

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

STATE OF FLORIDA,
DEPARTMENT OF FINANCIAL
SERVICES,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

Petitioner,

CASE NO. 1D06-3486

v.

VINCENT ROBERT FUGETT, SR.,

Respondent.

_____ /

Opinion filed December 27, 2006.

Petition for Review -- Original Jurisdiction.

Angelique Knox, Counsel for the Department of Financial Services, Tallahassee.

Vincent Robert Fugett, Sr., pro se, Respondent.

PER CURIAM.

The Department of Financial Services (DFS) petitions this court for review of a non-final order entered by an administrative law judge (ALJ) of the Department of

Administrative Hearings, recommending that DFS enter a final order determining that Respondent's application to be licensed as an insurance agent "has been granted by operation of law" under the default provision of section 120.60(1), Florida Statutes. We have jurisdiction to review a non-final administrative order under section 120.68(1), Florida Statutes, and Florida Rule of Appellate Procedure 9.190(b)(2) when review of the final agency action would not provide an adequate remedy. We have stated that the scope of review in such a matter "is analogous to and no broader than the right of review by common law certiorari," see Charlotte County v. Gen. Dev. Utilities, Inc., 653 So. 2d 1081, 1084 (Fla. 1st DCA 1995).

We find that the ALJ, who *sua sponte* raised and decided the issue of default after the final hearing without giving the parties an opportunity to present evidence and/or argument, departed from the essential requirements of law by denying DFS due process, for which the remedy of appeal following the conclusion of the administrative proceedings will be inadequate. The challenged recommended order is therefore QUASHED, and the case is REMANDED to the ALJ for further proceedings consistent with this opinion.

ERVIN, BARFIELD, and POLSTON, JJ., CONCUR.