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Docketed by TM T

CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

IN THE MATTER OF

STEPHANIE M. JAMES

Case No. 152905-14-AG

FINAL ORDER

THIS CAUSE came for consideration and final agency action on the Written Report and Recommendation issued on September 29, 2014, attached as Exhibit A.

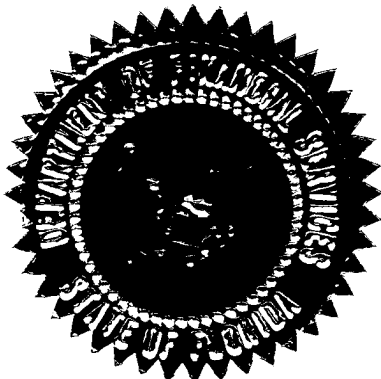
Pursuant to section 120.57(2), Florida Statutes, a hearing was conducted on August 20, 2014, in Tallahassee, Florida via telephonic conference before Hearing Officer Alan J. Leifer.

After review of the record, including testimony and admitted exhibits, and being otherwise fully apprised in all material premises,

IT IS HEREBY ORDERED that the Findings of Fact and the Conclusions of Law of the Hearing Officer are adopted as the Department's Findings of Fact and Conclusions of Law.

IT IS HEREBY FURTHER ORDERED that the Recommendation made by the Hearing Officer is adopted by the Department, and that Stephanie James' license as a resident life including variable annuity and health (2-15) insurance agent be revoked pursuant to section 626.611, Florida Statutes (2014), and Rule 69B-231.150, *Florida Administrative Code*.

DONE and ORDERED this 18th day of November, 2014.



Robert C. Kneip
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."

Copies furnished to:

Rachael Crag-Chaderton, Attorney for Stephanie James

Jessica Harmsen, Attorney for the Department

Alan J. Leifer, Hearing Officer

**FLORIDA DEPARTMENT
OF FINANCIAL SERVICES**

IN THE MATTER OF:

CASE NO.: 152905-14-AG

STEPHANIE M. JAMES
_____ /

WRITTEN REPORT AND RECOMMENDATION

This cause came to be heard via a telephonic informal hearing on August 20, 2014, pursuant to the provisions of section 120.57(2), Florida Statutes. The purpose of the proceeding was to receive evidence and testimony relative to the May 29, 2014, one (1) count Administrative Complaint that was filed by the Florida Department of Financial Services against Stephanie M. James (hereinafter sometimes known as the "Respondent") seeking the suspension or revocation of her insurance agent license based on her felony criminal history.

APPEARANCES

Rachael M. Crag-Chaderton, Esq.
Crag-Chaderton Law Group
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Casselberry, Fl. 32707-2402

Attorney for Stephanie M. James

Rachic Wilson, Esq.
Florida Department of Financial Svcs.
200 East Gaines Street
Tallahassee, Florida 32399

Attorney for Petitioner,
Department of Financial Services

BACKGROUND

Stephanie M. James is currently and at all times material to this proceeding licensed by the Florida Department of Financial Services (hereinafter referred to as the "Petitioner" or "Department") as a resident life including variable annuity and health (2-15) insurance agent.

On May 29, 2014, the Petitioner filed a one (1) count Administrative Complaint against the Respondent seeking to suspend or revoke her insurance agent license due to her criminal history in Case Number 2013-CF-25844-A-O before the Ninth Judicial Circuit Court in and for Orange County Florida. More specifically, the Department cited the Respondent's nolo contendere pleas to one (1) third (3rd) degree felony charge for illegally obtaining food stamps and one (1) third (3rd) degree felony charge of illegally obtaining Medicaid benefits in Case Number 2013-CF-25844-A-O as grounds for the suspension or revocation of her insurance agent licensure.

The Respondent timely filed an executed Election of Proceeding Form requesting a telephonic informal hearing pursuant to the provisions of Section 120.57(2), Florida Statutes, which occurred on August 20, 2014. Both Parties filed Proposed Recommended Orders.

EXHIBITS AND WITNESSES

The Petitioner introduced six (6) exhibits at the hearing that were admitted into evidence without objection and are identified as follows:

- Department's Exhibit 1: A copy of the Department's May 29, 2014, Administrative Complaint filed against the Respondent seeking the suspension or revocation of her insurance agent licensure.
- Department's Exhibit 2: A copy of the Respondent's executed June 10, 2014, Election of Proceeding Form requesting a telephonic informal hearing pursuant to the provisions of Section 120.57(2), Florida Statutes.
- Department's Exhibit 3: A three (3) page copy of the November 13, 2013 Information that was filed in Case Number 2013-CF-15844-A-O, styled as State of Florida vs. Stephanie M. James, before the Ninth Judicial Circuit Court in and for Orange County, Florida.
- Department's Exhibit 4: A one (1) page certification of Nolle Prosequi, in Case Number 2013-CF-15844-A-O, withdrawing Count 1 of the November 13, 2013, Information identified as Department's Exhibit 3.
- Department's Exhibit 5: A one (1) page copy of the March 24, 2014, Judgment entered by the Ninth Judicial Circuit Court in Case Number 2013-CF-15844-A-O.

