

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FRANCELINE PIERRE,)
)
 Petitioner,)
)
 vs.) Case No. 11-6049
)
 DEPARTMENT OF FINANCIAL)
 SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on February 9, 2012, by video teleconference, with the parties appearing in Tallahassee, Florida, before June C. McKinney, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, who presided in Tallahassee, Florida.

APPEARANCES

For Petitioner: Franceline Pierre
447 Northeast 195th Street, Number 317
Miami, Florida 33179

For Respondent: Robert P. Blaesser, Jr., Esquire
Department of Financial Services
Division of Legal Services
200 East Gaines Street
Tallahassee, Florida 32399-0333

STATEMENT OF THE ISSUE

Whether Petitioner's application for licensure as a Resident General Lines Insurance Agent was properly denied by the Department of Financial Services.

PRELIMINARY STATEMENT

By letter dated September 20, 2011, the Department of Financial Services ("Department" or "Respondent") issued its Notice of Denial by which it informed Franceline Pierre ("Pierre" or "Petitioner") that the Department intended to deny her application for a Resident General Lines Agent license.

Petitioner challenged the Department's decision and timely requested a formal hearing. On November 23, 2011, the Department referred the case to the Division of Administrative Hearings for assignment of an Administrative Law Judge to conduct the hearing.

The hearing was held on February 9, 2012. At the final hearing, Petitioner testified on her own behalf and did not present any exhibits. The Department presented the testimony of Petitioner, Gardonal Marcellot, Otto V. Latimer, Jr., and Wendi Cameron. The Department's Exhibits numbered 1, 3, 6 through 13, 15 through 20, 22, and 24 through 27 were received into evidence.

The proceeding was transcribed. The one-volume Transcript was filed with DOAH on March 2, 2012. The parties availed themselves of the right to submit proposed recommended orders. Petitioner late filed her Proposed Recommended Order. Respondent

did not object to Petitioner's untimely filing and the undersigned has considered both Proposed Recommended Orders as well as the testimony and exhibits presented at hearing in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner owns two insurance agencies, All Florida Insurance and Tax Services ("All Florida") and One Florida Insurance Agency, Inc. ("One Florida").

2. On or about January 5, 2010, Gardonal Marcellot ("Marcellot") filled out an application and interviewed with Petitioner for an insurance agent position. The same day, Petitioner offered Marcellot a job at All Florida as an insurance agent.^{1/}

3. Marcellot accepted the job and provided Pierre a copy of his 2-20 General Lines Insurance Agent license and Social Security card. Pierre informed Marcellot that his start date for employment with All Florida would be January 15, 2010.

4. Soon thereafter, there was a major earthquake in Haiti, and Petitioner informed Marcellot by email that she had to go out of the country to help her family and she was pushing back his start date with the company.

5. Marcellot never reported to work or started his employment with All Florida after Pierre left the country.^{2/}

6. On or about February 12, 2010, Petitioner applied for agency licensure with the Department for All Florida and named Christopher Jeremie as the Agent in Charge. Pierre also named Marcellot as the secretary and treasurer of All Florida on the application. Marcellot never held a corporate officer position at All Florida.

7. While operating All Florida, Pierre engaged in all the activities that require an insurance agent license. She admitted during the hearing that she ran the office, met with customers by phone and in person, responded to fax and email insurance requests, provided insurance quotes for customers, completed forms for customers, input the insurance information in the computer to get quotes for customers to review, input the information online, and processed numerous insurance applications.

8. On February 26, 2010, Petitioner filled out an application for a Change of Agent in Charge for All Florida and named Marcellot Agent in Charge without his permission.^{3/}

9. Pierre continued to utilize Marcellot's licensure information and name him Agent in Charge without his permission to obtain Agency appointments with companies^{4/} for at least five insurance applications.

