

**FILED**

FEB 22 2010

Docketed by     



REPRESENTING  
**ALEX SINK**  
CHIEF FINANCIAL OFFICER  
STATE OF FLORIDA

IN THE MATTER OF:

FOUR SEASONS TOURS AND CRUISES,  
INC.

CASE NO.: 105532-09-AG

NOTICE OF INTENT TO ISSUE CEASE AND DESIST ORDER

FOUR SEASONS TOURS AND CRUISES, INC.  
8380 Ulmerton Road, Suite 314  
Largo, Florida 33771

You, FOUR SEASONS TOURS AND CRUISES, INC. ("FOUR SEASONS"), are hereby notified that the Chief Financial Officer of the State of Florida has caused to be made an investigation of your activities in this state, as a result of which it is alleged:

GENERAL ALLEGATIONS

1. At all times relevant herein, FOUR SEASONS was a Florida Corporation with a business address at 8380 Ulmerton Road, Suite 314, Largo, Florida, 33771.
2. At all times relevant herein, Nancy Sue Pemberton and Elmer Lee Pemberton were the officers and directors of FOUR SEASONS.
3. You, FOUR SEASONS, do not currently hold a travel insurance license pursuant to Section 626.321(1)(c), Florida Statutes, or appointments pursuant to Section 626.112(1)(a), Florida Statutes.

4. At all times pertinent to the dates and occurrences referred to herein, you, FOUR SEASONS, did not hold a travel insurance license pursuant to Section 626.321(1)(c), Florida Statutes, or the necessary appointments pursuant to Section 626.112(1)(a), Florida Statutes.

5. Section 624.401, Florida Statutes, provides that no person shall act as an insurer, and no insurer or its agents, attorneys, subscribers, or representatives shall directly or indirectly transact insurance in this state except as authorized by a subsisting Certificate of Authority issued to the insurer by the Florida Office of Insurance Regulation (“OIR”).

6. Section 624.04, Florida Statutes, defines “person” and includes “company”, “corporation”, and “every legal entity” in the definition.

7. Section 624.09, Florida Statutes, provides that an “unauthorized insurer” is an insurer which is not duly authorized by a subsisting certificate of authority issued by OIR to transact insurance in this state.

8. Section 624.10, Florida Statutes, provides that transacting insurance includes any of the following, in addition to other applicable provisions of this code: 1) solicitation or inducement; 2) preliminary negotiations; 3) effectuation of a contract of insurance; and 4) transaction of matters subsequent to effectuation of a contract of insurance and arising out of it.

9. Pursuant to Chapter 626, Florida Statutes, the Florida Department of Financial Services (“Department”) has jurisdiction over you, FOUR SEASONS, and the business of travel insurance.

#### COUNT I

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

11. On or about September 19, 2007, D.R. of Lady Lake, Florida purchased four (4) travel packages, for herself and three travel companions from you, FOUR SEASONS.

12. On or about August 18, 2008, D.R. purchased travel insurance for herself and three travel companions, covering the aforementioned travel packages from you, FOUR SEASONS.

13. The travel insurance you, FOUR SEASONS, sold D.R., on or about August 18, 2008, was with Prime Travel Protection, Inc.

14. The aforementioned transactions of insurance were handled by Elmer Lee Pemberton, a travel consultant and corporate officer of FOUR SEASONS, who was not licensed or appointed as a (2-41) travel insurance agent at the time.

15. Subsequent to the purchase, D.R. and her three travel companions cancelled their travel arrangements due to an illness of one of the travelers. Travel insurance claims were filed, which have not been paid.

16. Prime Travel Protection, Inc. has never held a license or Certificate of Authority to transact insurance in Florida.

17. You, FOUR SEASONS, directly or indirectly acted as agent for, or otherwise represented or aided Prime Travel Protection, Inc. in the unauthorized transaction of travel insurance.

