STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL SERVICES,

Petitioner,

vs. Case No. 18-2737PL

GARRY NELSON SAVAGE,

Respondent.
_____/

RECOMMENDED ORDER

The final hearing in this matter was conducted before Administrative Law Judge Andrew D. Manko of the Division of Administrative Hearings ("DOAH"), pursuant to sections 120.569 and 120.57(1), Florida Statutes (2018),[1/] on November 29 and 30, 2018, and April 18, 2019, by video teleconference between sites in Tallahassee and Ft. Myers, and May 28, 2019, in Ft. Myers.

APPEARANCES

For Petitioner: David J. Busch, Esquire
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For Respondent: Michael Buchholtz, Esquire
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STATEMENT OF THE ISSUE

Whether Gary Savage committed the statutory violations alleged in the Amended Administrative Complaint and, if so, what penalty is authorized for such violations.

PRELIMINARY STATEMENT

On April 19, 2018, the Department of Financial Services ("Department") issued an eight-count Administrative Complaint against Mr. Savage seeking to revoke his license as an insurance agent for unlawfully charging fees for selling annuities beyond the applicable commission for those products. On May 10, 2018, Mr. Savage disputed the allegations and requested a hearing under section 120.57(1).

On May 25, 2018, the Department referred the Administrative Complaint to DOAH to conduct a formal administrative hearing. The final hearing was initially set for August 2, 2018, but was reset for November 29 and 30, 2018, upon agreement of the parties.

On September 28, 2018, the Department moved to amend its Complaint to add a count relating to adverse administrative action taken against Mr. Savage's securities license. On October 8, 2018, the undersigned granted the Department's request and the hearing proceeding on the Amended Administrative Complaint ("Complaint").

The final hearing began on November 29 and 30, 2018. After the Department indicated it was dropping Count IV, the hearing proceeded on the remaining eight counts. The Department presented its case-in-chief, but Mr. Savage did not complete his case-in-chief. The continuation of the hearing was set for February 8, 2019, but was continued twice based on Mr. Savage's requests for medical reasons. The continuation of the final hearing began on April 18, 2019, and concluded on May 29, 2019.

In its case-in-chief and rebuttal case, the Department presented the testimony of nine witnesses: Marion Albano, Joseph Cerny, Ernest Blougouras, Kathy Butler, Beverly Wilcox, Jane D'Angelo, Eda Flate, and George Flate, all of whom were clients of Mr. Savage; and Juanita Midgett, a Department investigator. Petitioner's Exhibits 1 through 103 and 107 were admitted into evidence. Petitioner's Proposed Exhibits 104, 105, 106, and 108 were not admitted into evidence.

In his case-in-chief, Mr. Savage testified on his own behalf and presented the testimony of Nelson Villaverde, a Department investigator. Respondent's Exhibits 1 through 44 and 46 through 53 were admitted into evidence. Respondent's Proposed Exhibit 45 was not admitted into evidence.

A four-volume Transcript of the final hearing was filed on June 11, 2019. After receiving one 30-day extension, one 20-day extension, and a final two-day extension, the parties timely

filed their Proposed Recommended Orders ("PROs"), which were duly considered in preparing this Recommended Order.

FINDINGS OF FACT

The Parties and Principle Allegations

1. The Department is the state agency charged with the licensing of insurance agents in Florida, pursuant to authority granted in chapter 626, parts I and IX, Florida Statutes, and Florida Administrative Code Chapter 69B-231.

2. Mr. Savage is a 75-year-old registered investment advisor and financial planner who also is licensed to sell life insurance in Florida.

3. The Department's Complaint seeks to revoke Mr. Savage's license as an insurance agent. Counts I through III and V through VIII concern eight clients, whereby Mr. Savage earned commissions for selling them annuities and, based on agreements they signed, charged them annual one-percent financial planning service fees tied to the value of their portfolios, including the annuities. Each of these counts alleged the following statutory violations:

- Engaging in unfair insurance trade practices for knowingly collecting an excessive premium or charge. § 626.9541(1)(o)2., Fla. Stat.;

- Demonstrating a lack of fitness or trustworthiness to conduct insurance business. § 626.611(1)(g), Fla. Stat.;

- Demonstrating a lack of reasonably adequate knowledge and technical competence to engage in insurance transactions. § 626.611(1)(h), Fla. Stat.;

- Engaging in fraudulent or dishonest insurance practices. § 626.611(1)(i), Fla. Stat.; and
- Misappropriating, converting, or unlawfully withholding moneys belonging to others in conducting insurance transactions. § 626.611(1)(j), Fla. Stat.

Count IX charged Mr. Savage with two violations concerning adverse administrative action taken by the Financial Industry Regulatory Authority ("FINRA") against his securities license:

- Failing to timely report final administrative action taken by FINRA against his securities license. § 626.536, Fla. Stat.; and

- Being suspended and fined for violating FINRA's rules. § 626.621(12), Fla. Stat.

4. At the time of the hearing, Mr. Savage was not working in the financial services industry because FINRA suspended him for several months. During his suspension, Mr. Savage continued to meet with his insurance clients, though he currently has no appointments with life insurers to sell their products.

Wearing Two Hats - An Investment Advisor and Insurance Agent

5. Mr. Savage has worked in the investment industry for over 50 years, initially focusing on securities but evolving into financial advising and estate planning work. He has taken numerous courses and examinations relevant to securities law, financial planning, and tax law.

6. Mr. Savage owns two investment advisor businesses: Wall Street Strategies, Inc. ("Wall Street"), is a stock brokerage firm that handles securities transactions; and Advanced Strategies, Inc. ("Advanced Strategies"), is a registered investment advisor firm, offering clients financial planning, tax management, and estate planning advice.

7. In order to provide a wide variety of products to his financial planning clients, Mr. Savage also is licensed as a nonresident agent in Florida to sell life insurance, including annuities.[2/] Annuities provide a guaranteed income stream over a term of years, but also come with substantial penalties if they are surrendered or cancelled before the term expires. Fixed index annuities, like those Mr. Savage sold to the clients at issue here, offer portfolios of funds tracking stock market indexes. Owners choose from around six portfolios and can then reallocate by choosing different portfolios each year.

8. Mr. Savage considers himself an investment advisor who is licensed to sell insurance, which is what he tells new clients. Indeed, his businesses are securities and investment advisor firms, not insurance agencies.

