v. Stephenson, 498 So.2d 673, 676 (Fla. 1st DCA 1986) and Florida Rules of Civil Procedure, Rule 1.510(f) as to the motion for continuance.

Affirmed as modified.

Rolando POZO, Appellant,

v.

Guadalupe PRADA, Appellee.

No. 89-2811.

District Court of Appeal of Florida, Third District.

May 29, 1990.

Rehearing Denied July 25, 1990.

Bank officer sought relief from judgment entered for coventurer in fraud action. The Circuit Court, Dade County, Milton M. Friedman, J., denied relief, and bank officer appealed. The District Court of Appeal, Ferguson, J., held that final order of State Comptroller and Head of the Department of Banking and Finance dismissing professional misconduct charges against bank officer did not entitle bank officer to relief from earlier judgment for inducing coventurer, in venture unrelated to position as bank officer, to part with her funds in reliance on fraudulent misrepresentations.

Affirmed.

Cope, J., filed specially concurring opinion.

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Final order of State Comptroller and Head of the Department of Banking and Finance dismissing professional misconduct charges against bank officer did not entitle officer to relief from earlier judgment entered in favor of coventurer in fraud action for inducing coventurer, in venture unrelated to position as bank officer, to part with her funds in reliance on fraudulent misrepresentations. West's F.S.A. RCP Rule 1.540(b)(5).

Zuckerman, Spaeder, Taylor & Evans and Michael S. Pasano and Humberto J. Pena and Guy A. Rasco, Miami, for appellant.

Joseph S. Paglino and Frank Wolland, Miami, for appellee.

Before FERGUSON, COPE and GERSTEN, JJ.

FERGUSON, Judge.

In March 1983, after a nonjury trial, the court entered a judgment awarding the appellee $22,000 in damages on a finding that she had been defrauded by the appellant in a commercial transaction. In December 1987, an administrative tribunal found the appellant not guilty of professional misconduct charges, brought by the Florida Department of Banking and Finance, arising out of the same transaction. It was alleged, in the administrative charges, that the appellant had violated professional standards as a bank officer. Finding that the appellee was not a credible witness, the administrative hearing officer recommended a denial of the Department's petition to remove the appellant from his position as a bank officer. The State Comptroller and Head of the Department of Banking and Finance entered a final order dismissing the administrative charges. Armed with that administrative disposition, the appellant sought relief from the earlier judgment, relying on Florida Rule of Civil Procedure 1.540(b)(5) which provides:

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, decree, order or proceeding for the following reasons: ... (5) the judgment or decree has been satisfied, released or discharged or a prior judgment or decree upon which it is based has been reversed or otherwise vacated or it is no longer

equitable that the judgment or decree have prospective application.

We affirm for the following reasons. First, the judgment of the trial court was not based upon, nor was it dependent upon, any findings made by the administrative tribunal. *See Jacksonville Maritime Ass'n v. City of Jacksonville,* 551 F.Supp. 1130 (M.D.Fla.1982) (where an agency determination will not materially aid the court, judiciary need not defer its ruling). Second, the finding of the administrative tribunal that the appellant did not violate his responsibilities as a bank officer, is separate from the question decided in the trial court, i.e., whether the appellant, as co-venturer with the appellee, and unrelated to his position as a bank officer, took advantage of the appellee, by misleading words or conduct, inducing her to part with her funds in reliance on his fraudulent misrepresentations. An administrative action brought by the state in the public interest is distinct from a private action seeking compensation for damages based on the same occurrence. *See Albrecht v. State,* 444 So.2d 8 (Fla.1984), *superseded by statute on other grounds as stated in, Bowen v. Dep't. of Envtl. Reg.,* 448 So.2d 566 (Fla. 2d DCA 1984).

In addressing the single issue presented by this appeal, we conclude that there is no clear showing of abuse of discretion by the trial court in its ruling that the facts developed at the administrative hearing were not of such a nature that execution of the judgment would be against good conscience. *Weitzman v. F.I.F. Consultants, Inc.,* 468 So.2d 1085 (Fla. 3d DCA) (citing 30 Am.Jur.2d *Executions* § 636 (1967)), *rev. denied,* 479 So.2d 117 (Fla.1985).

Affirmed.

COPE, Judge (specially concurring).

I join the opinion but add that the scope of the "prospective application" clause of Rule 1.540(b)(5), Florida Rules of Civil Procedure, is unsettled as applied to a judgment for money damages, apart from the unique circumstances involved in *Weitzman v. F.I.F. Consultants, Inc.,* 468 So.2d 1085 (Fla. 3d DCA), *review denied,* 479 So.2d 117 (Fla.1985). *See State ex rel. Metropolitan Dade County v. American Bankers Ins. Co.,* 558 So.2d 539 (Fla. 3d DCA 1990) (on rehearing); *see also Curtiss-Wright Corp. v. Diaz,* 507 So.2d 1197, 1198 (Fla. 3d DCA 1987), *approved on other grounds,* 519 So.2d 610 (Fla.1988). *See generally DeClaire v. Yohanan,* 453 So.2d 375 (Fla.1984).

FIVE BROTHERS CONSTRUCTION CORPORATION, Appellant,

v.

Haydee J. FERRER and Francisco Ferrer, Appellees.

Nos. 89-2902, 89-2784.

District Court of Appeal of Florida, Third District.

June 5, 1990.

Rehearing Denied July 27, 1990.

An Appeal from the Circuit Court for Dade County; Jon I. Gordon, Judge.

Mallory H. Horton, Miami, for appellant.

Appel & Brown and Anthony J. Brown, Miami, for appellees.

Before COPE, GERSTEN and GODERICH, JJ.

PER CURIAM.

We affirm the final judgment in favor of appellees Haydee and Francisco Ferrer, who were plaintiffs below in a dog bite case. There was sufficient evidence from which the jury could find that appellant landlord knew of the presence of tenant's dog and its vicious propensities, *see Olave v. Howard,* 547 So.2d 349, 350 (Fla. 3d DCA 1989), *Vasques v. Lopez,* 509 So.2d 1241 (Fla. 4th DCA 1987); *Anderson v. Walthal,* 468 So.2d 291 (Fla. 1st DCA 1985), and the trial court properly overruled landlord's