate, a circuit judge, and three appellate court judges, it is difficult to find a more blatant form of willful and unjustified resistance, and the excuse that he was merely following the ill-chosen advice of his attorney does not alter the ALJ's conclusion of willfulness. The record amply supports the challenged conclusion, and the exception identifies no supporting legal basis. Accordingly, this exception is rejected.

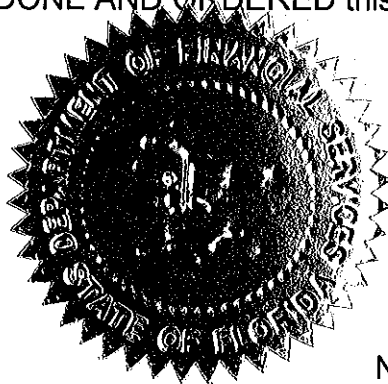
The Petitioner's eleventh exception is the same as his third exception. For the same reasons expressed in that rejection, the eleventh exception is rejected.


The Petitioner excepts to the final recommendation, but provides no legal basis for that exception. Accordingly, it is summarily rejected.

Therefore, in consideration of all of the above,

IT IS HEREBY ORDERED that the Findings of Fact and Conclusions of Law announced by the ALJ are adopted as the Department's Findings of Fact and Conclusions of Law, and that the Petitioner's application for licensure as an All-Lines Public Adjuster is denied, and a permanent bar against his licensure of any kind under the Florida Insurance Code is imposed herewith. [Section 626.207, Fla. Stat.]

DONE AND ORDERED this 23<sup>rd</sup> day of August, 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 Busch  
Michael D. Gelety  
ALJ Claude Arrington

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JEFFREY CARL PELLET, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 11-4054  
 )  
 FLORIDA DEPARTMENT OF FINANCIAL )  
 SERVICES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on April 17, 2012, by video teleconference between Lauderdale Lakes and Tallahassee, Florida, before Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings (DOAH).

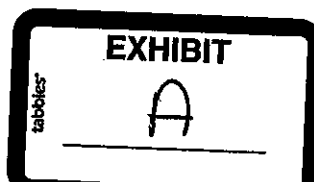
APPEARANCES

For Petitioner: Michael D. Gelety, Esquire  
1209 Southeast 3rd Avenue  
Fort Lauderdale, Florida 33316

For Respondent: David J. Busch, Esquire  
Department of Financial Services  
Division of Legal Services  
612 Larson Building  
200 East Gaines Street  
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

Whether the Florida Department of Financial Services (the Department) has grounds to deny the application for an "All-



Lines Public Adjuster's" license filed by Jeffrey Carl Pellet (Mr. Pellet) as alleged in the Department's Notice of Amended Denial and Notice of Permanent Bar dated January 19, 2012. Specifically, two grounds for denial were at issue. First, whether Mr. Pellet's action in litigating a subpoena served on him in 2008 by the Department constitutes grounds to deny his application. Second, whether Mr. Pellet's criminal history disqualifies him from licensure.

PRELIMINARY STATEMENT

The Department denied Mr. Pellet's application for licensure as an "All Lines Public Adjuster." The Department's initial denial letter asserted that his failure to timely comply with a subpoena served upon him by the Department in 2008 constituted grounds for the denial based on the following provisions: sections 624.307(3); 624.317(1); 624.318(1), (2), and (5); 624.321(1)(b) and (2); 626.561(2); 626.601(1); 626.611(7) and (13); 626.621(1), (2), (3), and (13); 626.870(4); and 626.8698(1), Florida Statutes. Mr. Pellet timely requested a formal administrative hearing to challenge the Department's proposed action, the matter was referred to DOAH, and this proceeding followed. Thereafter, the Department amended its denial letter by asserting that Mr. Pellet's criminal history disqualifies him from licensure.

At the formal hearing, Mr. Pellet testified on his own behalf and presented the additional testimony of Andrew Fuxa. Mr. Pellet's pre-marked Exhibits 3, 10-13, 15, and 22 were admitted into evidence. The Department presented the testimony of Robert Keegan and Matt Tamplin, both of whom are Department employees. The Department's Exhibits 1-15 were admitted into evidence.