9. Mr. Savage's client base is diverse. Many have portfolios with annuities and other investment products. Some have portfolios with no annuities. Others have portfolios with only annuities, like most of the clients at issue.

10. In order to procure new clients, Mr. Savage held financial planning seminars where diverse speakers discussed financial and estate planning, and tax management. Mr. Savage discussed the types of insurance products he preferred, including fixed index annuities. Other speakers discussed real estate, oil, and investment trusts, which were beneficial from a tax perspective. Most of the clients at issue attended such a seminar and later met with Mr. Savage to discuss their financial plans.

11. When Mr. Savage first met with the clients at issue, he asked them to bring tax returns, investment statements, wills and/or trusts, and other documents relevant for a financial planning discussion. They completed a new client form with information about their assets, investments, and objectives. He often met several times with new clients to develop a plan for them to reach their financial, estate, and tax management goals.

12. To provide financial planning services, Mr. Savage—— like most investment advisors——charged an annual one-percent fee based on the total value of the portfolio. He has reduced or waived his fee if the clients' situation warranted it or if they continued to purchase products for which he received commissions to compensate him for providing financial planning services.

13. Before that are charged an annual fee, Mr. Savage's clients signed a "Service Fee Agreement" ("Fee Agreement"),

which was on "Advanced Strategies, Inc., Registered Investment Advisor" letterhead and provided as follows:

> Advanced Strategies charges a 1% (one percent) financial planning retention fee annually. This fee is based upon the total combined value of accounts including annuities, indexed life, mutual funds, income products and brokerage accounts that we manage or provide service for. This amount is tax deductible as a professional fee.

14. The Fee Agreement offered to provide several financial planning services[3/]:

- Address, ownership, and beneficiary changes;
- Duplicate statements and tax returns;
- Required minimum distribution and withdrawal requests, and deposits;
- General account questions;
- One printed analysis per year;
- Annual review;
- Asset rebalancing when applicable;
- Informing client of new tax laws, changes in estate planning, and new exciting products and concepts.

The Fee Agreement noted that the non-refundable fee was due on the service anniversary date and that non-payment would result in discontinuation of the planning services until paid in full.

15. Mr. Savage confirmed that the Fee Agreement was voluntary. If clients wanted to purchase a product, but did not

want him to manage their portfolio or provide the outlined services, they did not have to sign the agreement. In that event, Mr. Savage would procure the product and not provide financial planning services.

16. All of the clients at issue here purchased annuities from Mr. Savage. He helped them complete the applications with the insurance companies and, if necessary, assisted them with transferring or closing out other investments used to pay the premiums. He ensured that the insurers received the paperwork and the premiums. Once the annuities were procured, he received commissions from the insurers. The Complaint did not allege that he acted unlawfully in recommending annuities to the clients or receiving commissions from the insurers.

17. All of the clients at issue also signed the Fee Agreement and Mr. Savage provided them with services every year.[4/] Some of the services were things an insurance agent technically could handle, such as answering client calls, making address and beneficiary changes, providing duplicate statements, assisting with the paperwork for required minimum distributions, withdrawals, and deposits, and asset reallocation. Other services were things that an agent could not provide, such as tax management/credits, duplicate tax forms, assistance with estates, trusts, and wills, and financial planning advice.

18. But, even as to the services an agent technically could provide, Mr. Savage used his financial planning expertise to advise these clients as to a number of decisions relating to their annuities. For instance, although agents can assist with reallocation, required minimum distributions, and withdrawals, Mr. Savage's securities and financial planning expertise allowed him to make recommendations that took into account an analysis of the stock market, the economy, and the clients' financial circumstances and overall goals. An agent is not required to have that expertise, which is one reason he charged the clients an annual service fee.

19. Many of these clients did not recall Mr. Savage providing most of the services listed in the Fee Agreement, but the weight of the credible evidence reflects otherwise. He analyzed asset reallocations for these clients every year and, when he believed reallocation was appropriate, he undisputedly made it happen. He provided annual account analyses consolidating the clients' investment statements. He met with some of them every year to conduct an annual review and, for those he did not meet, he offered to do so in their annual invoice letter. Whenever the clients asked for assistance with questions, address, beneficiary, or ownership changes, withdrawals or required minimum distributions, or deposits, among others, he performed the task. And, as he confirmed and

some of the clients acknowledged, the Fee Agreement made it clear that the services were available, even if they did not need all of them in a particular year or did not think to ask.

20. Although some of the clients testified that Mr. Savage failed to tell them that his fee was optional, all of them had a chance to review the Fee Agreement before voluntarily signing it. The agreement noted that the fee was a "financial planning retention fee" based on the value of the accounts "that we manage or provide service for," and that non-payment "will result in the discontinuation of my/our planning services." These clients believed they hired Mr. Savage as an investment advisor and many understood that such advisors do charge fees for providing services.

21. More importantly, no client testified that Mr. Savage said his annual fee was required to procure the annuities or was a charge for insurance. Nothing in the Fee Agreement gave that indication either. Mr. Savage credibly confirmed that he did not charge a fee for insurance; rather, the client paid the fees for financial planning services. And, if they decided they no longer wanted Mr. Savage's services and stopped paying his fee, they took over management of their annuities without losing access to them or the money in them.

22. The Department concedes that Mr. Savage may wear two hats, as both the agent selling an annuity and the financial

advisor managing his client's portfolio. It contends, however, that Mr. Savage violated the insurance code by selling annuities to these clients and thereafter charging them annual fees——tied to the value of the annuities——to provide services that he should have provided for free after earning commissions on the sale of those annuities.

23. The Department's investigator, Ms. Midgett, testified about annuities, commissions, and insurance agent services based on her experience in the industry as both a former agent and certified chartered life underwriter.[5/] Ms. Midgett confirmed that the Department approves both the premiums and commissions applicable to annuities. Once the premium or deposit is paid, the commission is earned; if an additional deposit is made into the annuity, the agent would earn another commission.

24. Ms. Midgett testified that it is improper for an agent to receive a commission and knowingly charge a client any fees with respect to that annuity under section 626.9541(1)(o). However, she admitted that a financial advisor may charge service fees on annuities if they did not receive a commission on the sale. And, if the annuity is ever rolled into a non-insurance product, that agent could charge service fees on that asset because they are no longer tied to the annuity.

