

FILED

SEP 23 2014



Docketed by MC

CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

IN THE MATTER OF:

JOSE F. SURIS

CASE NO.: 145207-13-AG

ORDER OF SUSPENSION

THIS PROCEEDING came on for final agency action and the Chief Financial Officer, having considered the record in this case and the Administrative Complaint filed on August 20, 2013, and being fully advised in the premises, finds that:

1. Jose F. Suris, license I.D. #A258359, is currently licensed by the Department of Financial Services (the "Department"), pursuant to the Florida Insurance Code, as a surplus lines agent, life including variable annuity agent, life agent, life including variable annuity and health agent, life and health agent, general lines agent, health agent, and an all lines adjuster.

2. On January 24, 2014, an Administrative Complaint (the "Complaint") was issued against Jose F. Suris, which alleged that Mr. Suris failed to remit surplus lines premium taxes and assessments due to the Florida Surplus Lines Service Office. A true and correct copy of the Complaint, including a Notice of Rights and Election of Proceeding form, is attached hereto as "Exhibit A."

3. Jose F. Suris was notified in the Complaint of the right to request a proceeding in accordance with sections 120.569 and 120.57, Florida Statutes, and that failure to answer the Complaint or request a proceeding within twenty-one (21) days would result in the imposition of a penalty.

4. The Department made a diligent effort to serve the Complaint via certified mail, e-mail, and personal service but was unsuccessful.

5. In accordance with section 120.60(5), Florida Statutes, the Complaint was served upon Jose F. Suris by publication in the South Florida Business Journal on June 20, 2014, June 27, 2014, July 4, 2014, and July 11, 2014. A true and correct copy of service of the Complaint is attached hereto as "Exhibit B."

6. Jose F. Suris failed to answer the Complaint or request a hearing in accordance with sections 120.569, 120.57(1), and 120.57(2), Florida Statutes.

7. Based upon Jose F. Suris' failure to timely respond to the Complaint, the Chief Financial Officer finds that an Order of Suspension should be entered in this case.

FINDINGS OF FACT

8. The factual allegations contained in the Complaint dated January 24, 2014, attached hereto as "Exhibit A," and fully incorporated herein by reference, are hereby adopted as this Department's Findings of Fact in this case.

CONCLUSIONS OF LAW

9. Based upon the Findings of Fact adopted herein, the Department concludes that Jose F. Suris violated the specific statutes and rules charged in each count of the Complaint, and hereby adopts the violations charged in each count of the Complaint as the Conclusions of Law in this case.

PENALTY IMPOSED

10. The failure of Jose F. Suris to answer the Complaint or request a proceeding, taken together with the Findings of Fact and Conclusions of Law adopted herein, constitute grounds for the Chief Financial Officer to suspend the license of Jose F. Suris.

IT IS THEREFORE ORDERED that:

(a) All licenses, appointments and eligibility for licensure heretofore issued to Jose F. Suris, within the purview of the Department, are hereby SUSPENDED for a period of twelve (12) months.

(b) Following the twelve (12) month suspension, Respondent shall be entitled to file for an application for reinstatement of licensure. However, the license of Respondent shall not be reinstated if the circumstances or circumstance for which the license was suspended still exist or are likely to recur, or if Respondent is not otherwise eligible for licensure.

(c) During the period of suspension, the former licensee or appointee shall not engage in or attempt or profess to engage in any transaction or business for which a license or appointment is required under the Insurance Code or directly or indirectly, control, or be employed in any manner by any insurance agent or agency or adjuster or adjusting firm.

(d) Within ten (10) calendar days of the issuance of this order, all licenses issued to Jose F. Suris pursuant to the Florida Insurance Code shall be returned to the Department of Financial Services, Bureau of Licensing, Attention: Bureau of Licensing, 200 East Gaines Street, Tallahassee, Florida 32399-0319.

(e) Any person who knowingly transacts insurance or otherwise engages in insurance activities in this state without a license, or while the license(s) is/are suspended or revoked, commits a felony of the third degree.