IT IS THEREFORE CHARGED that you, FOUR SEASONS, have violated or are accountable under one or more of the following provisions of the Florida Statutes or Florida Administrative Code, which constitutes grounds for the imposition of a cease and desist order and fines:

(a) No person may be, act as, or advertise or hold himself or herself out to be an insurance agent, insurance adjuster, or customer representative unless he or she is currently

licensed by the department and appointed by an appropriate appointing entity or person. [Section 626.112(1)(a), Florida Statutes];

(b) No individual or entity shall transact travel insurance without a license. [Section 626.321(1)(c), Florida Statutes];

(c) No person shall directly or indirectly represent or aid any insurer not then authorized to transact such insurance in this state or from this state in the solicitation, negotiation, procurement, or effectuation of insurance or annuity contracts with respect to subjects of insurance resident, located, or to be performed in this state or any other state. [Section 626.901(1), Florida Statutes];

(d) If an unauthorized insurer fails to pay in full or in part any claim or loss within the provisions of any insurance contract which is entered into in violation of this section, any person who knew or reasonably should have known that such contract was entered into in violation of this section and who solicited, negotiated, took application for, or effectuated such insurance contract is liable to the insured for the full amount of the claim or loss not paid. [Section 626.901(2), Florida Statutes];

(e) Engaging in the business of insurance without being properly licensed. [Section 626.9571(1), Florida Statutes]; and

(f) Engaging in the unlawful transaction of insurance. [Section 626.9581, Florida Statutes].

## COUNT II

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

19. On or about June 26, 2007, J.D. of Belleville, Michigan purchased two (2) travel packages for himself and his wife from you, FOUR SEASONS.

20. On or about July 20, 2007, J.D. purchased travel insurance covering the aforementioned travel packages from you, FOUR SEASONS.

21. The travel insurance you, FOUR SEASONS, sold J.D., on or about July 20, 2007, was with Traveler Protection Services, Inc.

22. The aforementioned transactions of insurance were handled by Elmer Lee Pemberton, a travel consultant and corporate officer of FOUR SEASONS, who was not licensed or appointed as a (2-41) travel insurance agent at the time.

23. Subsequent to the purchase, J.D. and his wife cancelled their travel arrangements due to an illness of J.D. Travel insurance claims were filed, which have not been paid.

24. Traveler Protection Services, Inc. has never held a license or Certificate of Authority to transact insurance in Florida.

25. You, FOUR SEASONS, directly or indirectly acted as agent for, or otherwise represented or aided Travel Protection Services, Inc. in the unauthorized transaction of travel insurance.

IT IS THEREFORE CHARGED that you, FOUR SEASONS, have violated or are accountable under one or more of the following provisions of the Florida Statutes or Florida Administrative Code, which constitutes grounds for the imposition of a cease and desist order and fines:

(a) No person may be, act as, or advertise or hold himself or herself out to be an insurance agent, insurance adjuster, or customer representative unless he or she is currently

licensed by the department and appointed by an appropriate appointing entity or person. [Section 626.112(1)(a), Florida Statutes];

(b) No individual or entity shall transact travel insurance without a license. [Section 626.321(1)(c), Florida Statutes];

(c) No person shall directly or indirectly represent or aid any insurer not then authorized to transact such insurance in this state or from this state in the solicitation, negotiation, procurement, or effectuation of insurance or annuity contracts with respect to subjects of insurance resident, located, or to be performed in this state or any other state. [Section 626.901(1), Florida Statutes];

(d) If an unauthorized insurer fails to pay in full or in part any claim or loss within the provisions of any insurance contract which is entered into in violation of this section, any person who knew or reasonably should have known that such contract was entered into in violation of this section and who solicited, negotiated, took application for, or effectuated such insurance contract is liable to the insured for the full amount of the claim or loss not paid. [Section 626.901(2), Florida Statutes];

(e) Engaging in the business of insurance without being properly licensed. [Section 626.9571(1), Florida Statutes]; and

(f) Engaging in the unlawful transaction of insurance. [Section 626.9581, Florida Statutes].

WHEREFORE, you, FOUR SEASONS, are hereby notified that the Chief Financial Officer intends to enter an Order requiring you to Cease and Desist selling unauthorized travel insurance and imposing other such penalties as may be provided under the provisions of Sections 626.9571, 626.9581, and 626.901, Florida Statutes, any referenced sections of the Florida

Statutes as set out in this Notice, and under any other applicable section of the Florida Insurance Code or Florida Administrative Code.