On April 16, 2012, counsel for Mr. Pellet filed a "Motion to Declare Florida Statute 626.207 Unconstitutional on its Face and as Applied to Petitioner Pellet" and "Pellet's Motion to Strike Department's Amended Denial of License and Notice of Permanent Bar and Motion in Limine to Prevent Mention or Use of Information and Allegations Contained Therein as a Justification for Denial of Licensure." The motion to strike and the motion in limine were denied on the merits.<sup>17</sup> No ruling was made on the merits of the motion asserting that the statute is unconstitutional because the undersigned lacks the authority to do so. It is well established that only a court of competent jurisdiction can rule on constitutional issues. See Key Haven Associated Enters., Inc., v. Trs. of the Internal Improvement Trust Fund, 427 So. 2d 153 (Fla. 1982).

A Transcript of the proceedings, consisting of two volumes, was filed on May 3, 2012. Both parties filed Proposed



Recommended Orders (PROs), which have been duly considered by the undersigned in the preparation of this Recommended Order.<sup>2/</sup>

#### FINDINGS OF FACT

1. The Department is the state agency that regulates the practice of insurance in the State of Florida.

2. On April 20, 2011, Mr. Pellet filed with the Department an application for an "All-Lines Independent Adjuster's" license.

#### CRIMINAL HISTORY

3. On October 13, 1987, Mr. Pellet entered a plea of nolo contendere to three counts of insurance fraud and three counts of grand theft. Adjudication of guilt was withheld. He was ordered to serve six months of community control to be followed by 2.5 years of probation. Mr. Pellet's term of probation was terminated May 24, 1989.<sup>3/</sup>

#### CHANGE IN THE LAW

4. Before it was invalidated in April 2010, Florida Administrative Code Rule 69B-211.042(8)(a) contained a 15-year waiting period before a person with Mr. Pellet's criminal history would become eligible for the type license at issue in this proceeding.<sup>4/</sup>

5. Section 6 of chapter 2011-174, Laws of Florida, created subsection 627.206(3), Florida Statutes. That provision became effective on July 1, 2011, and provides as follows:

(3) An applicant who commits a felony of the first degree; a capital felony; a felony involving money laundering, fraud, or embezzlement; or a felony directly related to the financial services business is permanently barred from applying for a license under this part. This bar applies to convictions, guilty pleas, or nolo contendere pleas, regardless of adjudication, by any applicant, officer, director, majority owner, partner, manager, or other person who manages or controls any applicant.

6. Section 626.207(1) defines the term "financial services business" to include any financial activity regulated by the Department of Financial Services, Office of Insurance Regulation, or Office of Financial Regulation. The foregoing provision is applicable to the type of application submitted by Mr. Pellet.

7. The foregoing provision is applicable to Mr. Pellet's application because his application was pending when the provision became law. Section 18 of chapter 2011-174, Laws of Florida, provides as follows:

The amendments to s. 626.207, Florida Statutes, made by this act do not apply retroactively and apply only to applicants whose applications are pending or submitted on or after the date that the amendments to s. 626.207, Florida Statutes, made by this act become law. This section shall take effect upon this act becoming a law.

PRIOR LICENSE

8. In compliance with the then existing 15-year waiting

period, Mr. Pellet waited until December 18, 2003, to file with the Department an application for licensure as an "Independent Adjuster." That application disclosed Mr. Pellet's criminal history. On July 9, 2004, the Department granted Mr. Pellet's application and issued an "Independent Adjuster" license to him.<sup>5/</sup> He held that license until he converted it to a "Public Adjuster Apprentice" license in August 2009. Mr. Pellet's "Public Adjuster Apprentice" license expired February 11, 2011.<sup>6/</sup> Mr. Pellet held no license from the Department as of the date of the formal hearing.