NOTICE OF RIGHT TO APPEAL

Any party to these proceedings adversely affected by this Order is entitled to seek review within thirty (30) days of the rendition of this Order, pursuant to section 120.68, Florida Statutes, and Rule 9.190, *Florida Rules of Appellate Procedure*. Review proceedings must be instituted by filing a petition or notice of appeal with Julie Jones, the DFS Agency Clerk. Filing with the Agency Clerk may be accomplished via United States 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 fax number is (850) 488-0697. The email address is Julie.Jones@myfloridacfo.com.

A copy of the petition or notice of appeal must also be filed with the appropriate district court of appeal within thirty (30) days of the rendition of this Order.

DONE and ORDERED this 23rd day of September, 2014.




Greg Thomas
Director, Agent & Agency Services

COPIES FURNISHED TO:

Jose F. Suris
12750 SW 119th Street
Miami, Florida 33186

Greg Thomas, Director
Division of Agent & Agency Services
200 East Gaines Street
Tallahassee, Florida 32399

April Harrell
Senior Attorney
Division of Legal Services
200 East Gaines Street
Tallahassee, Florida 32399



CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

FILED

JAN 24 2014

Docketed by FB

IN THE MATTER OF:

JOSE F. SURIS

CASE NO.: 145207-13-AG

ADMINISTRATIVE COMPLAINT

TO: JOSE F. SURIS
12920 Southwest 133rd Court
Miami, Florida 33186

You, JOSE F. SURIS, are hereby notified that the Chief Financial Officer of the State of Florida has caused to be made an investigation of your activities while licensed as a Surplus Lines Agent (1-20), a Life Including Variable Annuity Agent (2-14), a Life Agent (2-16), a Life Including Variable Annuity & Health Agent (2-15), a Life & Health Agent (2-18), a General Lines (Property & Casualty) Agent (2-20), a Health Agent (2-40), and an All Lines Adjuster (5-20), in this state, as a result of which it is alleged:

GENERAL ALLEGATIONS

1. Pursuant to Chapter 626, Florida Statutes, you, JOSE F. SURIS, are currently licensed in this state as a Surplus Lines Agent (1-20), a Life Including Variable Annuity Agent (2-14), a Life Agent (2-16), a Life Including Variable Annuity & Health Agent (2-15), a Life & Health Agent (2-18), a General Lines (Property & Casualty) Agent (2-20), a Health Agent (2-40), and an All

Lines Adjuster (5-20). Your license I.D. number is A258359.

2. At all times pertinent to the dates and occurrences referred to herein, you, JOSE F. SURIS, were licensed in this state as a Surplus Lines Agent (1-20), a Life Including Variable Annuity Agent (2-14), a Life Agent (2-16), a Life Including Variable Annuity & Health Agent (2-15), a Life & Health Agent (2-18), a General Lines (Property & Casualty) Agent (2-20), a Health Agent (2-40), and an All Lines Adjuster (5-20).

3. Pursuant to Chapter 626, Florida Statutes, the Florida Department of Financial Services (hereinafter "Department") has jurisdiction over your insurance licenses and appointments.

4. According to the Florida Department of State, Division of Corporations, you, JOSE F. SURIS, are President of S&M Financial Group, Inc.

5. At all times relevant to the dates and occurrences referred to herein you, JOSE F. SURIS, were the owner and agent in charge of S&M Financial Group, Inc.

COUNT I

6. The above general allegations are hereby realleged and fully incorporated herein by reference.

7. On May 29, 2013, The Department received documentation from the Florida Surplus Lines Service Office ("FSLSO") that you, JOSE F. SURIS, owe FIVE THOUSAND ONE HUNDRED FIFTY EIGHT AND 24/100 (\$5,158.24) DOLLARS in surplus lines premium taxes, ONE THOUSAND NINE HUNDRED THIRTY AND 68/100 (\$1,930.68) DOLLARS in Florida Hurricane Catastrophe Fund assessments, THREE HUNDRED SEVENTY THREE AND 59/100 (\$373.59) DOLLARS in a tax delinquency penalty, and EIGHTY THREE AND 14/100 (\$83.14) DOLLARS in a Florida Hurricane Catastrophe Fund penalty. The total amount of taxes and assessments, including penalties that you owe to FSLSO is SEVEN THOUSAND FIVE HUNDRED FORTY FIVE AND 65/100 (\$7,545.65) DOLLARS.