You, FOUR SEASONS, are further notified that any person who violates a Cease and Desist order of the Department shall be subject, at the discretion of the Department, to a monetary penalty of not more than fifty thousand (\$50,000.00) dollars pursuant to Sections 626.9581 and 626.9601, Florida Statutes.

#### NOTICE OF RIGHTS

You have the right to request a proceeding to contest this action by the 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 Julie Jones, Agency Clerk, at the Florida Department of Financial Services, 612 Larson Building, 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 A CEASE AND DESIST ORDER WILL BE ENTERED AGAINST YOU. VIOLATION OF THE ORDER TO CEASE AND DESIST WILL SUBJECT YOU TO FINE UP TO \$50,000, PURSUANT TO SECTIONS 626.9581 AND 626.9601, FLORIDA STATUTES.

If you request a proceeding, you must provide information that complies with the requirements of Rule 28-106.201(2), 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 and address of each [state] agency affected and each [state] agency's file or identification number, if known;

(b) The name, address, and telephone number of the Petitioner; the name, address, and telephone number of the Petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the Petitioner's substantial interests will be affected by the Department's determination;

(c) A statement of when and how the Petitioner received notice of the Department's decision;

(d) A statement of all disputed issues of material fact. If there are none, the Petition must so indicate;

(e) A concise statement of the ultimate facts alleged, including the specific facts the Petitioner contends warrant reversal or modification of the Department's proposed action;

(f) A statement of the specific rules or statutes the Petitioner contends require reversal or modification of the Department's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

(g) A statement of the relief sought by the Petitioner, stating precisely the action Petitioner wishes the Department to take with respect to the Department's proposed action.



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.

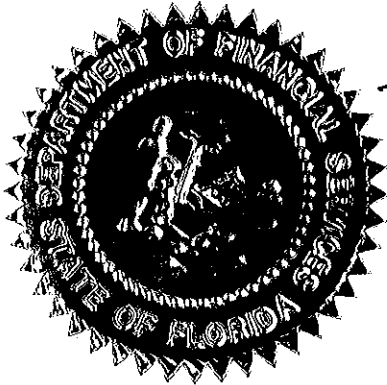
If a proceeding is requested and there is no dispute of material fact, the provisions of section 120.57(2), Florida Statutes, apply. In this regard, you may submit oral or written evidence in opposition to the action taken by the Department or a written statement challenging the grounds upon which the 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 that 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 2<sup>nd</sup> day of February 2010.



*Nancy A. Rowell*

NANCY ROWELL  
Director, Division of Agent & Agency Services

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing NOTICE OF INTENT TO ISSUE CEASE AND DESIST ORDER and ELECTION OF PROCEEDING have been furnished to FOUR SEASONS TOURS AND CRUISES, INC., 8380 Ulmerton Road, Suite 314, Largo, Florida 33771 via U.S. Certified Mail, restricted delivery, this ~~22<sup>nd</sup>~~ February 2010.



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Philip Payne, Esquire  
Division of Legal Services  
200 East Gaines St.  
612 Larson Building  
Tallahassee, Florida 32399-0333  
(850) 413-4156

STATE OF FLORIDA  
DEPARTMENT OF FINANCIAL SERVICES  
DIVISION OF LEGAL SERVICES

IN THE MATTER OF:

FOUR SEASONS TOURS AND CRUISES,  
INC.

CASE NO.: 105532-09-AG

ELECTION OF PROCEEDING

I have received and have read the NOTICE OF INTENT TO ISSUE CEASE AND DESIST ORDER 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 Notice of Intent to Issue Cease and Desist Order 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 28-106.201(2), Florida Administrative Code, as specified in 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 NOTICE OF INTENT TO ISSUE CEASE AND DESIST ORDER. 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 NOTICE OF INTENT TO ISSUE CEASE AND DESIST ORDER.

The address for filing is: Julie Jones, Agency Clerk, Florida Department of Financial Services, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0390.

Signature \_\_\_\_\_

Print Name \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

Date

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.: \_\_\_\_\_