#### SUBPOENA

9. Prior to February 12, 2008, the Department received complaints that Mr. Pellet was performing services beyond the scope of his licensure. At that time, Mr. Pellet was an owner and operator of a business known as Professional Insurance Estimating & Appraisals. On February 12, 2008, the Department served an investigative subpoena on Mr. Pellet by leaving the subpoena with an employee of Mr. Pellet at Mr. Pellet's office. The subpoena was directed to Mr. Pellet and to an associate of Mr. Pellet who is not involved in this proceeding. The subpoena cited the following authority for the subpoena: sections 624.307, 624.310, 624.317, 624.318, 624.321, 626.561, 626.601, 626.748, and 626.9561. The subpoena demanded that Mr. Pellet produce to the Department: the complete claim files for seven

named consumers "including the contracts entered with each of these consumers, communications with these consumers and or their insurers, the request for appraisal for each of these consumers, the companies settlement checks, the consumer check made payable to Pellet or Professional Insurance Estimating & Appraisals, and the bank account name and number for Professional Estimating & Appraisals' bank account."

10. Mr. Pellet did not comply with the subpoena. Instead, Mr. Pellet filed "Motion for a Protective Order and to Quash Subpoena" (Motion to Quash) in Broward circuit court. The Motion to Quash was heard by a magistrate who denied the Motion to Quash as it related "to non-testimonial production of files, records, documents, etc." The magistrate's report ordered Mr. Pellet and his associate to comply with the subpoena within 30 days unless they filed an objection and requested a hearing before the circuit judge within the 30-day period. On February 18, 2009, the circuit judge denied the Motion to Quash and also denied the exceptions to the magistrate's report that had been filed on behalf of Mr. Pellet. The circuit judge ratified and "approved in all respects" of the magistrate's report.

11. On March 10, 2009, Mr. Pellet, through counsel, offered to produce two of the seven consumer files demanded by the subpoena and asserted that the other five consumer files had

been shredded before the subpoena was issued. No offer was made as to the banking information demanded by the subpoena. The Department rejected that offer.

12. Mr. Pellet appealed the order denying the Motion to Quash to the Fourth District Court of Appeal. On May 19, 2010, the court affirmed the order denying the Motion to Quash. Mr. Pellet filed a motion for re-hearing, which was denied by the court on June 16, 2010.

13. During the course of the formal hearing before the undersigned Mr. Pellet repeated the offer to produce two of the seven consumer files demanded by the subpoena and asserted that the other five consumer files had been shredded before the subpoena was issued. No offer was made as to the banking information demanded by the subpoena. The Department rejected that offer.

14. Mr. Pellet's action in litigating the subpoena impeded the Department's investigation into his alleged wrongdoing.

15. Mr. Pellet has paid the fee and passed a pre-licensure examination, which are pre-requisites for the license he seeks.

#### CONCLUSIONS OF LAW

16. DOAH has jurisdiction over the subject matter of and the parties to this proceeding pursuant to sections 120.569 and 120.57(1).

17. This is a de novo proceeding designed to formulate final agency action. See Hamilton Cnty Bd. of Cnty. Comm'rs v. Dep't Envtl. Reg., 587 So. 2d 1378 (Fla. 1st DCA 1991) and section 120.57(1)(k).

18. As the applicant, Mr. Pellet has the burden of proving his entitlement to the relief he seeks by a preponderance of the evidence. See Dep't of Banking and Fin. v. Osborne Stern, 670 So. 2d. 932 (Fla. 1996) and Dep't of Transp. v. J. W. C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

19. A "preponderance" of the evidence means the greater weight of the evidence. See Fireman's Fund Indemnity Co. v. Perry, 5 So. 2d 862 (Fla. 1942).

20. The authorities relied upon by the Department, which are recited in the Amended Denial Letter (Department's Exhibit 15), provide it with the authority to subpoena Mr. Pellet's files and business bank accounts in order to investigate the complaints against him. His resistance to the subpoena was rejected by the magistrate, the circuit judge, and the appellate court. That resistance impeded the Department's investigation.

21. Section 626.611 provides, in relevant part, as follows:

The department shall deny an application for . . . license or appointment, if it finds that as to the application . . . any one or more of the following applicable grounds exist:

\* \* \*

(7) Demonstrated lack of fitness or trustworthiness to engage in the business of insurance.

\* \* \*

(13) Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of this code.