Department's Exhibit 6: An eight (8) page copy of the Court's March 24, 2014, Order of Probation entered in Case Number 2013-CF-15844-A-O.

The Respondent did not submit any exhibits into evidence, testified on her own behalf, and called her current employer Antoine Malak to testify on her behalf. The Department did not call any witnesses to testify at the informal hearing and both Parties filed Proposed Recommended Orders.

FINDINGS OF FACT

1. For all purposes and times relevant to this proceeding, the Respondent is licensed as a resident life including variable annuity and health (2-15) insurance agent in Florida. (Department's Exhibit 1.)
2. Pursuant to Chapter 626, Florida Statutes, the Department has jurisdiction over the Respondent's insurance agent license and appointments.
3. On March 24, 2014, the Petitioner entered nolo contendere pleas to one (1) third (3rd) degree felony charge for illegally obtaining food stamps and one (1) third (3rd) degree felony charge for illegally obtaining Medicaid benefits in Case Number 2013-CF-25844-A-O, styled as State of Florida vs. Stephanie M. James, before the Ninth Judicial Circuit Court in and for Orange County, Florida. (Department's Exhibit 5.) As a result of her nolo contendere pleas in Case Number 2013-CF-15844-A-O, the Court withheld the adjudication of guilt, ordered the payment of Eleven Thousand, Six Hundred Sixty Five and 84/100 Dollars (\$11,665.84) as restitution, and sentenced the Petitioner to a total of ten (10) years' probation [five (5) years of probation for each charge to be served consecutively]. (Department's Exhibits 5 and 6.)

4. The criminal felony charges against the Respondent, a single mother of three (3) children, are based on her failing to disclose she was employed by American National Insurance Company when she was receiving public assistance [food stamps and Medicare] for the benefit of her children, beginning November 14, 2010 through April 30, 2013. (Department's Exhibit 3 and the Respondent's testimony.)
5. On May 29, 2014, the Department filed a one (1) count Administrative Complaint against the Respondent seeking the suspension or revocation of her resident life including variable annuity and health insurance agent license (2-15) based on a nolo contendere pleas in Case Number 2013-CF-25844-A-O. (Department's Exhibit 1.)
6. The Petitioner timely filed an Election of Proceeding Form requesting a telephonic informal hearing pursuant to the provisions of Section 120.57(2), Florida Statutes, which occurred on August 20, 2014. (Department's Exhibit 2.) Both Parties filed Proposed Recommended Orders.

CONCLUSIONS OF LAW

1. The Department of Financial Services has jurisdiction over the subject matter and the parties to this proceeding, pursuant to chapters 120 and 626, Florida Statutes.
2. Because there are no disputed issues of material fact, this matter is proceeding pursuant to section 120.57(2), Florida Statutes, and principally concerns the issues of determining any penalties under the Florida Insurance Code, including mitigation.
3. Because the Petitioner is seeking to penalize the Respondents' insurance agent license, it has the burden of proving by clear and convincing evidence that the Respondent committed the violations alleged in their Administrative Complaint. Ferris v. Turlington,

510 So. 2d 292 (Fla. 1987); Department of Banking and Finance v. Osborne Stern & Company, 670 So. 2d 932 (Fla. 1996).

4. Section 626.611, Florida Statutes, governs the compulsory suspension or revocation of an insurance agent license, is applicable in this matter, and states in-part as follows:

(1) The department shall ... suspend or revoke the eligibility to hold a license or appointment of any such person if it finds that as to the applicant, licensee or appointee any one or more of the following applicable grounds exist:

...
(n) Having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the laws of the United States of America or of any state thereof or under the law of any country that involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction in such cases.

Section 626.611, Florida Statutes (2014).¹

5. On March 24, 2014, the Respondent entered nolo contendere pleas to one (1) third (3rd) degree felony charge for illegally obtaining food stamps and one (1) third (3rd) degree felony charge of illegally obtaining Medicaid benefits in Case Number 2013-CF-25844-A-O, styled as State of Florida vs. Stephanie M. James, before the Ninth Judicial Circuit Court in and for Orange County, Florida. (Department's Exhibit 5.) More specifically, the Respondent pled nolo contendere to two (2) charges of knowingly failing to disclose a material fact used in making a determination of eligibility to receive public assistance under any state or federal funded assistance program, namely that she was employed by American National Insurance Company. (Department's Exhibits 3 and 5.) *See Florida*

¹ Section 626.611, Florida Statutes was amended by the Legislature, effective as of July 1, 2014, but the substantive statutory provisions relevant to this proceeding are unchanged and were only renumbered. "[T]he agency must apply the law in effect at the time it makes its final decisions". Agency for Health Care Administration v. Mount Sinai Medical Center, 690 So.2d 689, 691 (Fla. 1st DCA 1997).