25. Ms. Midgett also testified about the services agents are expected to provide. Once an agent sells a product, he or

she becomes the agent of record and does "things such as answer questions, beneficiary changes, address changes, yearly reviews, anything to keep that client and to help them in any way they can." According to her, "it's basic 101 insurance that an agent services their clients," which is "extremely important if you want to build your book of business and to keep a client happy."

26. Importantly, however, Ms. Midgett conceded that no statute or rule specified what services agents were required to provide once they sold an annuity. "It's just understood when you're an insurance agent that you're going to service your clients. It's part of the sale of the product." She believed agents learned this in the course study to obtain a license.

27. Although Ms. Midgett testified that Mr. Savage should have provided most of the services listed in the Fee Agreement for free once he earned commissions on the sale of the annuities, she conceded that at least two of them——duplicate tax forms and informing the client of new tax laws——were not services agents would do. She also agreed that agents could not advise clients as to taking money from an annuity and investing in stocks, mutual funds, real estate trusts, or other investment-related options as "those are all investment advisor functions."

28. Ms. Midgett initially admitted having no knowledge of whether insurance agents were trained in asset reallocation,

though she "would assume so" because "[i]f you have a license to sell the product, then obviously you have to have the knowledge of how to be able to service that product and make the allocations." When she testified several months later in the Department's rebuttal case, she stated that the manual used to obtain a license in Florida had a chapter on annuities that "touched on" reallocation. But, she admitted she was not an expert on reallocation or analyzing market conditions, and she had only previously worked with one agent who sold annuities, though he did advise his annuity clients on reallocation.

29. In sum, the Department conceded that no statute or rule articulated the services an agent is required to provide upon receiving a commission. The appointment contracts between the agents and the insurance companies, two of which are in the record, apparently do not specify the services agents are expected to provide. At best, the evidence established what a good agent should do to build a book of business; the evidence did not establish what services an agent, like Mr. Savage, was legally required to provide for receiving a commission.

Count I – Kathy Butler

30. Ms. Butler met Mr. Savage while working at a yacht club. In February 2011, they met at his office and she filled out a new client form with financial information.

31. In March 2011, Mr. Savage assisted Ms. Butler with the application for a fixed index annuity for $50,000. On that same day, she signed the Fee Agreement, which she understood to be paying for his services as an investment advisor to manage the annuity and ensure it was being invested correctly; she believed he received income from the insurance company. In January 2012, she purchased another fixed index annuity for $8,000. Mr. Savage procured both annuities.

32. Between 2012 and 2015, Ms. Butler received annual invoices from Mr. Savage and paid about $3,265 in service fees. At this point, Ms. Butler deals directly with the insurance companies, though Mr. Savage is still listed as her agent.

33. The weight of the credible evidence shows that Mr. Savage answered general account questions, made a beneficiary change, conducted annual reviews when requested, sent annual account statements, analyzed reallocation each year and, when he recommended reallocation in 2014 and 2015, he handled the paperwork. Ms. Butler knew she could avail herself of the services in the Fee Agreement, even though she chose not to request many of them.

Count II – Beverly Wilcox

34. Ms. Wilcox met Mr. Savage at a seminar in early 2009. In February 2009, they met at his office, she completed a new client form, and she signed the Fee Agreement. She believed he

was a financial advisor and that she would owe him money, but she did not read the Fee Agreement before signing it.

35. In March 2009, Mr. Savage assisted Ms. Wilcox with the application to purchase a fixed index annuity for $120,000. He procured the annuity, as requested.

36. Between 2010 and 2016, Ms. Wilcox received yearly invoices from Mr. Savage and paid about $6,500 in fees, after which she decided to deal with the annuity company directly.

37. The weight of the credible evidence shows that Mr. Savage answered questions when asked, offered to conduct annual reviews each year, sent annual account statements, analyzed reallocation each year and, when he recommended reallocation in 2010 and 2012, he handled the paperwork.

Count III – Joseph Cerny

38. Mr. Cerny met Mr. Savage while working at a yacht club and knew he was a financial advisor.

39. Mr. Cerny purchased several fixed index annuities and other investments from Mr. Savage, who helped him complete the paperwork and procured the policies. Between 2003 and 2004, he bought two annuities for $100,000 each and two mutual funds for about $30,000 each. In 2008, he bought an annuity for $10,000. In 2010, he bought another annuity for $119,400.

40. Mr. Savage did not charge fees for the first few years. Mr. Cerny believed he received compensation from the

companies. However, in March 2010, Mr. Cerny signed the Fee Agreement. Between 2011 and 2012, he received two invoices, paying the first for $1,266.84 but refusing to pay the second. Mr. Cerny and Mr. Savage ended their relationship at that point.

41. The weight of the credible evidence shows that Mr. Savage answered questions, provided annual statements, assisted with making withdrawals when requested, met with Mr. Cerny yearly, analyzed reallocation each year and, when he recommended reallocation in 2010 and 2011, he handled the paperwork.

Count V – Marion Albano

42. Ms. Albano met Mr. Savage at a retirement seminar in early 2007. In February 2007, they met at his office to go over her investments, including several annuities. Based on his recommendation, she surrendered her old annuities and purchased a fixed index annuity for about $1.6 million. He assisted her with the application and procured the annuity.

43. In February 2007, Ms. Albano also signed the Fee Agreement. Mr. Savage told her there was a service charge to manage the annuity and she agreed because her brother pays the same rate on his managed brokerage account. She was never worried about losing the annuity if she failed to pay the fee.

44. Ms. Albano received invoices from Mr. Savage every year from 2008 through 2015 and testified that she had paid

between $110,000 and $120,000 in fees during that time. She had to pay some of the fees out of her distributions.

45. The weight of the credible evidence shows that Mr. Savage answered account questions, corresponded with her daughter about his recommendations, provided her with an account analysis each year, met with her annually to review her account, and assisted her with required minimum distributions and withdrawals. He analyzed reallocation each year and, when he recommended reallocation in 2010 and 2011, he handled the paperwork.

Count VI – Jane D'Angelo

46. Ms. D'Angelo and her late husband, whose son-in-law was an insurance agent, met Mr. Savage at an estate planning seminar in early 2003; they believed he was an investment advisor. In March 2003, he came to their home and they completed a new client form, indicating they had several types of investments, including annuities.

47. Between 2003 and 2016, the D'Angelos invested with Mr. Savage. In 2003, they purchased a tax credit investment for $10,000. In 2005, they purchased a similar investment for $19,000, which resulted in tax credits totaling $17,174.