22. The Department asserts that it has grounds to deny Mr. Pellet's application pursuant to subsections 626.11(7) and (13). The Department failed to prove that Mr. Pellet "demonstrated lack of fitness or trustworthiness to engage in the business of insurance" when he opted to litigate the validity of the Department's subpoena because that action does not reflect on his "fitness" or "trustworthiness."

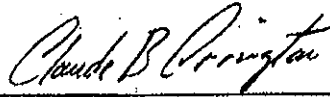
23. The Department proved that Mr. Pellet willfully failed to comply with a valid subpoena, which provided grounds to deny his application pursuant to section 626.611(13).

24. Moreover, the Department should deny Mr. Pellet's application pursuant to the provisions of section 626.207(3).

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby RECOMMENDED that the Department of Financial Services enter a final order denying Mr. Pellet's application for license as an "All-Lines Public Lines Adjuster."

DONE AND ENTERED this 11th day of July, 2012, in  
Tallahassee, Leon County, Florida.



---

CLAUDE B. ARRINGTON  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 11th day of July, 2012.

ENDNOTES

<sup>1/</sup> The Department's amended denial referenced Mr. Pellet's criminal plea and recited its statutory authority. The amended denial letter included the following:

In 2006 several complaints were received by the Department alleging that you were acting as a public adjuster without being licensed as such. The complaints arose from various sources (Companies and consumers) on claims stemming from Hurricane Katrina. Your defense was that you have always acted as an appraiser in assisting consumers in the settlement of claims, not as a public adjuster. As part of its investigation in February 2008, the Bureau of Investigation, acting through Department investigators Montero and Keegan, served a subpoena on you at your place of business, Professional Insurance Estimating & Appraisals (PIE). In response to that request you retained a lawyer who moved to quash the subpoena in the Broward County Circuit Court. After several preliminary pleadings were filed,



the case was initially heard by then Magistrate Barbara McCarthy in April 2008. On May 15, 2008, Magistrate McCarthy issued a recommendation to Circuit Judge Aleman upholding the Department's subpoena. A hearing was held before Judge Aleman on February 18, 2009, at the conclusion of which Judge Aleman ruled for the Department. On March 19, 2009, you took an appeal to the Fourth District Court of Appeal. That Court also ruled for the Department, its last order dated June 16, 2010, denied your motion for rehearing. As a result, you were required to comply with the Department's subpoena but failed to do so. After the Department had spent two and one-half years in two courts defending its subpoena, it filed a seven-count Administrative Complaint in August 2010, the last count complaining of your continued failure to comply with its subpoena. The other counts addressed your alleged public adjusting activities dating back to 2002. In October 2010 you surrendered your independent adjuster license and your apprentice license expired in February 2011, resulting in voluntary dismissal of the administrative charges that sought to discipline licenses you no longer held. Your failure, as a prior licensee, to honor the Department's subpoena, upheld as lawful by both a circuit court and a district court of appeal, and your plea to the crime of insurance fraud, requires [sic] that you not be granted further licensure by this Department, and that you are permanently barred from applying for licensure in the future.

<sup>2/</sup> The undersigned granted the joint motion for an extension of time to file PROs. The respective PROs were timely filed.

<sup>3/</sup> Mr. Pellet has not had any involvement with the criminal justice system since he was discharged from probation.

<sup>4/</sup> Florida Administrative Code Rule 69B-211.042(8)(a) was held invalid by the Amended Final Order entered in Santana v. Dep't

of Fin. Servs., Case No. 09-0829RX (Fla. DOAH April 29, 2010),  
aff'd, 61 So. 3d 1116 (Fla. 1st DCA 2011).

<sup>5/</sup> Mr. Pellet argues that the change in the law should not be applied to him because he has already "paid" for his criminal history by waiting the 15-year period before applying for and receiving licensure from the Department. That argument is not persuasive because the undersigned has no authority to disregard the plain meaning of the amended statute.

<sup>6/</sup> On August 6, 2010, the Department filed an Administrative Complaint against Mr. Pellet alleging that he engaged in activities beyond the scope of his license. That proceeding was referred to DOAH and assigned Case No. 10-8909PL. That proceeding, which included allegations relating to Mr. Pellet's failure to comply with the subpoena, was voluntarily dismissed after Mr. Pellet's licensure expired.

