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JAN 30 2015

Docketed by TmT



CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

IN THE MATTER OF:

Case No.: 146771-14-AG

JUAN CARLOS BERNAL

AMENDED FINAL ORDER¹

THIS CAUSE came for consideration and final agency action on the Written Report and Recommendation issued on October 25, 2014, attached as Exhibit A. The Written Report and Recommendation was rendered pursuant to a request by Juan Carlos Bernal ("Bernal") for an informal proceeding after receiving the Administrative Complaint ("Complaint") filed January 21, 2014, by the Department of Financial Services (the "Department"). The Complaint sought to revoke Bernal's license as Resident Customer Representative Insurance (4-40) Agent.

Pursuant to section 120.57(2), Florida Statutes, an informal hearing was conducted via telephonic conference on September 18, 2014, before Hearing Officer Alan J. Leifer in Tallahassee, Florida.

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

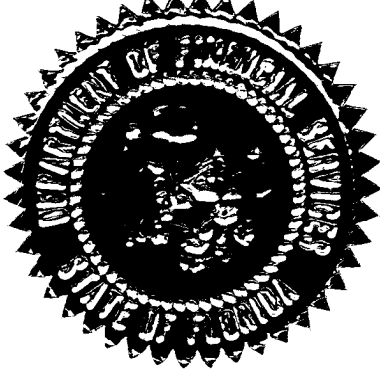
IT IS HEREBY ORDERED that the Findings of Fact and the Conclusions of Law of the Hearing Officer are adopted as the Department's Findings of Fact and Conclusions of Law, except for a scrivener's error relating to the year of Bernal's criminal plea, which is corrected by this Final Order to read November 14, 2013.

IT IS HEREBY FURTHER ORDERED that the Recommendation made by the Hearing Officer is adopted by the Department, and that Bernal's license as a Resident Customer

¹ This Amended Order is issued for the sole purpose of correcting all references in the above action as being a denial of an application for licensure to a revocation of an existing license.

Representative (4-40) Insurance Agent be revoked, based upon his criminal history pursuant to section 626.111, Florida Statutes.

DONE and ORDERED this 30th day of January, 2015.



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:

Stephen Palmer Smith, Esquire
Derick Dehmer, Esquire
Alan J. Leifer, Hearing Officer

FLORIDA DEPARTMENT OF FINANCIAL SERVICES

IN THE MATTER OF:

CASE NO.: 146771-14-AG

JUAN CARLOS BERNAL
_____ /

WRITTEN REPORT AND RECOMMENDATION

This cause came to be heard via a telephonic informal hearing on September 18, 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 January 21, 2014, one (1) count Administrative Complaint that was filed by the Florida Department of Financial Services against Juan Carlos Bernal (hereinafter sometimes known as the "Respondent") seeking the suspension or revocation of his insurance agent license based on his 2013 felony criminal history.

APPEARANCES

Stephen Palmer Smith, Esquire
1502 SE Port Saint Lucie Blvd.
Port Saint Lucie, Florida 34952

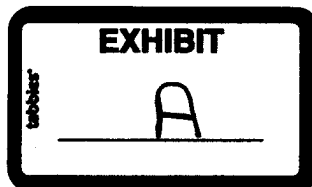
Attorney for Juan Carlos Bernal

Derick Dehmer, Esq.
Florida Department of Financial Svcs.
200 East Gaines Street
Tallahassee, Florida 32399

Attorney for Petitioner,
Department of Financial Services

BACKGROUND

Juan Carlos Bernal 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 customer representative (4-40) insurance agent. On January 21, 2014, the Petitioner filed a one (1) count Administrative Complaint against the Respondent seeking to suspend or revoke his insurance agent license due to his criminal history in Case Number 2013-CF-



2417A, before the Nineteenth Judicial Circuit Court in and for Saint Lucie County, Florida. More specifically, the Department cited the Respondent's nolo contendere plea to one (1) third (3rd) degree felony charge of making false statements for public aid in Case Number 2013-CF-2147A as grounds for the suspension or revocation of his 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 September 18, 2014. Both Parties filed Proposed Recommended Orders.