48. Between 2005 and 2011, they purchased eight fixed index annuities from Mr. Savage. He assisted them with the applications, informing them that the companies paid him

directly. He procured the following annuities, some of which were purchased by transferring money from their existing annuities: In April 2005, they bought an annuity for $250,000; in May 2007, they bought an annuity for $32,789.78; in May 2008, they bought an annuity for $29,510; in March 2009, they bought three annuities for $337,554, $550,000, and $6,000; in May 2011, they bought two annuities, one for $40,715 and another for $150,889; and, in June 2011, they bought an annuity for $24,667.

49. Prior to 2010, they paid no service fees. However, in April 2010, they signed the Fee Agreement. Although they were surprised and felt like they had to sign, Ms. D'Angelo agreed they were not coerced or told the annuities would lapse if they failed to do so. Indeed, she never lost access to the annuities even after she stopped paying Mr. Savage's fees in 2015.

50. Mr. Savage sent them annual invoices from 2010 through 2015, totaling $54,000 in fees. Mr. Savage agreed to waive the 2010 fee and, ultimately, they only paid about $14,511 total. In 2016, Ms. D'Angelo informed Mr. Savage that she no longer needed his services. She had been dealing directly with the insurance companies herself, though they have provided her with names of individuals if she wanted someone to advise her.

51. The weight of the credible evidence shows that Mr. Savage provided numerous services to the D'Angelos on the investments he managed for them.[6/] He had discussions with them,

sent them annual statements, and assisted them with deposits and transfers between annuities, required minimum distributions and withdrawals, income riders, and beneficiary and ownership changes. He analyzed reallocation every year and handled the paperwork when he felt it was appropriate. He also offered to meet annually and held those meetings in years in which they were requested.

Count VII – Ernest Blougouras

52. Rev. Ernest Blougouras, a Greek Orthodox priest, attended several financial planning seminars with Mr. Savage. They met privately in February 2005, at which he completed a new client form listing his investments, which included fixed annuities, CDs, mutual funds, bonds, and stocks.

53. Rev. Blougouras purchased fixed index annuities and other investments from Mr. Savage. He told Rev. Blougouras that he received commissions for selling the annuities. Mr. Savage assisted with the applications and procured the policies.

54. Over the last 14 years, Rev. Blougouras purchased nine fixed index annuities. In March 2005, he bought an annuity for $347,003; in April 2005, he bought an annuity for $229,458; in August 2005, he bought an annuity for $102,227; in June 2006, he bought an annuity for $8,300; in May 2007, he bought an annuity for $41,143; in June 2009, he bought an annuity for $50,000; in July 2009, he bought an annuity for $14,308; and, though the

record is unclear as to the date, he bought another annuity that was worth $40,572 in 2010. Since 2011, he bought an additional annuity and several non-insurance investments, such as real estate trusts and energy funds.

55. Prior to 2010, Mr. Savage did not charge Rev. Blougouras service fees because he continued to purchase annuities. However, in 2010, Mr. Savage decided to start charging an annual service fee and sent Rev. Blougouras the Fee Agreement. Rev. Blougouras believed that Mr. Savage's services would be cancelled if he failed to pay the fee and he would have to hire another advisor. He signed the Fee Agreement and continues to use Mr. Savage's services.

56. Mr. Savage has sent annual invoices to Rev. Blougouras every year since 2010. The record only contains the 2010 invoice for $9,883 and Rev. Blougouras could not recall how much he paid overall. However, he confirmed that he has paid every invoice he has received either himself or with distribution checks he received from the annuities.

57. The weight of the credible evidence shows that Mr. Savage provided numerous services to Rev. Blougouras. He prepared paperwork and documents for required minimum distributions and withdrawals, held meetings to review and organize his tax paperwork, copied documents requested, and made address changes when requested. He analyzed asset reallocation

every year and, when he recommended reallocation in 2010 and 2011, he completed the necessary paperwork.

Count VIII – George Flate

58. Mr. Flate and his wife met Mr. Savage at a financial planning seminar in 2010. In February 2010, they met Mr. Savage and completed their new client form listing their investments, including fixed annuities, CDs, mutual funds, and stocks. They also signed the Fee Agreement, which Mr. Flate believed was a standard service agreement. They thought they hired Mr. Savage as an investment advisor and never believed they would lose access to the annuities if they stopped paying his fees.

59. Based on Mr. Savage's recommendation, the Flates purchased two fixed index annuities: one annuity was issued in April 2010 for approximately $22,000, and the other annuity was issued in May 2010 for approximately $22,500. Mr. Savage assisted them with filling out the applications and handled the paperwork to ensure the annuities were issued.

60. Between 2012 and 2015, Mr. Savage sent the Flates invoices for his annual service fees every year. In total, they paid approximately $1,506 in service fees. In 2015, the Flates terminated their relationship with Mr. Savage. They have worked with two financial advisors since then, neither of whom charged them service fees relating to the annuities.

61. The weight of the credible evidence shows that Mr. Savage provided numerous services to the Flates. Each year, he met with them to go over their account, provided them with account analyses, analyzed reallocation and, the two to three times they agreed with his recommendations, he handled the paperwork. He handled withdrawals and address changes for them when requested, and he provided them with information as to changes in tax law and estate planning, though they did not believe that was necessary since they had tax and estate lawyers. The Flates understood that Mr. Savage was available to answer their questions and provide the services if they asked.

Count IX – FINRA Disciplinary Proceeding

62. On July 14, 2016, two former clients of Mr. Savage's filed a Statement of Claim with FINRA alleging that he had recommended investments that were not suitable for them. Over Mr. Savage's objections to proceeding with the hearing as scheduled, the arbitration panel awarded the clients over $725,000 in damages, fees, and costs.

63. The clients filed a petition in Florida circuit court to approve the arbitration award. Mr. Savage responded in opposition and moved to vacate the arbitration award on grounds that it violated his due process rights. On November 9, 2017, the circuit court issued a final judgment awarding over

$769,000. On December 4, 2017, Mr. Savage appealed the circuit court's order to the Second District Court of Appeal.

