

**FILED**

MAR 31 2015

Docketed by MC



CHIEF FINANCIAL OFFICER  
JEFF ATWATER  
STATE OF FLORIDA

IN THE MATTER OF

Case No. 157571-14-AG

JEAN E. FRANCOIS

FINAL ORDER

THIS CAUSE came for consideration and final agency action on the Written Report and Recommendation issued on January 26, 2015, attached as Exhibit A.

Pursuant to section 120.57(2), Florida Statutes, a hearing was conducted on January 8, 2015, in Tallahassee, Florida, via telephonic conference before Hearing Officer William L. Camper.

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 hearing officer's findings of fact are adopted except the second finding of fact is amended to correct a scrivener's error by inserting the number "(2)" before subparagraph (c) of the quoted statutory provision. Further, paragraph 15 is modified to read as follows:

15. Rule 69B-231.150(1), *Florida Administrative Code*, states that the penalty for a licensee who has pled nolo contendere to a felony is revocation of the license. Rule 69B-231.150(2)(a), *Florida Administrative Code*, further states that the penalty for a licensee who has pled nolo contendere to a felony directly related to the financial

services business, regardless of adjudication, is a permanent bar to reinstatement of a license.

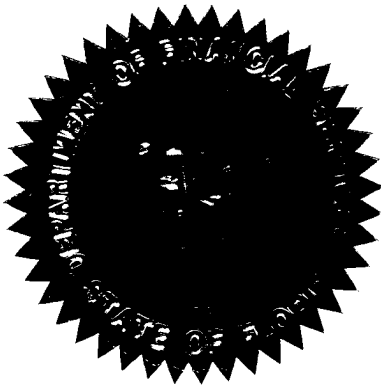
In addition, the following sentence is added to the end of paragraph 19:

Section 626.207(3), Florida Statutes, permanently bars an applicant for licensure who has committed a felony related to the financial services industry as has Mr. Francois.

These conclusions of law are as or more reasonable than that which they replace.

IT IS HEREBY FURTHER ORDERED that the hearing officer's recommendation is adopted by the Department, except that the reference to section 626.621(8), Florida Statutes, is replaced with a reference to section 626.207(3), Florida Statutes, and that Jean E. Francois' licensure as a life including variable annuity and health agency and customer representative is revoked pursuant to section 626.611(1)(n), Florida Statutes, and he is permanently barred from licensure pursuant to section 626.207(3), Florida Statutes (2014).

DONE and ORDERED this 31<sup>st</sup> day of March, 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](mailto:Julie.Jones@myfloridacfo.com)."

Copies furnished to:

Jean E. Francois, Petitioner  
Colin McLaughlin, Attorney for the Department  
William L. Camper, Hearing Officer



CHIEF FINANCIAL OFFICER  
JEFF ATWATER  
STATE OF FLORIDA

DEPARTMENT OF FINANCIAL SERVICES,  
Petitioner,

DFS Case No.: 157571-14-AG

V.

JEAN E. FRANCOIS,  
Respondent.

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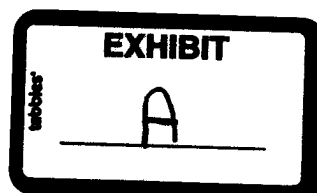
**WRITTEN REPORT**  
**AND RECOMMENDED ORDER**

Pursuant to Section 120.57(2), Florida Statutes, and written notice, a hearing was held in this case before William L. Camper, a duly-appointed Hearing Officer of the Department of Financial Services, on January 8<sup>th</sup>, 2015, by telephone conference. The purpose of the hearing was the Department's proposed suspension and revocation of Respondent's Insurance license due to his having plead nolo contendere to Grand Theft, a third degree felony.

**APPEARANCES**

For Petitioner:      Conor J. McLaughlin, Esq.  
Department of Financial Services  
Division of Legal Services  
612 Larson Building  
200 East Gaines Street  
Tallahassee, Florida 32399-0333

For Respondent:      Jean E. Francois, pro se  
11828 NW 28<sup>th</sup> Street  
Coral Springs, FL 33065



## **BACKGROUND**

On October 1, 2014, the Department of Financial Services ("Department") filed an Administrative Complaint against Jean E. Francois ("Respondent" or "Licensee"). The Administrative Complaint alleged that the Respondent, Jean E. Francois, violated certain provisions of the Florida Insurance Code by pleading nolo contendere to grand theft, a third degree felony, which included funds from State Farm Insurance Company. In accordance with sections 626.611(2) and 626.207(4), Florida Statutes, the Department immediately issued a Notice of Temporary Suspension on October 1, 2014, due to the nature of the crime and its direct relation to the financial services business. Mr. Francois did not dispute the factual allegations in the Administrative Complaint and, by submitting an Election of Proceeding form to the Department, requested to attend a hearing conducted by a Department hearing officer by telephone. Pursuant to the Notice of Hearing and Scheduling Order for a Section 120.57(2) hearing, a telephone hearing was held on January 8, 2015 in Tallahassee, Florida.