COPIES FURNISHED:

Julie Jones, CP, FRP, Agency Clerk  
Department of Financial Services  
Division of Legal Services  
200 East Gaines Street  
Tallahassee, Florida 32399-0390

David J. Busch, Esquire  
Department of Financial Services  
Division of Legal Services  
612 Larson Building  
200 East Gaines Street  
Tallahassee, Florida 32399  
david.busch@myfloridacfo.com

Michael D. Gelety, Esquire  
1209 Southeast 3rd Avenue  
Fort Lauderdale, Florida 33316  
mgeletyattorney@gmail.com

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.

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JEFFREY CARL PELLET.

Petitioner,  
vs.

DOAH CASE NO.: 11-4054

JUDGE: CLAUDE ARRINGTON

FLORIDA DEPARTMENT OF  
FINANCIAL SERVICES,

Respondent.

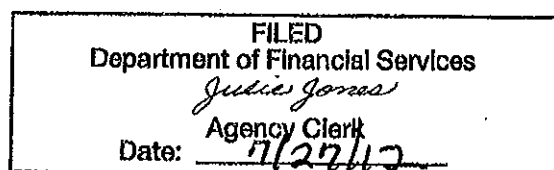
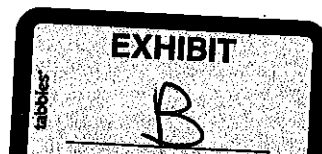
**PETITIONER PELLET'S EXCEPTIONS TO RECOMMENDED ORDER  
AND REQUEST FOR DE NOVO REVIEW OF ORDER**

COMES NOW the Petitioner, Jeffrey Carl Pellet, by an through the undersigned attorney and, pursuant to F.S. 120.57(K) files these exceptions to the Recommended Order proposed by the Administrative Judge Claude B. Arrington, specifically, challenging the Recommended Denial of Petitioner's application for an Independant All-Lines Adjuster's License, after the evidentiary final hearing held on Tuesday April 17, 2012.

Additionally, the Petitioner requests the agency to make any de novo review of the Recommended Order.

More specifically, the Petitioner objects to and files his objections to the following:tes as follows:

1. The Petitioner objects to the actual framing of the issues found at page 2,



paragraph 1 of the recommended order, specifically, where the the petitioner's "action and litigating a subpoena served on him in 2008 by the department constitute grounds to deny his application". The petitioner will note that he is afforded the absolute constitutional right to challenge the subpoena in the Circuit Court of the county in which the subpoena is issued, and has the constitutional right to appeal an adverse ruling to the Court of Appeals. Framing the issue in terms of exercising of a constitutional right establishing grounds to deny an application for licensing shows a lack of understanding of the constitutional issues involved and a prejudice which can not be allowed to form the basis of a denial;

2. Petitioner notes that, at page 3 paragraph 2, the Motion to Declare section 626.207 unconstitutional was properly filed yet never ruled upon, and the petitioner objection takes exception to the Recommended action of denying his application for license without the constitutionality of the statute as applied to the petitioner being decided by a "court of competent jurisdiction";

3. Petitioner objects and takes exception to the findings and conclusion at page 5 paragraph 7 of the Recommended Order, claiming that Section 626.207 (1) "is applicable to Mr. Pellets application". Specifically, the Department is Estopped from invoking this section as the Petitioner has already been "punished" by having already served more than the previously required 15 years suspension under the old

version of the statute. Even more important is the fact that after this punishment was served by Petitioner, the department granted petitioner his license as in "Independent Adjuster" in July of 2004, and that license was then converted to a "public adjuster apprentice" license when such license was granted to Petitioner Pellet in August 2009 (see page 5, paragraph 8). At no time at all those years did the Department, object to or consider appellant's previous criminal prosecution – ending in a withheld adjudication not a conviction. Pellet has no convictions on his record. Petitioner Pellet was previously granted and held licenses from the Department: Independent Adjuster (5-20), Apprentice Public Adjuster (T31-20) (Department Exhibit 1, 2 and 3) (Tr. Vol. II. p. 136) and none of Petitioner's three (3) previous licenses, granted by the Department, were suspended or revoked, nor subject to discipline (Tr. Vol. I, p. 39); (See also objection and exception 11, to paragraph 24 at page 10);