Statute 414.39(1). The felony crimes to which the Respondent pled nolo contendere in Case Number 2013-CF-25844-A-O are crimes involving moral turpitude and fraud, and section 626.611(1)(n), Florida Statutes mandates the suspension or revocation of her resident life including variable annuity and health (2-15) insurance agent license. Tall v. Mukasey, 517 F.3d 1115, 1119 (9th Cir. 2008).

6. Rule 69B-231.150, Florida Administrative Code, entitled Criminal Proceedings, is applicable in this matter and specifically states in-part as follows:

- (1) While licensed by the Department, if a licensee is convicted of, or been found guilty of or has pled guilty or nolo contendere (no contest) to, a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country, regardless of adjudication, the penalty shall be revocation of all licenses and appointments held by the licensee. The terms of revocation and the conditions for reapplying are contained in Subsection 626.641(2) and Section 626.207, F.S.
- (2)(a) In accordance with Section 626.207, F.S., any licensee, while licensed by the Department, that is convicted of, has pled guilty or nolo contendere (no contest) to, or was found guilty of, a first degree felony, a capital felony, a felony involving money laundering, fraud or embezzlement, or a felony directly related to the financial services business, regardless of adjudication, is permanently barred from applying for reinstatement of any revoked or suspended license and from applying for any license under the Florida Insurance Code.

Rule 69B-231.150, Florida Administrative Code (2013). Pursuant to section 626.611(1)(n), Florida Statutes (2014) and rule 69B-231.150 (2013), the appropriate penalty regarding the Respondent and her felony criminal history is the revocation of her resident life including variable annuity and health insurance agent (2-15) license.

7. At the informal hearing and in her Proposed Recommended Order, the Respondent argues the Department has the discretion under the Florida Insurance Code to order an


administrative suspension followed by probation of the Respondent's insurance agent license, as well as the payment of a Two Thousand Dollar (\$2,000) administrative penalty. However the provisions of Florida Statute 626.611(1)(n) are applicable in this matter and requires the suspension or revocation of the Respondent's insurance agent license based on her March 23, 2014, nolo contendere plea to two (2) felony crimes involving moral turpitude and fraud. Rule 69B-231.150, Florida Administrative Code (2013), is applicable in this matter and specifically mandates the revocation of the Respondent's insurance agent license based on her March 24, 2014, nolo contendere plea to felony crimes punishable by imprisonment of one (1) year or more. Neither this Hearing Officer nor the Department has any discretion to recommend anything other than the revocation of the Respondent's insurance agent license when the Florida Insurance Code expressly requires revocation.

8. The Respondent argues that her status as a single mother, the recommendation by her current employer, her compliance with the Court's Order of Probation in Case Number 2013-CF-25844-A-O, and the financial hardship she would suffer if her insurance agent license were revoked are all mitigating factors that require something less than a license revocation. However, there are no provisions for any mitigating factors that would result in anything less than the revocation of her resident life including variable annuity and health (2-15) insurance agent license.
9. The Department has provided clear and convincing evidence that the Respondent has pled guilty to two (2) felony crimes involving fraud and moral turpitude in Case Number 2013-CF-25844-A-O, before the Circuit Court in and for Orange County, Florida, a violation of Florida Statute 626.611(1)(n), (2014).

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby RECOMMENDED that a Final Order be entered finding the Respondent violated Florida Statute 626.611(1)(n), (2014) as charged in the Department's May 29, 2014, Administrative Complaint based on her nolo contendere pleas in Case Number 2013-CF-15844-A-O, and revoke the Respondent's resident life including variable annuity and health (2-15) insurance agent license pursuant to section 626.611, Florida Statutes (2014) and rule 69B-231.150, Florida Administrative Code (2013).

Respectfully submitted this 29th day of September, 2014.


Alan J. Leifer, Hearing Officer
Department of Financial Services
3700 Lifford Circle
Tallahassee, Florida 32309
Phone: (850)668-9820

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Written Report and Recommendation has been provided to Rachael Crag-Chaderton, Esq., attorney for Stephanie James at 584 Legacy Park Drive, Casselberry, Fl. 32707-2402 and Rachic Wilson, Esquire, Counsel for the Department of Financial Services, at 612 Larson Building, 200 East Gaines Street, Tallahassee, FL 32399-0333 via First Class U.S. Mail this 29th day of September, 2014.


Alan J. Leifer, Hearing Officer