The Department timely filed its Proposed Recommended Order. The Respondent submitted a post hearing Termination Of Probation document and a letter from attorney, Andrew Coffey.

## **EXHIBITS AND WITNESSES**

The Respondent testified on his own behalf at the hearing. The Department did not call any witnesses to testify. The Department submitted five (5) exhibits that were admitted into evidence at the hearing without objection, and are identified as follows:

**Exhibit A** – Department Automated Licensing Information System (ALIS) Printout.

**Exhibit B** – Criminal history documents from the Circuit Court, Seventeenth Judicial Circuit, in and for Broward County, Florida.

**Exhibit C** – Notice of Temporary Suspension (10-01-2014) and Erratum Order (10-22-14)

**Exhibit D** – Administrative Complaint (10-01-2014)

**Exhibit E** – Election of Proceeding Form and accompanying letter from Respondent (10-14-2014)

The Respondent did not submit any exhibits, but did present testimony that his probation was completed following the date of filing of the Administrative Complaint, and he indicated he would forward, subsequent to the hearing, a document indicating the termination of his probation

### **FINDINGS OF FACT**

1. Pursuant to chapter 626, Florida Statutes, Jean E. Francois is currently licensed in this state as a life including variable annuity and health and a customer representative. [Respondent's Exhibit A].

2. On May 15, 2014, the Respondent pled nolo contendere to one count of grand theft, a third degree felony under §812.014, Florida Statutes, which included funds from State Farm Insurance Company and which reads:

(1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:

(a) Deprive the other person of a right to the property or a benefit from the property.

(b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

...  
(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

3. Valued at \$10,000 or more, but less than \$20,000.

3. Adjudication of guilt was withheld. Respondent successfully completed his probation on November 13, 2014. [Exhibit B].

4. As the result of this criminal record, the Department filed an Administrative Complaint notifying Respondent of its intention to suspend or revoke his license as an insurance agent [Exhibit D].

5. In Response to the Administrative Complaint, Respondent filed an Election Of Proceeding form admitting there were no material facts in dispute and requested a 120.57(2), Florida Statutes, hearing. [Exhibit E]

### CONCLUSIONS OF LAW

6. The Department of Financial Services has jurisdiction over the subject matter of, and the parties to this proceeding pursuant to chapters 626 and 624, Florida Statutes, and section 120.57(2), Florida Statutes.

7. By electing a proceeding pursuant to section 120.57(2), Florida Statutes, Respondent admits that no material facts are in dispute.

8. The Administrative Complaint filed against the Respondent cited sections 626.611(1)(n), and 626.621(8), Florida Statutes as grounds for suspension or revocation of the license. [Exhibit D].

9. At all times material to the instant case, section 626.611(1), Florida Statutes, has read:

"The department shall ... suspend revoke, or refuse to renew or continue the license or appointment of any applicant, agent..., and it 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 grounds exist:

...

(n) Having been found guilty of or to entering a plea of guilty or nolo contendere to a felony or a crime punishable by imprisonment of one (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 which involves moral turpitude, without regard to whether a judgment or conviction has been entered by the court having jurisdiction of such cases."

10. At all times material to the instant case, section 626.621(8), Florida Statutes, has read:

The department may, in its discretion ... suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent ... and it may suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, license, or appointee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

...  
(8) 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 law of the United States of America or of any state thereof or under the law of any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases."

11. The Department must prove by clear and convincing evidence that Respondent committed the violations alleged in the administrative complaint. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

12. There is clear and convincing evidence in the record to establish that the Respondent pled nolo contendere to grand theft, a third degree felony, with adjudication of guilt withheld, and which included funds from State Farm Insurance Company. [Exhibit B; hearing testimony] This is a felony of moral turpitude.

13. The Fifth District Court of Appeal of Florida has held that "stealing (or theft) is a crime of dishonesty." Hamilton v. State, 447 So. 2d 1008 (Fla. 5th DCA 1984). The court stated that "it is well settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude." Id. at 1008.