4. Petitioner objects takes exception to the reliance upon the anonymous complaints allegedly received by the Department, with no indication of reliability or truthfulness as the basis for the February 2008's investigative subpoena issued by the Department;

5. Petitioner objects and takes exception to the partial and inaccurate history of the litigation of the subpoena by the petitioner, as found at page 7, paragraph 10

of the Recommended Order, significantly excluding that portion of the magistrate judges Report And Recommendation, as well as that part of the Circuit Court Order in which jurisdiction was reserved for the courts to review further objections, make in camera inspections of information, and to take ameliorative action to enforce the subpoena if appropriate. The Recommended Order also fails to include the significant warning of the constitutional right to appeal the court's order upholding the subpoena;

6. Petitioner objects and takes exception to the inexact and incorrect and incomplete statements at page 7 paragraph 11. Although Petitioner did in fact offer to produce the remaining existing files listed in the subpoena in question in March 2009, there is no indication and there was no evidence produced by the Department that this assertion by the Petitioner was inaccurate, no evidence or even suspicion that more than the to proffered files existed. Additionally, Petitioner takes exception to the general summary claim that "the banking information demanded by the subpoena" was not offered as this privacy objection was yet to be specifically litigated by either the Magistrate Judge or the Circuit Judge, and was based upon independent ground for the initial objection. One of the main objections to the subpoena into the production of records and documents pursuant to the subpoena in question was the fact the Subpoena also called for personal banking records and

financial information, not related to the files and not mandated by Florida Statute. (Department Exhibit 4) (Tr. Vol. I, p. 49). In fact, Petitioner had close to five bank accounts, personal accounts, with no money co-mingled in the business accounts. (Tr. Vol. I, p. 49-50). Petitioner Pellet was partially successful in his challenge, narrowing the scope of the subpoena and convincing both the General Master and the Circuit Judge to retain jurisdiction for further in camera review of any documents which were produced, (Petitioner's Exhibit 3,, p. 23-5, transcript of Magistrate proceedings), and to enforce the Court's Order. (Departments Exhibit 5 and 6)(Tr. Vol. I. p. 78-80, 81-3). (see also page 8, paragraph 13 of the Recommended Order);

7. While it is true that Petitioner appealed the order denying his motion to quash, that appeal was made necessary by the Departments refusal and, additionally, it would be improper and unconstitutional for the Petitioner to be penalized for the exercise of a basic constitutional right of appeal, and the petitioner objects to the claim on page 8, paragraph 12 of the Recommended Order;

8. Petitioner objects to and take exception to the groundless conclusion in paragraph 14 of page 8 of the Recommended Order as there was. Note testimony produced and no proof that the Petitioner's actions "impeded the Departments investigation". Quite contrary, by the very terms of the subpoena itself, the names of



the clients were known and available to the Department as they were listed on the subpoenas (see also page 9, paragraph 20);

9. Petitioner objects and takes exception to the statements and paragraph 20, at page 9 of the Recommended Order that his "resistance impeded the Departments Investigation" as petitioner's resistance "was rejected by the magistrate, the circuit judge and the appellate court." As was pointed out repeatedly in the evidentiary hearing and in the petitioner's proposed order, the department made absolutely no efforts to enforce the subpoena as is customary and logical and necessary – no motion to enforce, no petition for rule to show cause why petitioner should not be held in contempt, no motion for in camera inspection, etc. Note: It was stipulated that the Department never attempted to enforce the Subpoena in question, never filed a Motion to Compel or Enforce, never filed a Motion to hold the Petitioner in contempt (Tr. Vol. II, p. 154)(Tr. Vol. 78-9);

10. Petitioner objects to and takes exception to the allegations and legal conclusions in paragraphs 23 of page 10 of the Recommended Order, as the Department failed to present evidence of or even indication that the Petitioner "willfully failed to comply with a valid subpoena." No such evidence was presented, and, other than a history of animosity between the aggressive Petitioner and the Department, i.e., after the Department entered into a joint Motion to

continue the January 18, 2012 trial date, on the eve of trial, the Department added an entirely new ground for denial -- a ground never mentioned previously, on January 19, 2012, the Department filed their Notice of Amended Denial and Notice of Permanent Bar, suddenly claiming that petitioner's license was being denied because of a "nolo contendere" disposition of a felony charge on October 13, 1987 -- nearly twenty five (25) years ago, with no intervening problems arrests or charges.