EXHIBITS AND WITNESSES

The Petitioner introduced four (4) proposed exhibits at the informal hearing that were admitted into evidence without objection and are identified as follows:

- Department's Exhibit A: A two (2) page copy of the Respondent's insurance agent licensure history as maintained by the Department in their insurance agent licensing database.
- Department's Exhibit B: A seventeen (17) page composite exhibit consisting of the Respondent's felony criminal history in Case Number 2013-CF-2147A, styled as State of Florida v. Juan Carlos Bernal, before the Nineteenth Judicial Circuit Court in and for Saint Lucie County, Florida.
- Department's Exhibit C: A copy of the Department's January 21, 2014, one (1) count Administrative Complaint filed against the Respondent seeking the suspension or revocation of his insurance agent licensure.
- Department's Exhibit D: A copy of the Respondent's executed June 20, 2014, Election of Proceeding Form requesting a telephonic informal hearing pursuant to the provisions of section 120.57(2), Florida Statutes, attaching a one (1) page letter from the Respondent.

At the September 18, 2014, telephonic informal hearing, the Respondent testified about completing his Court ordered probation on December 2, 2013, and pointed to a letter from the Florida Department of Corrections confirming the termination. By agreement, the Respondent subsequently provided proposed exhibit A. The Respondent also provided a second exhibit that was attached to his Proposed Recommended Order and is identified as follows:

Respondent's Exhibit A: A one (1) page December 4, 2013, letter from the Florida Department of Corrections confirming the Respondent completed his criminal sentence in Case Number 2013-CF-2147A on December 2, 2013. This exhibit was discussed at the telephonic informal hearing, submitted into evidence immediately after the informal hearing, and is admitted into evidence without objection.

Respondent's Exhibit B: A three (3) page composite exhibit consisting the Respondent's medical records from 2008 that was not discussed at the telephonic informal hearing and was introduced for the first time as an exhibit to the Respondent's Proposed Recommended Order.¹ This Hearing Officer's August 7, 2014, Notice of Hearing and Scheduling Order provided that the Parties were to submit proposed exhibits no later than ten (10) days before the informal hearing unless by agreement of the Parties. It is hereby ORDERED that the Respondent's proposed Exhibit B was not timely filed and will not be admitted into evidence.

The Respondent testified on his own behalf and called Mr. Craig Clinton Campbell, his current employer, to testify on his behalf. The Department did not call any witnesses to testify at the informal hearing and both Parties timely filed Proposed Recommended Orders.

FINDINGS OF FACT

1. For all purposes, since August 19, 2009, and at all times relevant to this proceeding, the Respondent is licensed as a resident customer representative (4-40) insurance agent in Florida. (Department's Exhibit A.)
2. Pursuant to chapters 120 and 626, Florida Statutes, the Department has jurisdiction over the Respondent's insurance agent license and appointments.
3. On November 14, 2014, the Respondent entered a nolo contendere plea to the third (3rd) degree felony crime of making a false statement to obtain public aid in Case Number 2013-CF-2147A, styled as State of Florida vs. Juan Carlos Bernal, before the Nineteenth Judicial Circuit Court in and for Saint Lucie County, Florida. (Petitioner's Exhibit B.) As a result of his nolo contendere plea in Case Number 2013-CF-2147A, the Court withheld the

adjudication of guilt, ordered the payment of Fourteen Thousand, Five Hundred Thirty Nine and 24/100 Dollars (\$14,539.24) as restitution, and sentenced the Respondent to five (5) years of probation with the provision that probation would terminate “immediately upon [the] payment of restitution.” (Id.) The Respondent completed his Court ordered sentence in Case Number 2013-CF-2147A on December 2, 2013, just eighteen (18) days after probation was imposed by the Court. (Department’s Exhibit A.)

4. On January 21, 2014, the Department filed a one (1) count Administrative Complaint against the Respondent seeking the suspension or revocation of his resident customer representative insurance agent license (4-40) based on his nolo contendere plea in Case Number 2013-CF-2147A. (Department’s Exhibit C.)
5. 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 September 18, 2014. (Department’s Exhibit D.) Both Parties timely 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

¹ The Respondent timely filed his Proposed Recommended Order three (3) days after the Department filed their Proposed Recommended Order. There is no indication in the Department’s Proposed Recommended Order they had seen or knew of the Respondent’s proposed Exhibit B.

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.²

(Emphasis added.)