64. On June 12, 2018, while the appeal was pending, Mr. Savage signed a Letter of Acceptance, Waiver and Consent ("AWC") with FINRA. The AWC stated that Mr. Savage accepted and consented, without admitting or denying, the following findings:

(1) Wall Street failed to apply for a material change in its business operations, i.e., to sell oil and gas interests, private placements, and non-traded real estate investment trusts, before engaging in more than 50 such transactions, many of which were consummated by Mr. Savage;

(2) Mr. Savage failed to timely update his FINRA Form U4 within 30 days of the Statement of Claim being filed against him in July 2016;

(3) Mr. Savage failed to timely respond to FINRA's requests for information relating to an upcoming examination of Wall Street; and

(4) Wall Street failed to maintain the minimum net capital requirements of $5,000 while engaging in securities transactions.

65. Mr. Savage agreed to three sanctions: (1) a five-month suspension from associating with any FINRA registered firm; (2) a three-month suspension from association with any FINRA registered firm in a principal capacity, to be served following the five-month suspension; and (3) a $30,000 fine.

66. The AWC confirmed that Mr. Savage waived his procedural rights relating to these alleged violations and made clear that it would become part of his permanent disciplinary

record that could be considered in future actions brought by FINRA or other regulators. He was precluded from taking positions inconsistent with the AWC in proceedings in which FINRA was a party, but was not precluded from taking inconsistent positions in litigation if FINRA was not a party.

67. The five-month suspension began on June 13, 2018, and ended on November 17, 2018. The three-month suspension began on November 18, 2018, and ended on February 17, 2019.

68. In the interim, on August 16, 2018, FINRA notified Mr. Savage by letter that it was suspending his securities license indefinitely for his "failure to comply with an arbitration award or settlement agreement or to satisfactorily respond to a FINRA request to provide information concerning the status of compliance." This letter is not in the record and, as such, it is unclear whether Mr. Savage had an avenue to challenge that suspension directly. Mr. Savage had challenged the underlying arbitration award, which remained pending on appeal in the Second District Court of Appeal.

69. On November 7, 2018, the Second District affirmed the circuit court's arbitration order.

70. On November 20, 2018, Mr. Savage put the Department on notice of the FINRA disciplinary actions, including the AWC from June 2018 and the decision of the Second District affirming the arbitration award.

CONCLUSIONS OF LAW

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

72. It is well settled under Florida law that determining whether alleged misconduct violates a statute or rule is a question of ultimate fact to be decided by the trier-of-fact based on the weight of the evidence. Holmes v. Turlington, 480 So. 2d 150, 153 (Fla. 1985); McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995); Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995). Determining whether the alleged misconduct violates the law is a factual, not legal, inquiry.

73. The Department has the burden to prove its allegations against Mr. Savage by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932, 934 (Fla. 1996); Avalon's Assisted Living, LLC v. Ag. for Health Care Admin., 80 So. 3d 347, 348-49 (Fla. 1st DCA 2011) (citing Ferris v. Turlington, 510 So. 2d 292, 294-95 (Fla. 1987)). As the Florida Supreme Court has stated:

> Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or

> conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

74. "Where a statute imposes sanctions and penalties in the nature of denial or revocation of a license to practice for violating its proscriptions, such a statute 'must be strictly construed and no conduct is to be regarded as included within it that is not reasonably proscribed by it.'" McCloskey v. Dep't of Fin. Servs., 115 So. 3d 441, 444 (Fla. 5th DCA 2013) (citing Lester v. Dep't of Prof'l & Occ. Regs., 348 So. 2d 923, 925 (Fla. 1st DCA 1977)); accord Elmariah v. Dep't of Prof'l Reg., 574 So. 2d 164, 165 (Fla. 1st DCA 1990) (holding that a statute imposing "sanctions or penalties" is "penal in nature and must be strictly construed, with any ambiguity interpreted in favor of the licensee"); see also Djokic v. Dep't of Bus. & Prof'l Reg., 875 So. 2d 693, 695 (Fla. 4th DCA 2004) (same).

Counts I through III and V through VIII

75. Because Mr. Savage's alleged conduct and the violations charged in Counts I through III and V through VIII are materially almost identical, the findings of ultimate fact and conclusions of law below apply equally to those counts.

76. The Department alleged in the Complaint that Mr. Savage sold his clients annuities, had them sign the Fee Agreement, did not tell them that the fee was optional (only as to Counts I and II), and thereafter charged them annual one-percent service fees based on the value of their portfolios, including the annuities, in violation of sections 626.9541(1)(o)2. and 626.611(1)(g)-(j).

77. As to section 626.9541(1)(o)2., the Department argues that Mr. Savage knowingly collected excess premiums by charging his clients fees tied to the value of annuities he sold them.

78. Section 626.9541(1)(o)2. defines the following as an unfair or deceptive act: "Knowingly collecting as a premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance, in accordance with the applicable classifications and rates as filed with and approved by the office, and as specified in the policy." Neither "premium" nor "knowingly" are defined in this provision, though definitions of both are critical to determining whether Mr. Savage violated this provision.

79. Premium is defined in section 627.041(2), Florida Statutes, as "the consideration paid or to be paid to an insurer for the issuance and delivery of any binder or policy of insurance." Accord § 627.403, Fla. Stat. (defining premium as "the consideration for insurance, by whatever name called," or

any "'service' or similar fee or charge in consideration for an insurance contract is deemed part of the premium").

80. Knowingly is not defined in the statute, so its plain and ordinary meaning can be ascertained from a dictionary. Sosa v. Safeway Premium Fin. Co., 73 So. 3d 91, 104 (Fla. 2011). Knowing is defined as "[h]aving or showing awareness or understanding; well-informed" or "[d]eliberate; conscious." Black's Law Dictionary at 876 (7th ed. 1999). In the insurance context, knowingly means a deliberate violation with "awareness and understanding of its actions." Sosa, 73 So. 3d at 104.

81. Based on the plain and ordinary meaning of the statute, agents are precluded from collecting from the insured more money than the rate set by the Department and provided for in the policy to purchase or obtain an insurance product. If agents do so with awareness that such actions are unlawful, they violate section 626.9541(1)(o)2.

82. Based on the findings of fact above, the Department failed to prove by clear and convincing evidence that Mr. Savage violated this provision. The weight of the credible evidence shows that Mr. Savage did not charge the clients more than the applicable premium to procure the annuities; rather, he charged them annual fees to provide financial planning services, as investment advisors routinely do.