14. Other Florida agencies have found theft and larceny to be a crime of moral turpitude. "[C]ases have uniformly held crimes involving dishonest dealings, perjury, fraud, embezzlement, larceny, robbery, and all common law crimes involve moral turpitude." Dep't of Bus. and Professional Regulation, Div. of Real Estate v. Schooley, Case No. 84-3053 (Fla. Div. of Admin. Hearings March 14, 1985). Further, the Florida Bar has found that an attorney convicted of grand



theft had violated the Code of Professional Responsibility, Rule 1-102(A)(3), "Participating in Conduct Involving Moral Turpitude." The Fla. Bar v. Wilson, 643 So. 2d 1063 (1994).

15. Rule 69B-231.150(1), *Florida Administrative Code*, states that the penalty for a licensee who has pled nolo contendere to a felony which involves moral turpitude and is a crime involving breach of trust or dishonesty is revocation of licensure. Fla. Admin. Code R. 69B-231.150(1) (2013). Rule 69B-231.150(2)(a), *Florida Administrative Code*, states that any licensee who has pled nolo contendere to 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. Fla. Admin. Code R. 69B-231.150(2)(a) (2013).

16. Should Respondent's crime not be considered to directly involve the financial services business, Rule 69B-231.150(2)(b), *Florida Administrative Code*, states that a 15-year period of ineligibility applies to a licensee who has pled nolo contendere to a felony involving moral turpitude. Fla. Admin. Code R. 69B-231.150(2)(b) (2013). This period of ineligibility begins upon completion of licensee's criminal sentence, including payment of fines, restitution, and court costs. Id. See also In the matter of Rene Jose Sanchez, Department of Financial Services Case No. 137088-13-AG (2014).

17. Thus, considering this base punishment, and the aggravating factors addressed below, Respondent's license should be revoked.<sup>1</sup>

18. Rule 69B-231.150, *Florida Administrative Code*, contemplates lengthier suspensions and revocations, and the mitigation discussed in Rule 69B-231.160 applies to those higher penalties.

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<sup>1</sup> "If it is found that the licensee has violated any of the following subsections of Section 626.621, F.S., for which suspension or revocation of license(s) and appointment(s) is discretionary, the following stated penalty shall apply." R. 69B-231.150, Fla. Admin Code.

- a. Respondent, age 54 at the time of the crime, had the maturity and experience to be fully aware of the criminal nature of his actions; his age does not mitigate the underlying criminal action.
- b. Respondent is held to a higher standard as a licensee of the Department.
- c. The purported mitigation presented by Respondent at the hearing, that his probation had terminated, does not evince sufficient rehabilitation to mitigate the required penalty. It merely reflects a successful completion of his criminal penalty.


19. The Legislature does not take criminal activity by its licensees under the Insurance Code lightly. "[T]he business of insurance so directly affects the public that it is generally conceded to be affected with a public interest, and, being so, is subject to regulation and control by the Legislature." State ex rel. Kennedy v. Knott, 123 Fla. 295, 301 (Fla. 1936). In light of its duty to regulate those who may perform the fiduciary role of insurance agent, adjuster, customer representative, managing general agent, the Legislature passed section 626.207, Florida Statutes (2011) ("Disqualification of applicants and licensees; penalties against licensees; rulemaking authority.") Section 626.207, Florida Statutes reveals recent legislative intent to impose a disqualification period on licensees and applicants who have recent criminal history. Knowles v. Beverly Enterprises-Florida, Inc., 898 So. 2d, 1, 5 (Fla. 2004)(holding that, when determining the legislative intent behind a particular statute, one must look first to the language of the statute and its plain meaning").

#### **RECOMMENDATION**

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a Final Order be entered by the Department: 1) finding Respondent guilty

of the violations of section 626.611(1)(n) and section 626.621(8), Florida Statutes, as charged in the Administrative Complaint; and 2) recommending that the Department revoke Respondent's licenses and appointments issued or granted under or pursuant to the Florida Insurance Code.

Respectfully submitted by the Department this 26<sup>th</sup> day of January, 2015.

  
William L. Camper  
Hearing Officer  
3979 Meandering Lane  
Tallahassee, Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Written Report and Recommended Order has been furnished to Jean E. Francois by U.S. mail at 11828 NW 28<sup>th</sup> Street, Coral Springs, FL 33065; and to Conor McLaughlin, Esq. Department of Financial Services, by U.S. Mail, this 26<sup>th</sup> day of January, 2015.

  
William L. Camper