8. As of the date of the filing of this Administrative Complaint, you, JOSE F. SURIS, still have an outstanding debt of SEVEN THOUSAND FIVE HUNDRED FORTY FIVE AND 65/100 (\$7,545.65) DOLLARS PLUS INTEREST AND PENALTIES since May 16, 2013, with FSLSO.

IT IS THEREFORE CHARGED that you, JOSE F. SURIS, have violated or are accountable under the following provisions of the Florida Insurance Code and Rules of the Department of Financial Services which constitute grounds for the suspension or revocation of your license and appointments:

(a) Section 626.561(1), Florida Statutes, which provides that all premiums, return premiums, or other funds belonging to insurers or others received by an agent, solicitor, or adjuster in transactions under his license shall be trust funds so received by the licensee in a fiduciary capacity; and the licensee in the applicable regular course of business shall account for and pay the same to the insurer, insured, or other person entitled thereto.

(b) Section 626.611(4), Florida Statutes, which provides that it is a violation for any applicant, agent, title agency, adjuster, customer representative, service representative, or managing general agent to willfully use any license or appointment, or to have a license or appointment used, to circumvent any of the requirements or prohibitions of this code.

(c) Section 626.611(7), Florida Statutes, which provides that it is a violation for any applicant, agent, title agency, adjuster, customer representative, service representative, or managing general agent to demonstrate a lack of fitness or trustworthiness to engage in the business of insurance.

(d) Section 626.611(10), Florida Statutes, which provides that it is a violation for any applicant, agent, title agency, adjuster, customer representative, service representative, or

managing general agent to misappropriate, convert, or unlawfully withhold of moneys belonging to insurers or insureds or beneficiaries or to others and received in conduct of business under the license.

(e) Section 626.611(8), Florida Statutes, which provides that it is a violation for any applicant, agent, title agency, adjuster, customer representative, service representative, or managing general agent to demonstrate a lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by license or appointment.

(f) Section 626.611(9), Florida Statutes, which provides that it is a violation for any applicant, agent, title agency, adjuster, customer representative, service representative, or managing general agent to exhibit fraudulent or dishonest practices in the conduct of business under the license or appointment.

(g) Section 626.611(13), Florida Statutes, which provides that it is a violation for any applicant, agent, title agency, adjuster, customer representative, service representative, or managing general agent to willfully fail to comply with, or willfully violate, any proper order or rule of the department or any provision of this code.

(h) Section 626.621(2), Florida Statutes, which provides that violating any provision of this code or any law applicable to the business of insurance in the course of dealing under the licensure or appointment is, in itself, a violation of law.

(i) Section 626.621(6), Florida Statutes, which provides that it is a violation for any applicant, agent, title agency, adjuster, customer representative, service representative, or managing general agent, in the conduct of business under the license or appointment, to engage in unfair methods of competition or in unfair or deceptive acts or practices, as prohibited under part IX of this chapter, or otherwise show oneself to be a source of injury or loss to the public interest.

(j) Section 626.932(1), Florida Statutes, which provides that the premiums charged for surplus lines coverages are subject to a premium receipts tax of 5 percent of all gross premiums charged for such insurance. The surplus lines agent shall collect from the insured the amount of the tax at the time of the delivery of the cover note, certificate of insurance, policy, or other initial confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. The surplus lines agent is prohibited from absorbing such tax or, as an inducement for insurance or for any other reason, rebating all or any part of such tax or of his or her commission.

(k) Section 626.932(2)(a), Florida Statutes, which provides that the surplus lines agent shall make payable to the Department the tax related to each calendar quarter's business as reported to the Florida Surplus Lines Service Office, and remit the tax to the Florida Surplus Lines Service Office at the same time as provided for the filing of the quarterly affidavit, under s. 626.931. The Florida Surplus Lines Service Office shall forward to the department the taxes and any interest collected pursuant to paragraph (b), within 10 days of receipt.