5. On November 14, 2014, the Respondent entered a nolo contendere plea to the third (3rd) degree felony crime of making a false statement to obtain public aid in Case Number 2013-CF-2147A, styled as State of Florida vs. Juan Carlos Bernal, before the Nineteenth Judicial Circuit Court in and for Saint Lucie County, Florida. (Petitioner's Exhibit B.) The felony crime to which the Respondent pled nolo contendere in Case Number 2013-CF-2147A, by its' nature, is a crime that is "inherently fraudulent" and having as an element the intent to defraud "is clearly a crime involving moral turpitude". Tall v. Mukasey, 517 F.3d 1115, 1119 (9th Cir. 2008). Section 626.611(1)(n), Florida Statutes mandates the suspension or revocation of the Respondent's resident customer representative (4-40) insurance agent license based on his nolo contendere plea to a felony crime involving moral turpitude.

6. In his Proposed Recommended Order and at the informal hearing, the Respondent argues that Florida Statute 626.621 is applicable in this matter and provides both this Hearing Officer and the Department discretion to impose a penalty less than the suspension or revocation of his insurance agent license. What the Respondent fails to recognize is that section 626.621, Florida Statutes is only applicable if the felony crime to which a licensee pled nolo contendere or guilty **does not** involve moral turpitude. Section 626.621, Florida Statutes is not applicable in this matter because the crime to which the Petitioner pled nolo contendere in Case Number 2013-CF-2147A is a crime involving moral turpitude.
7. The Respondent also argues he never knowingly made false statements to gain public aid, had no intent to defraud anyone, cooperated with the State's investigation, and was the one who brought his employment to the State's attention in the first place. (Department's Exhibit D.) The Respondent testified he was a single parent who gained the custody of his child, learned public assistance was available to help raise his child, and acted in good faith. While what the Respondent argues may be true, it does not change the fact that he entered a plea of nolo contendere to a Florida felony crime involving fraud and moral turpitude in Case Number 2013-CF-2147A. (Department's Exhibit B.)
8. 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

² The Respondent's Felony Plea Form in Case Number 2013-CF-2147A reflects the maximum possible penalty of ten (10) years in prison for the felony crime to which he pled nolo contendere.

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 and rule 69B-231.150 (2013), the appropriate penalty regarding the Respondent and his felony criminal history is the revocation of his resident customer representative insurance agent (4-40) license.

9. The Respondent argues that his cooperation with the State, the recommendation by his current employer, that he has no prior felony criminal history, timely paid his Court ordered restitution, and was only on probation for eighteen (18) days are all mitigating factors that require something less than the revocation of his insurance agent license. However, there are no provisions for the consideration of any mitigating factors regarding an appropriate penalty whenever a licensed insurance agent enters a nolo contendere plea to a felony crime involving moral turpitude and fraud. 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.
10. The Department has provided clear and convincing evidence that the Respondent has pled nolo contendere to a felony crime involving fraud and moral turpitude in Case Number 2013-CF-2147A, a violation of Florida Statute 626.611(1)(n).

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) as charged in the Department's January 21, 2014, Administrative Complaint based on his nolo contendere plea to a felony crime involving moral turpitude and fraud in Case Number 2013-CF-15844-A-O, and revoke the Respondent's resident customer representative (4-40) insurance agent license.

Respectfully submitted this 25th day of October, 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 Stephen Palmer Smith, Esq., attorney for Juan Carlos Bernal at 1502 South East Port Saint Lucie Boulevard, Port Saint Lucie, Florida 34952 and Derick Dehmer, 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 25th day of October, 2014.


Alan J. Leifer, Hearing Officer

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Docketed by

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CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

IN THE MATTER OF

JUAN CARLOS BERNAL

Case No.: 146771-14-AG

FINAL ORDER

THIS CAUSE came for consideration and final agency action on the Written Report and Recommendation issued on October 25, 2014, attached as Exhibit A. The Written Report and Recommendation was rendered pursuant to a request by Juan Carlos Bernal ("Bernal") for an informal proceeding after receiving a Notice of Denial ("Notice") from the Department of Financial Services, Division of Insurance Agent and Agency Services (the "Department"), dated January 21, 2014. The Notice denied Bernal's application for licensure as a Resident Customer Representative (4-40) Insurance Agent.

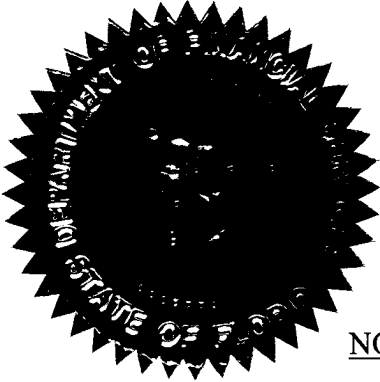
Pursuant to section 120.57(2), Florida Statutes, an informal hearing was conducted via telephonic conference on September 18, 2014, before Hearing Officer Alan J. Leifer in Tallahassee, Florida.