83. The Department nevertheless argues that Mr. Savage violated the provision by charging his clients fees to provide the same services he is obligated to provide after receiving commissions on the sale of the annuities. However, as just discussed, the clear language of the statute does not proscribe the type of fee charged by Mr. Savage to service the annuity once it has been issued.[7/] And, section 626.9541 does not prohibit a practice which is not specifically delineated as "unfair" in the act or in the insurance code. Whitaker v. Dep't of Ins. & Treasurer, 680 So. 2d 528, 531 (Fla. 1st DCA 1996) (citations omitted); accord United Wis. Life Ins. Co. v. Off. of Ins. Reg., 849 So. 2d 417, 420 (Fla. 1st DCA 2003).

84. Moreover, the Department conceded that there is no statute or rule delineating the services an agent is required to provide in exchange for the commission. The appointment contracts in the record do not articulate those services either. At best, the evidence showed what services good agents provide to build their book of business, which is distinct from the services agents are legally required to provide.

85. Due process requires regulated entities to be put on notice of the conduct proscribed, which is absent here. See Breesmen v. Dep't of Prof'l Reg., 567 So. 2d 469, 471 (Fla. 1st DCA 1990) ("Basic due process requires that a professional or business license not be suspended or revoked without adequate

notice to the licensee of the standard of conduct to which he or she must adhere.”). The lack of notice also undermines the argument that Mr. Savage acted knowingly in this regard.

86. Regardless, the weight of the credible evidence shows that Mr. Savage provided a number of services for his clients that agents are not permitted to handle. Moreover, as to those services agents are permitted to handle, agents would lack the financial planning expertise Mr. Savage used to advise his clients, which is the main reason he charged for his services.

87. Under section 626.611(1), the Department shall suspend or revoke an agent’s license if any of the following exists:

> (g) Demonstrated lack of fitness or trustworthiness to engage in the business of insurance.
>
> (h) Demonstrated lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license or appointment.
>
> (i) Fraudulent or dishonest practices in the conduct of business under the license or appointment.
>
> (j) Misappropriation, conversion, or unlawful withholding of moneys belonging to . . . insureds . . . and received in conduct of business under the license or appointment.

88. As to section 626.611(1)(g), the Department argued in its PRO that Mr. Savage demonstrated a lack of fitness or trustworthiness by having his clients sign the Fee Agreement,

which suggested that his fees were necessary to pay for services routinely provided by insurance agents.[8/]

89. Based on the findings of fact above, the Department failed to establish by clear and convincing evidence that Mr. Savage violated section 626.611(1)(g). The weight of the credible evidence shows that the clients believed they were hiring Mr. Savage as an investment advisor and voluntarily signed the Fee Agreement for financial planning services. That some of the services could have been provided by an insurance agent for free does not establish that Mr. Savage lacked fitness or trustworthiness to engage in insurance transactions. Indeed, Mr. Savage provided many services that agents either were not permitted to handle or, even if they were, lacked the financial planning expertise he used to advise his clients.

90. As to section 626.611(1)(h) and (i), the Department argued in its PRO that Mr. Savage knew he was precluded from charging the service fees, which means he engaged in fraudulent and dishonest insurance practices under subsection (1)(i), or, if he did not know, he lacked knowledge or competency to engage in such transactions under subsection (1)(h).

91. Based on the findings of fact above, the Department failed to establish by clear and convincing evidence that Mr. Savage violated section 626.611(1)(h) or (i). The weight of the credible evidence shows that the clients hired him as an

investment advisor and voluntarily signed the Fee Agreement. He then charged them annual financial planning service fees that were not precluded by a statute or rule cited in the Complaint.

92. As to section 626.611(1)(j), the Department argued in its PRO that Mr. Savage misappropriated premium monies of his clients by charging them fees tied to the value of their annuities, which were not "plainly expressed in the policy" as required by section 627.474, Florida Statutes.

93. Based on the findings of fact above, the Department failed to establish by clear and convincing evidence that Mr. Savage violated section 626.611(1)(j). The weight of the credible evidence shows that the fees were neither premiums nor charges for procuring the annuities. The fees were for providing financial planning services and were invoiced long after the annuities were procured, as agreed to by the clients when they signed the Fee Agreement. The validity of the annuities and the clients' access thereto were unaffected by the service fees or the failure to pay them.

Count IX

94. The Department alleged that Mr. Savage's failure to timely notify it of two disciplinary actions taken by FINRA against his securities license on June 13, 2018, and August 16, 2018, violated sections 626.611(1)(g), 626.536, and 626.621(12).

95. Based on the findings of fact above, the Department failed to establish by clear and convincing evidence that Mr. Savage's actions that led to suspension of his FINRA license violated section 626.611(1)(g).

96. As to section 626.536, that provision provides as follows:

> Within 30 days after the final disposition of an administrative action taken against a licensee or insurance agency by a governmental agency or other regulatory agency in this or any other state or jurisdiction relating to the business of insurance, the sale of securities, or activity involving fraud, dishonesty, trustworthiness, or breach of a fiduciary duty, the licensee or insurance agency must submit a copy of the order, consent to order, or other relevant legal documents to the department. The department may adopt rules to administer this section. (Emphasis added).

97. The parties disagree as to when the "final disposition" of the "administrative action" occurred. The Department claims that two final dispositions occurred: (1) on June 12, 2018, when Mr. Savage signed the AWC and gave up his right to challenge the findings; and (2) on August 16, 2018, when FINRA suspended his license for failing to comply with the arbitration order. Mr. Savage contends that the AWC did not give rise to a duty to report and that final disposition of the August 2018 suspension did not occur until the Second District affirmed the arbitration award on November 7, 2018.

98. The terms "final disposition of an administrative action" are not defined in section 626.536, so their plain and common meaning can be ascertained from a dictionary. Sosa, 73 So. 3d at 104. "Final" is defined as "not to be altered or undone" or "of or relating to a concluding court action or proceeding." Merriam-Webster Dictionary, available at https://www.merriam-webster.com/dictionary/final (last visited Sep. 26, 2019); see also Black's Law Dictionary at 644 (defining "finality doctrine" as "[t]he rule that a court will not judicially review an administrative agency's action until it is final"). "Disposition" is defined as "[a] final settlement or determination <the court's disposition of a case>." Black's Law Dictionary at 484. "Action" is defined as "any judicial proceeding, which, if conducted to a determination, will result in a judgment or decree," Black's Law Dictionary at 28-29, and "administration," of which administrative is a listed verb, is defined as "the practical management and direction of the executive department and its agencies." Id. at 44.