(l) Section 626.932(2)(b), Florida Statutes, which provides that the agent shall pay interest on the amount of any delinquent tax due, at the rate of 9 percent per year, compounded annually, beginning the day the amount becomes delinquent.

(m) Section 626.932(3), Florida Statutes, which provides that if a surplus lines policy covers risks or exposures only partially in this state and the state is the home state as defined in the federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRA), the tax payable shall be computed on the gross premium. The tax must not exceed the tax rate where the risk or exposure is located.

(n) Section 626.932(6), Florida Statutes, which provides that for the purposes of this section, the term "premium" means the consideration for insurance by whatever name called and includes

any assessment, or any membership, policy, survey, inspection, service, or similar fee or charge in consideration for an insurance contract, which items are deemed to be a part of the premium. The per-policy fee authorized by s. 626.916(4) is specifically included within the meaning of the term "premium." However, the service fee imposed pursuant to s. 626.9325 is excluded from the meaning of the term "premium."

WHEREFORE, you, JOSE F. SURIS, are hereby notified that the Chief Financial Officer intends to enter an Order suspending or revoking your licenses and appointments as an insurance agent or to impose such penalties as may be provided under the provisions of Sections 626.611, 626.621, 626.681, 626.691, and 626.9521, Florida Statutes, and under the other referenced Sections of the Florida Statutes as set out in this Administrative Complaint.

NOTICE OF RIGHTS

You have the right to request a proceeding to contest this action by the Department of Financial Services ("Department") pursuant to Sections 120.569 and 120.57, Florida Statutes, and Rule 28-106, Florida Administrative Code. The proceeding request must be in writing, signed by you, and must be filed with the Department within twenty-one (21) days of your receipt of this notice. Completion of the attached Election of Proceeding form and/or a petition for administrative hearing will suffice as a written request. The request must be filed with DFS Agency Clerk, Julie Jones, Florida Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-0390. Your written response must be received by the Department no later than 5:00 p.m. on the twenty-first day after your receipt of this notice. Mailing the response on the twenty-first day will not preserve your right to a hearing.

**YOUR FAILURE TO RESPOND IN WRITING WITHIN
TWENTY-ONE (21) DAYS OF YOUR RECEIPT OF THIS
NOTICE WILL CONSTITUTE A WAIVER OF YOUR**

**RIGHT TO REQUEST A PROCEEDING ON THE
MATTERS ALLEGED HEREIN AND AN ORDER OF
SUSPENSION OR REVOCATION WILL BE ENTERED
AGAINST YOU.**

If you request a proceeding, you must provide information that complies with the requirements of Rule 28-106.2015, Florida Administrative Code. As noted above, completion of the attached Election of Proceeding form conforms to these requirements. Specifically, your response must contain:

(a) The name, address, and telephone number, and facsimile number (if any) of the respondent (for the purpose of requesting a hearing in this matter, you are the "respondent").

(b) The name, address, telephone number, facsimile number of the attorney or qualified representative of the respondent (if any) upon whom service of pleadings and other papers shall be made.

(c) A statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the petition must so indicate.

(d) A statement of when the respondent received notice of the administrative complaint.

(e) A statement including the file number to the administrative complaint.

If a hearing of any type is requested, you have the right to be represented by counsel or other qualified representative at your expense, to present evidence and argument, to call and cross-examine witnesses, and to compel the attendance of witnesses and the production of documents by subpoena.

If a proceeding is requested and there is no dispute of material fact, the provisions of Section 120.57(2), Florida Statutes, apply. In this regard, you may submit oral or written evidence in opposition to the action taken by the Department or a written statement challenging the grounds upon which the Department has relied. While a hearing is normally not required in the absence of a dispute of fact, if you feel that a hearing is necessary, one will be conducted in Tallahassee, Florida, or by telephonic conference call upon your request.