(Department's Exhibits 1, 2, 15) (Tr. Vol. I, p. 72-3, 75, 76-7.) -- there is no basis for such a finding. At worst, the record shows that Petitioner exercised his constitutional rights to challenge the subpoena. It is critical to understand that there was no indication, no proof that the Petitioner did anything "willful" except to follow the reasonable advice of his legal counsel. Petitioner relied in good faith on the advice of his attorney when he retained the remaining files in question, with the intention of having the magistrate court review the documents before they were surrendered. (Tr. Vol. I, p. 57, 65, 69-70, 79-80).

Despite the Department's apparent frustration with or ill will toward Petitioner Appellate, (attorney Busch for the Department stipulated that he in fact had input in the denial letters (Departments Exhibits 14 and 15) (Tr. Vol II, p. 191)), there was absolutely no proof presented of a "willful failure to comply";

11. Petitioner objects and take exception to the conclusion at page 10

paragraph 24 that the Department should deny Petitioner's application because of the revision of the pertinent statute. (See objection 3, previously set forth);

12. Petitioner objection takes exception to the final recommendation in the Recommended Order that the Department entered final order denying Petitioner's application;

13. Petitioner Pellet adopts the position set forth in his previously submitted Proposed Order.

WHEREFORE, the Petitioner Pellet requests a de novo review of the Recommended Order submitted by judge Arrington, and requests that these objections and exceptions be granted and adopted and that the final order be entered by the Department granting petitioner his requested license.

MICHAEL D. GELETY, ESQ.  
Attorney for Pellet

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that true copy of the foregoing was filed this 27th day of July, 2012, with the Clerk of the Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Fl 32399-3060 and by Telefax at (850) 921-6847, with a copy to David J. Busch, Florida Department of Financial Services, Division of Legal Services, 612 Larson Building, 200 East Gaines Street, Tallahassee, Fl 32399-0333.

MICHAEL D. GELETY, ESQ.  
Attorney for Pellet

1209 SE 3rd Avenue  
Ft. Lauderdale, FL 33316  
(954) 462-4600  
(954) 462-0828 Fax  
Florida Bar #215473  
[MGeletyattorney@Gmail.com](mailto:MGeletyattorney@Gmail.com)

STATE OF FLORIDA  
DEPARTMENT OF FINANCIAL SERVICES

JEFFREY CARL PELLET,  
Petitioner,

v.

CASE NO.: 119645-11

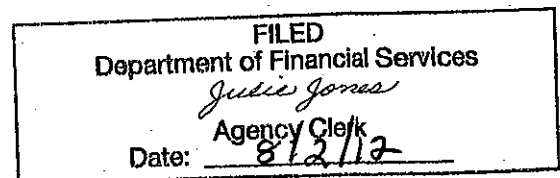
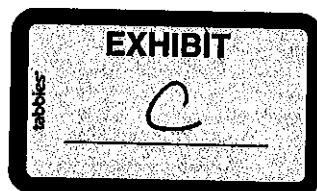
FLORIDA DEPARTMENT OF  
FINANCIAL SERVICES,  
Respondent.