10. On May 22, 2010, Pierre next utilized Otto Latimer's ("Latimer") licensure information without his permission and

changed the Agent in Charge for All Florida by naming Latimer to the position.^{5/}

11. On June 22, 2010, Petitioner submitted an Application for Agency Licensure online to the Department on behalf of One Florida and also named Latimer as the Agent in Charge without his permission.

12. Latimer never worked at or served as Agent in Charge for All Florida or One Florida.

13. Latimer owns his own business, Service Ace Corporation, where he works full time. He has been licensed since 1983 as a General Lines Insurance agent.

14. At some point, Latimer discovered that Pierre was having problems getting a 2-20 license agent. He offered to help her by allowing her to rent space at his agency location and for her to work under his license. He never gave her permission or allowed her to use his license or name him as Agent in Charge for appointments.

15. Pierre utilized Latimer's licensure information without his permission for her insurance companies and named him Agent in Charge for both Universal Property and Casualty Insurance Company and Citizens Property Insurance Corporation ("Citizens") insurance appointments for a total of about 19 insurance applications.

16. On August 11, 2010, Citizens terminated All Florida's Agent Appointment Agreement after determining that Pierre had committed forgery and larceny based on false personification because Pierre signed Marcelot's name to the agent appointment application and named him as agent of record.

17. On December 13, 2010, Pierre filed an application with the Department for a Resident General Lines Agent license.

18. On December 21, 2010, Petitioner signed and issued All Florida check number 1003 to Del Rio Discount Corporation, in the amount of \$1,000.00. Pierre cut check number 1003 as the gross down payment on a premium finance agreement dated October 1, 2010, for the homeowner policy purchased by Bernard and Eleanor Woodside. The check was returned for insufficient funds.

19. Del Rio Finance filed a complaint with the Department against Petitioner for Pierre issuing check 1003 on behalf of All Florida because the check bounced for insufficient funds.

20. Wendi Cameron ("Cameron"), the Department's investigator in this matter, started investigating the complaint in January 2011. She went to Pierre's office location to see Latimer, whom she believed was the Agent in Charge based on the paperwork Pierre had falsely completed and filed. Latimer was not present and so Cameron spoke to Pierre, who told Cameron that Latimer was out of the office.

21. On May 29, 2011, while Pierre's insufficient funds investigation was still pending, Cameron received another complaint about Pierre namely that Citizens Insurance Company had terminated Pierre's appointment after being advised by Marcellot that Pierre had used his identity without his knowledge and forged his name on applications.

22. Cameron visited Petitioner's office three times during Petitioner's investigations and an Agent in Charge was never present. Pierre was managing the office on each visit. On the fourth visit to the office, it was closed with a note on the door. Cameron was never able to speak to an Agent in Charge and was always informed that one was not available each time she called or visited.

23. The Department concluded its investigation of Pierre and denied her application for licensure based on the Department's sections 626.112(1)(a), (b)4, 626.112(9), 626.172(2), (3), 626.611(7), (8), 626.621(2), (3), and (6).

CONCLUSIONS OF LAW

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

25. Petitioner is the person seeking licensure in this proceeding. To prevail, Petitioner bears the ultimate burden of

proving entitlement to a license and that she meets all of the relevant statutory criteria for obtaining a license. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996).

26. Chapter 626, Florida Statutes, under which Respondent's denial of a 2-20 General Line Insurance Agent license has been denied, sets forth the acts for which the Respondent may deny a license.

27. Several statutory provisions are relevant to the Department's determination regarding Petitioner's eligibility for licensure. For instance, section 626.201 provides:

* * *

(2) The department or office may, upon completion of the application, make such further investigation as it may deem advisable of the applicant's character, experience, background, and fitness for the license or appointment. Such an inquiry or investigation shall be in addition to any examination required to be taken by the applicant as hereinafter in this chapter provided.

28. Section 626.211 provides that under certain circumstances, the Department is compelled to deny licensure to an applicant. Section 626.611 provides in pertinent part:

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

* * *

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

(8) Demonstrated lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license or appointment.