However, if you dispute material facts which are the basis for the Department's action,

you must request an adversarial proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes. These proceedings are held before a State Administrative Law Judge of the Division of Administrative Hearings. Unless the majority of witnesses are located elsewhere, the Department will request that the hearing be conducted in Tallahassee, Florida.

Failure to follow the procedure outlined with regard to your response to this notice may result in the request being denied. All prior oral communication or correspondence in this matter shall be considered freeform agency action, and no such oral communication or correspondence shall operate as a valid request for an administrative proceeding. Any request for an administrative proceeding received prior to the date of this notice shall be deemed abandoned unless timely renewed in compliance with the guidelines as set out above.

Mediation of this matter pursuant to Section 120.573, Florida Statutes, is not available. No Department attorney will discuss this matter with you until the response has been received by the Department.

DATED and SIGNED this 24th day of January, 2014.



A black rectangular box redacting the signature of Gregory Thomas.

GREGORY THOMAS
Director, Division of Agent and Agency Services

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing ADMINISTRATIVE COMPLAINT and the following ELECTION OF PROCEEDING has been furnished to:

JOSE F. SURIS
12920 Southwest 133rd Court
Miami, Florida 33156-6150

by U.S. Certified Mail, restricted delivery, return receipt requested, this 24th day of January, 2014.



April Harrell
Florida Department of Financial Services
Division of Legal Services
200 East Gaines St.
624-F Larson Building
Tallahassee, Florida 32399-0333
(850) 413-4114
Florida Bar Number 0099437

STATE OF FLORIDA
DEPARTMENT OF FINANCIAL SERVICES
DIVISION OF LEGAL SERVICES

IN THE MATTER OF:

JOSE F. SURIS

CASE NO.: 145207-13-AG

ELECTION OF PROCEEDING

I have received and have read the Administrative Complaint filed by the Florida Department of Financial Services ("Department") against me, including the Notice of Rights contained therein, and I understand my options. I am requesting disposition of this matter as indicated below. **(CHOOSE ONE)**

1. ☐ I do not dispute any of the Department's factual allegations and I do not desire a hearing. I understand that by waiving my right to a hearing, the Department may enter a final order that adopts the Administrative Complaint and imposes the sanctions sought, including suspending or revoking my licenses and appointments as may be appropriate.
2. I do not dispute any of the Department's factual allegations and I hereby elect a proceeding to be conducted in accordance with Section 120.57(2), Florida Statutes. In this regard, I desire to **(CHOOSE ONE)**:
 - ☐ Submit a written statement and documentary evidence in lieu of a hearing; or
 - ☐ Personally attend a hearing conducted by a department hearing officer in Tallahassee; or
 - ☐ Attend that same hearing by way of a telephone conference call.
3. ☐ I do dispute one or more of the Department's factual allegations. I hereby request a hearing pursuant to Section 120.57(1), Florida Statutes, to be held before the Division of Administrative Hearings. I have attached to this election form the information required by Rule 28-106.2015, Florida Administrative Code, as specified in subparagraph (c) of the Notice of Rights. Specifically, I have identified the disputed issues of material fact.

TO PRESERVE YOUR RIGHT TO A HEARING, YOU MUST FILE YOUR RESPONSE WITH THE DEPARTMENT OF FINANCIAL SERVICES WITHIN TWENTY-ONE (21) DAYS OF YOUR RECEIPT OF THE ADMINISTRATIVE COMPLAINT. THE RESPONSE MUST BE RECEIVED BY THE DEPARTMENT NO LATER THAN 5:00 P.M. ON THE TWENTY-FIRST DAY AFTER YOUR RECEIPT OF THE ADMINISTRATIVE COMPLAINT.

The address for filing is: DFS Agency Clerk, Julie Jones, Florida Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-0390.

Signature _____

Print Name _____

Date: _____

Address: _____

Date Administrative
Complaint Received: _____

If you are represented by an attorney or qualified representative, please attach to this election form his or her name, address, telephone and fax numbers

Phone No.: _____

Fax No.: _____