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, except for a scrivener's error relating to the year of Bernal's criminal plea, which is corrected by this Final Order to read November 14, 2013.

IT IS HEREBY FURTHER ORDERED that the Recommendation made by the Hearing Officer is adopted by the Department, and that Bernal's application for licensure as a Resident Customer Representative (4-40) Insurance Agent is denied, based upon his criminal history pursuant to section 626.111, Florida Statutes.

DONE and ORDERED this 17th day of December, 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.

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Copies furnished to:

Stephen Palmer Smith, Esquire
Derick Dehmer, Esquire
Alan J. Leifer, Hearing Officer

FLORIDA DEPARTMENT OF FINANCIAL SERVICES

IN THE MATTER OF:

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JUAN CARLOS BERNAL
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WRITTEN REPORT AND RECOMMENDATION

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APPEARANCES

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1502 SE Port Saint Lucie Blvd.
Port Saint Lucie, Florida 34952

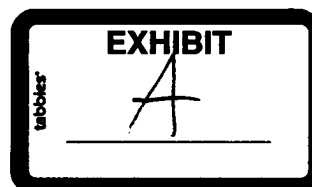
Attorney for Juan Carlos Bernal

Derick Dehmer, Esq.
Florida Department of Financial Svcs.
200 East Gaines Street
Tallahassee, Florida 32399

Attorney for Petitioner,
Department of Financial Services

BACKGROUND

Juan Carlos Bernal 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 customer representative (4-40) insurance agent. On January 21, 2014, the Petitioner filed a one (1) count Administrative Complaint against the Respondent seeking to suspend or revoke his insurance agent license due to his criminal history in Case Number 2013-CF-



2417A, before the Nineteenth Judicial Circuit Court in and for Saint Lucie County, Florida. More specifically, the Department cited the Respondent's nolo contendere plea to one (1) third (3rd) degree felony charge of making false statements for public aid in Case Number 2013-CF-2147A as grounds for the suspension or revocation of his insurance agent licensure.

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EXHIBITS AND WITNESSES

The Petitioner introduced four (4) proposed exhibits at the informal hearing that were admitted into evidence without objection and are identified as follows:

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Respondent's Exhibit A: A one (1) page December 4, 2013, letter from the Florida Department of Corrections confirming the Respondent completed his criminal sentence in Case Number 2013-CF-2147A on December 2, 2013. This exhibit was discussed at the telephonic informal hearing, submitted into evidence immediately after the informal hearing, and is admitted into evidence without objection.

Respondent's Exhibit B: A three (3) page composite exhibit consisting the Respondent's medical records from 2008 that was not discussed at the telephonic informal hearing and was introduced for the first time as an exhibit to the Respondent's Proposed Recommended Order.¹ This Hearing Officer's August 7, 2014, Notice of Hearing and Scheduling Order provided that the Parties were to submit proposed exhibits no later than ten (10) days before the informal hearing unless by agreement of the Parties. It is hereby ORDERED that the Respondent's proposed Exhibit B was not timely filed and will not be admitted into evidence.

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FINDINGS OF FACT

1. For all purposes, since August 19, 2009, and at all times relevant to this proceeding, the Respondent is licensed as a resident customer representative (4-40) insurance agent in Florida. (Department's Exhibit A.)
2. Pursuant to chapters 120 and 626, Florida Statutes, the Department has jurisdiction over the Respondent's insurance agent license and appointments.
3. On November 14, 2014, the Respondent entered a nolo contendere plea to the third (3rd) degree felony crime of making a false statement to obtain public aid in Case Number 2013-CF-2147A, styled as State of Florida vs. Juan Carlos Bernal, before the Nineteenth Judicial Circuit Court in and for Saint Lucie County, Florida. (Petitioner's Exhibit B.) As a result of his nolo contendere plea in Case Number 2013-CF-2147A, the Court withheld the

adjudication of guilt, ordered the payment of Fourteen Thousand, Five Hundred Thirty Nine and 24/100 Dollars (\$14,539.24) as restitution, and sentenced the Respondent to five (5) years of probation with the provision that probation would terminate “immediately upon [the] payment of restitution.” (*Id.*) The Respondent completed his Court ordered sentence in Case Number 2013-CF-2147A on December 2, 2013, just eighteen (18) days after probation was imposed by the Court. (Department’s Exhibit A.)