29. Section 626.621 also provides the Department grounds for discretionary refusal to deny licensure to an applicant.

Section 626.621 provides in pertinent part:

The department may, in its discretion, deny an application for . . . the license or appointment of any applicant. . . any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

* * *

(2) 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 or appointment.

(3) Violation of any lawful order or rule of the department, commission, or office.

* * *

(6) In the conduct of business under the license or appointment, engaging in unfair methods of competition or in unfair or deceptive acts or practices, as prohibited under part IX of this chapter, or having otherwise shown himself or herself to be a source of injury or loss to the public.

30. Pierre admitted at hearing that she operated as an insurance agent by soliciting insurance, giving individual quotes

in an attempt to persuade customers to purchase an insurance product, processing applications, as well as completing orders or applications for insurance products, which actions all require licensing pursuant to sections 626.112(1)(a) and (b)4. Further, Pierre signed the applications for First Florida and One Florida but falsely named both the officers and Agent in Charge on her applications contrary to the requirement to correctly do so in section 626.172(2)(e). Pierre's noncompliance with sections 626.112(1)(a), (b)4, and 626.172(2)(e), are grounds for denial of licensure pursuant to section 626.621(2).

31. The Department also alleges that Petitioner's license should be denied because she committed a felony of the third degree by knowingly transacting insurance or otherwise engaging in insurance activities without a license pursuant to section 626.112(9). The aforementioned statute designates a felony of the third degree punishable under the criminal provisions. The undersigned does not have the jurisdiction to determine such matters that are handled in circuit court. Therefore, section 626.112(9) is not a ground for denial of Pierre's license in this case.

32. The credible evidence also demonstrates that Petitioner's actions of forging licensees names on insurance license applications demonstrate a lack of fitness or trustworthiness to engage in the business of insurance. Further,

Pierre acted and held herself out as a licensed insurance agent and falsely named persons as the Agent in Charge of All Florida and One Florida, which are violations of section 626.611(7), a ground for denial of licensure.

33. The evidence also shows Pierre did not have adequate knowledge and technical competence to engage in the transactions authorized by her company's appointments in violation of section 626.611(8). Further, Pierre acted like an insurance agent processing applications and issued an insufficient All Florida check, another ground for denial of licensure.

34. The record is void of any evidence to demonstrate Petitioner violated any lawful order or rule of the department, commission, or office pursuant to section 626.621(3), and therefore, such an allegation is not a ground for denial of Pierre's license.

35. In this case, Petitioner has failed to satisfy her burden to establish a legal basis that she is entitled to a General Lines Insurance Agent license in that the credible evidence shows that Pierre violated numerous statutes, as found above, that prevent her from obtaining licensure with the Department.

RECOMMENDATION

Upon consideration of the foregoing Findings of Fact and Conclusions of Law reached, it is RECOMMENDED that the Department

of Financial Services enter a final order denying Petitioner's application for licensure as a General Lines Insurance Agent in the State of Florida.

DONE AND ENTERED this 26th day of March, 2012, in Tallahassee, Leon County, Florida.



JUNE C. MCKINNEY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of March, 2012.

ENDNOTES

^{1/} Marcellot denied any knowledge of Pierre hiring him as the Agent in Charge for All Florida. Such testimony is found to be credible.

^{2/} Marcellot denied ever reporting to work at All Florida or working there. Such testimony is found to be credible.

^{3/} There was conflicting testimony as to whether Marcellot provided Pierre permission to use his name or authorized his appointment as Agent in Charge for All Florida. Marcellot's testimony is found to be more credible.

^{4/} University Property Casualty Insurance Company and Citizens Property Insurance Corporation were two of the insurance companies with which Petitioner utilized Marcellot's name and information without his permission.

^{5/} Latimer denied allowing Petitioner use of his licensure information or providing her permission to name him Agent in Charge. Latimer's testimony is found to be more credible than Pierre.

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.