99. Based on the plain meaning of the text, final disposition of an administrative action occurs when the proceeding of an agency has concluded and is no longer subject to challenge or appeal. As the Florida Supreme Court has held, "a judgment becomes final . . . if an appeal is taken, upon the appeal being affirmed and either the expiration of the time for

filing motions for rehearing or a denial of the motions for rehearing." Silvestrone v. Edell, 721 So. 2d 1173, 1175 n.2 (Fla. 1998); see also Kipnis v. Bayerische Hypo-Und Vereinsbank, 202 So. 3d 859, 860 (Fla. 2016) (holding that tax court "action became final ninety days after the tax court's judgment, at the expiration of the time period for an appeal of that judgment").

100. The Department established by clear and convincing evidence that Mr. Savage failed to timely submit a copy of the AWC within 30 days of its issuance on June 13, 2018. The AWC finally disposed of FINRA's administrative action against Mr. Savage for the three alleged violations and precluded him from appealing those findings. That is the very essence of a final disposition.

101. Mr. Savage's arguments to the contrary are rejected. The fact that the AWC was a settlement without admitting the findings is of no consequence, as section 626.536 makes clear that orders reached by consent must be reported. And, though one of the AWC's findings concerned the Statement of Claim that led to the arbitration award, that finding only related to Mr. Savage's failure to timely report that Statement to FINRA. That finding was not at issue in Mr. Savage's appeal, which concerned only the propriety of the arbitration award itself.

102. The Department failed to establish by clear and convincing evidence that Mr. Savage failed to timely submit a

copy of FINRA's suspension for failing to comply with the arbitration order within 30 days of August 16, 2018. The Department presented no evidence as to how FINRA handled this suspension, except for a FINRA report that noted the suspension was initiated by letter on August 16, 2018. The letter was not introduced. No evidence was presented as to whether Mr. Savage had a right to appeal the suspension or whether it was subject to a stay given the pending appeal of the arbitration award on which the suspension for failing to comply therewith was based. That evidence is critical to determining whether the suspension was a final disposition of an administrative action.

103. As to section 626.621(12), that provision authorizes the Department to suspend or revoke an agent's license if he or she:

> Has been the subject of or has had a license, permit, appointment, registration, or other authority to conduct business subject to any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, final agency action, or administrative order by any court of competent jurisdiction, administrative law proceeding, state agency, federal agency, national securities, commodities, or option exchange, or national securities, commodities, or option association involving a violation of any federal rule or regulation of any national securities, commodities, or options exchange or national securities, commodities, or options association.

104. This provision plainly and unambiguously "means that the agency is authorized to revoke a license, if the licensee has been the subject to any decision by a national securities association such as FINRA." Turbeville v. Dep't of Fin. Servs., 248 So. 3d 194, 199 (Fla. 1st DCA 2018); see also Wojnowski v. Off. of Fin. Reg., 98 So. 3d 189, 191 (Fla. 1st DCA 2012) (finding agency authorized to discipline investment advisor under section 517.161(1)(m), Florida Statutes, which has nearly identical language to section 626.621(12), based on FINRA arbitration award finding violations of state securities law).

105. The Department established by clear and convincing evidence that it has discretion to discipline Mr. Savage under section 626.621(12) because FINRA suspended his securities license for violating its rules. Although Mr. Savage neither admitted nor denied the findings in the AWC, he agreed to a consent order that found he violated several FINRA rules and suspended him from selling securities for five months and from serving as a principal in an agency that sells securities for three months. Mr. Savage also was suspended indefinitely on August 16, 2018, for failing to comply with the arbitration award or respond to a request for information from FINRA about the arbitration.

Recommended Penalty

106. Based on the findings of fact and conclusions of law above, the Department established that Mr. Savage violated sections 626.536 and 626.621(12), as alleged in Count IX.

107. To determine the appropriate penalty, the undersigned must first calculate the penalty per count. Fla. Admin. Code R. 69B-231.040(1).[9/] Where the Department proves two violations in a single count, as in Count IX, "only the violation specifying the highest stated penalty will be considered for that count . . . regardless of the number or nature of the violations established in a single count." Id. at R. 69B-231.040(1)(a) & (b).

108. Under Florida Administrative Code Rule 69B-231.090(12), "the following stated penalty shall apply:
(12) Section 626.621(12), F.S. - suspension six months."[10/] Under Florida Administrative Code Rule 69B-231.110(5), a violation of section 626.536 is subject to an "administrative fine of not less than $500 for the first violation and suspension of 2 months for the second and subsequent violations." This is Mr. Savage's first violation of section 626.536. Because a six-month suspension is the highest stated penalty between these two violations, that is the maximum allowable penalty for Count IX.

109. Once the penalty for Count IX is calculated, the final penalty is determined by considering the following aggravating and mitigating factors: "(a) Willfulness of licensee's conduct; (b) Degree of actual injury to victim; (c) Degree of potential injury to victim; (d) Age or capacity of victim; (e) Restitution to victims; (f) Motivation of licensee; (g) Financial gain or loss to licensee; (h) Financial loss to victim; (i) Vicarious or personal responsibility; (j) Related criminal charge; disposition; (k) Existence of secondary violations in counts; (l) Previous disciplinary orders or prior warning by the Department; and (m) Violation of any part of sections 626.9541 and 627.4554, F.S., in relation to the sale of a life insurance policy or annuity to a senior citizen." Fla. Admin. Code R. 69B-231.160(1) & 69B-231.040(3)(a).

110. Based on the findings of fact and conclusions of law above, the weight of the credible evidence shows that Mr. Savage willfully violated section 626.536 by failing to notify the Department within 30 days of the AWC, particularly where the appeal of the arbitration award had no impact on the other violations found and suspensions imposed in the AWC. The Department has never before disciplined Mr. Savage.

111. The violation of section 626.611(12) proven in Count IX concerns discipline he received from FINRA, including suspensions, $30,000 in fines, and a final judgment after

arbitration of over $769,000 in damages. Although the lack of notice to the Department of the AWC did not impact any victims, germane to the violation of section 626.536, the substance of the arbitration award and resulting FINRA discipline involved financial loss to elderly clients, which are aggravating circumstances germane to the violation of section 626.611(12). The undersigned finds that Mr. Savage's testimony, namely, that the underlying offenses did not occur and that FINRA was essentially out to get him, lacks credibility, particularly in the context of mitigating and aggravating circumstances.

