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Commerca Bank of Tampa

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STATE OF FLORIDA  
DEPARTMENT OF BANKING AND FINANCE  
DIVISION OF BANKING

DEPARTMENT OF BANKING AND FINANCE, )  
DIVISION OF BANKING, ) Administrative Proceeding  
) No. 3140-B-2/93  
Petitioner, )  
)  
vs. )  
)  
ORLANDO GARCIA, )  
)  
Respondent. )  
)

FINAL ORDER

This matter came before Terence Straub, appointed Hearing Officer for the Department of Banking and Finance, Division of Banking (Department), upon written submissions as directed by the Order Cancelling Informal Hearing and Designating Procedures for Written Submissions dated August 18, 1993. The undersigned Hearing Officer makes his findings based upon the pleadings, memorandum and other documents duly submitted by the parties.

STATEMENT OF ISSUES

The issue for consideration in this matter is whether the removal and **prohibition** of Respondent from participating in the conduct of the affairs of a financial institution in this state pursuant to Section 655.037, Florida Statutes, as alleged in the Administrative Complaint filed herein, is appropriate.

PRELIMINARY STATEMENT

1. On April 5, 1993, the Department issued to Respondent Orlando Garcia (Garcia) an Administrative Complaint for Removal and **Prohibition** with Notice of Rights (Complaint) pursuant to Section 655.037, Florida Statutes.

2. On May 11, 1993, the law firm of Lazzara, Caskey and Paul, P.A., accepted

service on behalf of Garcia.

3. On July 8, 1993, Garcia filed his Amended Petition for Hearing which requested an informal hearing.

4. On July 20, 1993, the Department issued an Order Granting Informal Hearing, Appointing Informal Hearing Officer and Notice of Informal Hearing wherein the undersigned was appointed as Informal Hearing Officer in this matter.

5. On August 18, 1993, upon request of Garcia, the undersigned hearing officer entered an Order Cancelling Informal Hearing and Designating Procedures for Written Submissions.

6. On August 26, 1993, Garcia filed his written submissions, in the form of a Memorandum, with the Department.

7. On August 30, 1993, the Department submitted its Memorandum of Law in Support of Proposed Departmental Action, Notice of Filing and Petitioner's Request for Official Recognition.

8. The following findings are made after careful consideration of the written submissions of the parties.

#### FINDINGS OF FACT

9. The Findings of Fact in the Complaint, being supported by the evidence and uncontroverted by Garcia, are hereby accepted as true and correct, incorporated by reference as if fully set forth herein and adopted as the findings of fact of this Final Order.

#### CONCLUSIONS OF LAW

10. The Department has jurisdiction over this proceeding and Garcia, and is empowered to enforce the provisions of Chapter 655, Florida Statutes, pursuant to Sections 655.001 and 655.012, Florida Statutes.

11. The Department concludes as a matter of law that by virtue of his criminal conviction in USA v. Garcia, Case No. 92-56- CR-T-99(C) (D.C.M.D.Fla., Tampa Div. 1993) (criminal conviction), Garcia has engaged in conduct that is an unsafe and unsound practice.

12. The Department concludes as a matter of law that by virtue of his criminal conviction Garcia has engaged in conduct that is a violation of law involving fraud or moral turpitude which constitutes a felony.

13. The Department concludes as a matter of law that by virtue of his criminal conviction Garcia has engaged in conduct that is an act of commission or omission or a practice which is a breach of trust or a breach of fiduciary duty to a financial institution in this state.

14. The Department concludes as a matter of law that while the evidence submitted by Garcia may have justified a lighter sentence for the acts which resulted in his criminal conviction, it does not support the mitigation of the penalty proposed by the Department in this matter.

FINAL ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

ORDERED that pursuant to Section 655.012 and 655.037, Florida Statutes, ORLANDO GARCIA is hereby removed and prohibited from participating in the conduct of the affairs of any financial institution in this state.

It is further ORDERED that pursuant to Section 655.037(7), Florida Statutes, ORLANDO GARCIA is hereby deemed ineligible for election to any official position in or employment by any financial institution in this state except with prior written consent of the Department from the effective date of this Final Order.

DONE AND ORDERED in Tallahassee, Leon County, Florida this 24th day of September, 1993.

/S/ \_\_\_\_\_  
Terence Straub, Hearing Officer

/S/ \_\_\_\_\_  
GERALD LEWIS, as Comptroller of the  
State of Florida and Head of the  
Department of Banking and Finance

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK AND A SECOND COPY,

ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE CLERK OF THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THIS ORDER TO BE REVIEWED.

Copies furnished to:

Susan E. Steinberg  
Assistant General Counsel  
Office of Comptroller  
1313 Tampa Street, Suite 615  
Tampa, Florida 33602-3394

#### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Final Order has been furnished by U.S. Mail to Edward Suarez, Esquire, Lazzara, Caskey and Paul, P.A., Attorneys for Garcia, 606 Madison Street, Suite 2001, Tampa, Florida 33602 and to Orlando Garcia at 12107 Hill Street, Tampa, Florida 33612 this 27th day of September, 1993.

/S/ \_\_\_\_\_  
Albert T. Gimbel  
Chief Banking Counsel  
Office of Comptroller  
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