4. On January 21, 2014, the Department filed a one (1) count Administrative Complaint against the Respondent seeking the suspension or revocation of his resident customer representative insurance agent license (4-40) based on his nolo contendere plea in Case Number 2013-CF-2147A. (Department’s Exhibit C.)
5. 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 September 18, 2014. (Department’s Exhibit D.) Both Parties timely 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

¹ The Respondent timely filed his Proposed Recommended Order three (3) days after the Department filed their Proposed Recommended Order. There is no indication in the Department’s Proposed Recommended Order they had seen or knew of the Respondent’s proposed Exhibit B.

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.²

(Emphasis added.)

5. On November 14, 2014, the Respondent entered a nolo contendere plea to the third (3rd) degree felony crime of making a false statement to obtain public aid in Case Number 2013-CF-2147A, styled as State of Florida vs. Juan Carlos Bernal, before the Nineteenth Judicial Circuit Court in and for Saint Lucie County, Florida. (Petitioner's Exhibit B.) The felony crime to which the Respondent pled nolo contendere in Case Number 2013-CF-2147A, by its' nature, is a crime that is "inherently fraudulent" and having as an element the intent to defraud "is clearly a crime involving moral turpitude". Tall v. Mukasey, 517 F.3d 1115, 1119 (9th Cir. 2008). Section 626.611(1)(n), Florida Statutes mandates the suspension or revocation of the Respondent's resident customer representative (4-40) insurance agent license based on his nolo contendere plea to a felony crime involving moral turpitude.

6. In his Proposed Recommended Order and at the informal hearing, the Respondent argues that Florida Statute 626.621 is applicable in this matter and provides both this Hearing Officer and the Department discretion to impose a penalty less than the suspension or revocation of his insurance agent license. What the Respondent fails to recognize is that section 626.621, Florida Statutes is only applicable if the felony crime to which a licensee pled nolo contendere or guilty **does not** involve moral turpitude. Section 626.621, Florida Statutes is not applicable in this matter because the crime to which the Petitioner pled nolo contendere in Case Number 2013-CF-2147A is a crime involving moral turpitude.
7. The Respondent also argues he never knowingly made false statements to gain public aid, had no intent to defraud anyone, cooperated with the State's investigation, and was the one who brought his employment to the State's attention in the first place. (Department's Exhibit D.) The Respondent testified he was a single parent who gained the custody of his child, learned public assistance was available to help raise his child, and acted in good faith. While what the Respondent argues may be true, it does not change the fact that he entered a plea of nolo contendere to a Florida felony crime involving fraud and moral turpitude in Case Number 2013-CF-2147A. (Department's Exhibit B.)
8. Rule 69B-231.150, Florida Administrative Code, entitled Criminal Proceedings, is applicable in this matter and specifically states in-part as follows:
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² The Respondent's Felony Plea Form in Case Number 2013-CF-2147A reflects the maximum possible penalty of ten (10) years in prison for the felony crime to which he pled nolo contendere.

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 and rule 69B-231.150 (2013), the appropriate penalty regarding the Respondent and his felony criminal history is the revocation of his resident customer representative insurance agent (4-40) license.

9. The Respondent argues that his cooperation with the State, the recommendation by his current employer, that he has no prior felony criminal history, timely paid his Court ordered restitution, and was only on probation for eighteen (18) days are all mitigating factors that require something less than the revocation of his insurance agent license. However, there are no provisions for the consideration of any mitigating factors regarding an appropriate penalty whenever a licensed insurance agent enters a nolo contendere plea to a felony crime involving moral turpitude and fraud. 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.
10. The Department has provided clear and convincing evidence that the Respondent has pled nolo contendere to a felony crime involving fraud and moral turpitude in Case Number 2013-CF-2147A, a violation of Florida Statute 626.611(1)(n).

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) as charged in the Department's January 21, 2014, Administrative Complaint based on his nolo contendere plea to a felony crime involving moral turpitude and fraud in Case Number 2013-CF-15844-A-O, and revoke the Respondent's resident customer representative (4-40) insurance agent license.

Respectfully submitted this 25th day of October, 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 Stephen Palmer Smith, Esq., attorney for Juan Carlos Bernal at 1502 South East Port Saint Lucie Boulevard, Port Saint Lucie, Florida 34952 and Derick Dehmer, 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 25th day of October, 2014.



Alan J. Leifer, Hearing Officer