112. Upon consideration of all of the relevant factors, the undersigned recommends that the final penalty for the violations proven in Count IX be increased from a six-month suspension to a 12-month suspension.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Financial Services issue a final order suspending Mr. Savage's license as an insurance agent for twelve months.

DONE AND ENTERED this 30th day of September, 2019, in Tallahassee, Leon County, Florida.

ANDREW D. MANKO
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of September, 2019.

ENDNOTES

[1/] All statutory references are to Florida Statutes (2018), unless otherwise noted. The conduct underlying the alleged statutory violations in Counts I through VIII occurred between 2008 and 2016. Because the statutory provisions did not materially change during those years, the 2018 versions are cited for ease of reference.

[2/] At the hearing, Mr. Savage testified that he has primarily resided in Florida for the last five or six years, but also has a home in Ohio. He acknowledged that he should have changed his licensure to that of a Florida resident agent, but had not yet done so. The Department did not charge Mr. Savage with any violation of Florida law for failing to make that change, so it is not discussed herein.

[3/] In or around 2011, Mr. Savage revised the Fee Agreement, though most of it remained materially unchanged. Except for Ms. Butler, all of the clients at issue signed the prior version of the Fee Agreement, which is the one described here.

[4/] Most of the clients signed the Fee Agreement at the beginning of their relationship with Mr. Savage, the anniversary date was set for the next year, and he sent them an invoice every year on that date for the services provided the preceding year. Three

established clients, Dr. and Mrs. D'Angelo and Rev. Blougouras, received his services without an annual fee for several years because they consistently purchased new investments. In 2010, Mr. Savage requested that they too sign the Fee Agreement and they did, even though their agreements listed their anniversary dates as being only one month beyond the date of execution. Upon receiving their first invoice about a month later, the D'Angelos objected and Mr. Savage agreed to waive the 2010 fee; Rev. Blougouras paid the invoice without objection.

[5/] The Department tendered Ms. Midgett as an expert on the subject of annuities, commissions thereon, agent services, and the propriety of charging service fees tied to the value of annuities. The undersigned agreed that Ms. Midgett's qualifications rendered her an expert in those areas, but that she lacked expertise to offer opinions as to the financial services industry. The undersigned gave Ms. Midgett's testimony the weight he deemed appropriate.

[6/] Though most of the exhibits were admitted without objection, some were admitted over objections, including hearsay. Consistent with section 120.57(1)(c), the undersigned has not based any finding of fact on hearsay evidence alone, unless it would be admissible over objection in a civil action. The hearsay evidence was used, however, to supplement or explain other admissible evidence. For instance, Mr. Savage's database telemagic notes were admitted over the Department's hearsay objection, but they supplement and explain admissible testimony from Mr. Savage, the clients, and Ms. Midgett as to the services Mr. Savage provided and the types of services insurance agents do not provide.

[7/] Although unnecessary given the clear and unambiguous language of section 626.9541(1)(o)2., it should be noted that section 626.593, Florida Statutes, prohibits insurance agents from charging fees over the applicable premium for offering advice or information relating to health insurance plans, unless a written contract providing for such fees is executed with the customer. Had the legislature intended to preclude the types of fees charged by Mr. Savage in relation to annuities, it certainly could have expressly done so in section 626.593, section 626.9541(1)(o)2., or in another provision in chapter 626.

[8/] The Department did not allege in the Complaint that Mr. Savage failed to inform his clients that he was an insurance agent or that annuities were life insurance, nor did the Department charge him with violations of sections 626.9531(1) or

626.99(5), Florida Statutes, which require such disclosures. The Department also did not allege that Mr. Savage sent the clients investment statements with inflated rates of return or charge him with a statutory violation based thereon. The undersigned rejects the Department's belated attempt to argue in its PRO that Mr. Savage violated sections 626.611(1)(g)-(i) by engaging in those actions. See, e.g., Delk v. Dep't of Prof'l Reg., 595 So. 2d 966, 967 (Fla. 5th DCA 1992) (holding that due process means that "the proof at trial or hearing be that conduct charged in the accusatorial document").

Regardless, the Department failed to establish by clear and convincing evidence that these belated allegations against Mr. Savage proved he lacked fitness or trustworthiness, engaged in fraudulent or dishonest insurance practices, or lacked the knowledge or competence to engage in such transactions. Although the clients testified that they were unaware that Mr. Savage was an insurance agent or that they were purchasing life insurance, they reviewed and signed applications with life insurance companies to purchase the annuities, which listed the insurance company names repeatedly in the header, specified that they were purchasing a life insurance product, inquired as to whether the annuities were replacing a prior life insurance product, and noted that Mr. Savage was the agent. Several of the clients also owned annuities when they met Mr. Savage. Mr. Savage testified that he informed attendees at his seminars and new clients that he was a financial planner with an insurance license, he went over annuities as being insurance products to explain how they worked, and the clients all received statements on life insurance company letterhead. The weight of the credible evidence shows that these clients either knew or should have known that Mr. Savage was an insurance agent and that annuities were life insurance products.

[9/] The statutory violations at issue in Count IX occurred in 2018. Thus, the 2019 versions of any disciplinary sanction rules, some of which were materially revised in 2019, do not apply. See Brewer v. Fla. Dep't of Health, 268 So. 3d 871, 873 (Fla. 1st DCA 2019) (applying version of sanctions rule "applicable to the date of Brewer's alleged violations"). Rather, the 2018 versions of these rules are applicable.

[10/] The undersigned notes that section 626.621 was amended in 2017. Prior to the amendment, the substance of subsection (12), which is at issue here, had been contained in subsection (13). Although the statutory subsections were renumbered in 2017, the Department did not revise the correlating penalty provisions

outlined in rule 69B-231.090 until July 2019. Thus, under the rule in effect at the time of the alleged violation in 2018, a violation of section 626.611(12) was subject to a suspension of six months. The undersigned is required to apply the clear and unambiguous version of the rule in effect at the time of the alleged violation giving rise to the penalty. Brewer, 268 So. 3d at 873. The undersigned notes that the Department's PRO correctly cited the 2018 version of rule 69B-231.100 as to the penalty for section 626.536, but incorrectly cited the 2019 version of rule 69B-231.090 as to the penalty for section 626.621(12).

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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.