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DEPARTMENT'S RESPONSE TO PELLET'S EXCEPTIONS

The Department, through its undersigned attorney, responds to each numbered paragraph of Petitioner's exceptions to the Recommended Order (RO) as follows:

1. Although the ALJ listed as a ground for the Department's denial of an adjuster's license to Pellet, "Mr. Pellet's action in litigating a subpoena served on him in 2008 by the Department", it should be understood that it was not the fact that Mr. Pellet chose to litigate the subpoena that resulted in the denial of licensure. It was the fact that he refused to comply with the multiple court orders upholding the Department's subpoena. This is made plain in the Department's denial letter and in the RO at ¶¶ 9-13. The ALJ's paragraph 14 notation is accurate: Mr. Pellet's action in litigating the subpoena impeded the Department's investigation into his alleged wrongdoing. Evidence supporting the original prosecution (license disciplinary action) became stale. However, the



gravamen of the license denial stems from his refusal to obey the courts' rulings, not the challenges to the subpoena. The ALJ noted that Pellet is not unfit or untrustworthy to hold a license by reason of the subpoena challenge standing alone. RO, ¶22.

2. Pellet's challenge to the amended section 626.207, Florida Statutes (2011) could not be decided by the ALJ for the reasons cited by the ALJ in the RO.

3. The Department is not estopped from denying Pellet a license. Section 18, chapter 2011-174, *Laws of Florida* provides that "[t]he amendments to s. 626.207, Florida Statutes, made by this act do not apply retroactively and apply only to applicants whose applications are pending or submitted on or after the date that the amendments to s. 626.207, Florida Statutes, made by this act become law." Pellet's application is pending and, by reason of his criminal history, he "is permanently barred from applying for a license..." §626.207(3), *Fla. Stat.* Pellet is simply not eligible for licensure under the amended statute.

4. The denial of the license sought by Pellet does not rely "upon the anonymous complaints" regarding the 2008 investigation. Obviously there was some basis for the Department seeking documents relating to its 2008 investigation. However, the license denial in no way depends on the "reliability or truthfulness" of the original complainants.

5. The ALJ's history of the subpoena litigation may be incomplete, but it is not inaccurate. The multiple court orders upholding the Department's subpoena are in the record for anyone to read. Mr. Pellet's multiple constitutional challenges were heard by the circuit court and district court of appeal. The courts' adverse rulings to Pellet's arguments are now the law of the case.

6. This exception is unclear. There is no assertion of "inaccuracy" as to the destruction of the demanded files by the ALJ. Is Pellet now contending that he did not destroy the requested evidence? As to the bank record request, the "follow the dollar" rule is a time tested investigative method for determining misconduct by a licensee. Pellet enjoyed no partial success in litigating the subpoena issues at any level.

7. This exception is unclear. The appeal to the district court was made necessary by the Department's refusal? Refusal to do what?

8. The Department did list insured names on the subpoena in order for Mr. Pellet to identify and produce the files. The numerous statutes cited in the Department's denial letter give it the right to demand such documents from its licensees.

9. Pellet cites no authority for the proposition that court orders must be enforced in order to be considered binding on parties. The Department successfully defended its subpoena.

The mandate from the appellate court should have served to produce the files and bank records. It did not.

10. Somehow Pellet seems to think that if he cites a constitutional right, he is allowed to ignore all statutes and Department rules. The constitutional challenges were heard over a course of years. It is now the history of this case. Pellet has never produced a single document in response to the Department's subpoena and simply citing to the United States Constitution does not provide him with authority to withhold evidence. The undersigned has no "ill will toward Petitioner." There is ample evidence and law to support the Department's position. Not one of the six judges that have listened to Mr. Pellet's arguments has expressed any inkling of support for Mr. his position.

11. The ALJ's recommendation comports with the Department's final order *In The Matter of Armando Cesar Santana*, Case No. 118524-11-AG (December 8, 2011).

12. The exceptions cited in paragraphs 12 and 13 are to recommendations that necessarily derive from the findings of fact and conclusions of law antecedent thereto.

WHEREFORE, the Petitioner's exceptions should be denied in their entirety and the Recommended Order should be adopted by the Department's final order.



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. mail to Michael D. Gelety, Esq., 1209 SE. 3<sup>rd</sup> Avenue, Fort Lauderdale, Florida 33316 this 2<sup>nd</sup> day of August, 2012.



David J. Busch  
Fla. Bar No. 140945

Florida Dept. of Financial Services  
200 E. Gaines St.  
Tallahassee, FL 32399  
Tel. 850-413-4146  
e-mail: David.Busch@myfloridacfo.com

Attorney for the Department