

FILED

MAR 15 2019

Docketed by JAS



CHIEF FINANCIAL OFFICER
JIMMY PATRONIS
STATE OF FLORIDA

DEPARTMENT OF FINANCIAL SERVICES,
DIVISION OF INSURANCE AGENT AND
AGENCY SERVICES,

Petitioner,

v.

VIVIAN SANTOS,

Respondent.

DOAH CASE NO.: 18-1656PL
DFS CASE NO.: 214761-17-AG

FINAL ORDER

THIS CAUSE came on for consideration of and for final agency action on a Recommended Order. Vivian Santos (“Respondent”) timely filed exceptions to the Recommended Order. The Department of Financial Services (“Petitioner”) did not file exceptions, but did file a response to Respondent’s exceptions.

RULING ON RESPONDENT’S EXCEPTIONS

Exceptions are authorized by section 120.57(1)(k), Florida Statutes (2018), and Rule 28-106.217, *Florida Administrative Code*.

The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

§ 120.57(1)(k), Fla. Stat. (2018).

First Exception: Recommended Order Paragraph 17

Respondent's first exception disputes the Recommended Order's finding that Respondent's testimony, as it related to her alleged state of confusion over her role as a sub-agent, lacked credibility.

Credibility of the witnesses is a matter that is within the province of the administrative law judge, as is the weight to be given the evidence. . . .

If . . . the issue is primarily one of the weight or credibility of the witnesses, it does not matter that there might be competent substantial evidence to support a contrary view of the evidence.

Stinson v. Winn, 938 So. 2d 554, 555 (Fla. 1st DCA 2006).

If, as is often the case, the evidence presented supports two inconsistent findings, it is the hearing officer's role to decide the issue one way or the other. The agency may not reject the hearing officer's finding unless there is no competent, substantial evidence from which the finding could reasonably be inferred. The agency is not authorized to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion. [emphasis in original]

Packer v. Orange Cty. Sch. Bd., 881 So. 2d 1204, 1207 (Fla. 5th DCA 2004) (quoting *Tedder v. Florida Parole Com'n.*, 842 So. 2d 1022, 1025 (1st DCA 2003)). Competent, substantial evidence supports the factual finding; therefore, it may not be set aside. The exception is rejected.

Second Exception: Recommended Order Paragraphs 25 and 27

Respondent's second exception cites Conclusions of Law paragraphs 25 and 27, but appears to be directed at Conclusions of Law paragraph 26, which states that "[Respondent's] conduct was willful." "Willfulness is a question of fact." *Roche Sur. and Cas. Co., Inc. v. Dep't of Fin. Servs., Office of Ins. Reg.*, 895 So. 2d 1139, 1141 (Fla. 2d DCA 2005). Competent, substantial evidence supports the factual finding; therefore, it

may not be set aside. *See* Ruling on Respondent's First Exception, above. The exception is rejected.

Third Exception

Respondent's third exception, captioned "Standards of Review for Exceptions," does not identify by page number or paragraph the portion of the Recommended Order Respondent is disputing, and it is not clear that Respondent even takes exception with the Recommended Order under the above caption. For the foregoing reasons, Petitioner's third "exception" is not addressed. § 120.57(1)(k), Fla. Stat. (2018).

After reviewing the record, including all testimony and admitted exhibits, considering applicable law, and otherwise being fully apprised in all material premises, the Recommended Order is hereby adopted.

Accordingly, Respondent's licenses and appointments are suspended for a period of one year, effective from the date of this Final Order.

DONE and ORDERED this 15th day of March, 2019.




Ryan West
Chief of Staff

NOTICE OF RIGHT TO APPEAL

A party adversely affected by this final order may seek judicial review as provided in section 120.68, Florida Statutes, and Florida Rule of Appellate Procedure 9.190. Judicial review is initiated by filing a notice of appeal with the Agency Clerk, and a copy of the notice of appeal, accompanied by the filing fee, with the appropriate district court of appeal. The notice of appeal must conform to the requirements of Florida Rule of Appellate Procedure 9.110(d), and must be filed (i.e., received by the Agency Clerk) within thirty days of rendition of this final order.

Filing with the Department's Agency Clerk may be accomplished via U.S. Mail, express overnight delivery, hand delivery, facsimile transmission, or electronic mail. The address for overnight delivery or hand delivery is Julie Jones, DFS Agency Clerk, Department of Financial Services, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0390. The facsimile number is (850) 488-0697. The email address is Julie.Jones@myfloridacfo.com.

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