

**STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

In the Matter of **David W. Hite.**

) **FINAL ORDER**
) Case No. INS 02-12-011

The Director of the Oregon Department of Consumer and Business Services (director) commenced this administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 731.256, to take enforcement action against David W. Hite (Hite).

On January 16, 2003, the director issued a Notice of Proposed Action, pursuant to ORS 183.415 and related rules. The notice informed Hite that the director proposed to take certain enforcement action against Hite, that Hite was entitled to a hearing, and that Hite had to request a hearing in writing within 21 days if Hite wanted a hearing. The notice also informed Hite that the record of the proceeding then to date, including the designated portion of the Insurance Division's file on Hite, would automatically become part of the contested case record for purposes of proving a prima facie case if Hite did not request a hearing within the time allowed to make the request.

The director did not receive a request for a hearing.

The director reviewed the designated portion of the Insurance Division's investigation file on Hite and found that it proves a prima facie case.

Therefore, director now makes the following final decision in this proceeding in accordance with ORS 731.248 and 183.470, and related rules.

Findings of Fact and Conclusions of Law

Licensing

Hite has been licensed in Oregon as a nonresident insurance agent since 8/7/02. Hite's current license number is 180153. Hite's last recorded residence was in Caribou, Maine.

Convicted of a Crime

Hite is subject to disciplinary action pursuant to ORS 744.074(1)(f) in three instances because of the following circumstances:

1. On 12/14/88, Hite was convicted by the Circuit Court for Leon County, Florida, in the criminal case entitled *State of Florida v. David W. Hite*, number 88-6912, of one count of the crime of passing a worthless bank check, a misdemeanor in the first degree, pursuant to Florida Statutes §832.05 (2002). Hite committed the above crime by issuing a check, number 228, dated 6/?/88, in the amount of \$10, to Publix Super Market in Tallahassee, Florida, in exchange for cash, knowing at such time that Hite did not have sufficient funds in the account upon which the check was drawn to pay the check when presented for payment, and failing to pay the check within seven days after being sent notice that the check was dishonored.

2. On 12/14/88, Hite was convicted by the Circuit Court for Leon County, Florida, in the criminal case entitled *State of Florida v. David W. Hite*, number 88-8788, of one count of the crime of passing a worthless bank check, a misdemeanor in the first degree, pursuant to Florida Statutes §832.05 (2002). Hite committed the above crime by issuing a check, number 227, dated 6/20/88, in the amount of \$15, to a different Publix Super Market in Tallahassee, Florida, in exchange for cash, knowing at such time that Hite did not have sufficient funds in the account upon which the check was drawn to pay the check when presented for payment, and failing to pay the check within seven days after being sent notice that the check was dishonored.

3. On 3/13/92, Hite was convicted by the Circuit Court for Leon County, Florida, in the criminal case entitled *State of Florida v. David Hite*, number 90-909, of one count of the crime of passing a worthless bank check, a misdemeanor, pursuant to Florida Statutes §832.05 (2002). Hite committed the above crime by issuing a check, number 112, dated 11/22/89, in the amount of \$177.18, to "Harveys" in Tallahassee, Florida, in exchange for cash and merchandise, knowing at such time that Hite did not have sufficient funds in the account upon which the check was drawn to pay the check when presented for payment, and failing to pay the check within seven days after being sent notice that the check was dishonored.

Each of the above three crimes, if committed in Oregon, would be either the crime of theft by deception, a misdemeanor, pursuant to ORS 164.055 and 164.085;

or the crime of negotiating a bad check, also a misdemeanor, pursuant to ORS 164.055. Each such crime is a misdemeanor involving moral turpitude because it requires intent and involves dishonesty as well as harm to a specific person. *See In re Chase*, 299 Or 391, 402, 702 P2d 1082 (1985)(a crime involving moral turpitude requires the elements of intent; fraud, deceit or dishonesty; and harm to a specific person); *In re Carstens*, 297 Or 155, 163 (1984)(theft is a misdemeanor involving moral turpitude).

Made False Statement on License Application

Hite violated ORS 744.074(1)(a) in one instance by engaging in the following conduct. On 7/31/02, the Insurance Division received from Hite an application dated 6/27/02 for an Oregon nonresident insurance agent license. Hite answered "Yes" to question 1 which asked "Have you ever been convicted of, or are you currently charged with, committing a crime, whether or not adjudication was withheld?" Hite's answer was false and he knew that it was false. Hite disclosed that he had been convicted on or about 8/8/01 by the Sagadahoc County Superior Court in the State of Maine, in the criminal case entitled *State of Florida v. David W. Hite*, case number BATSC-CR-1999-00179, of the crime of driving under the influence, pursuant to Main Revised Statutes Title 29-A §2411. However, Hite did not disclose that he had been convicted of the other three crimes described above.

Order

Pursuant to ORS 744.013(1) (1999) and 744.074(1), the Oregon license as an insurance agent issued to Hite shall be revoked on the date of this order.

Notice of Judicial Review

Pursuant to ORS 183.480 and 183.482, Hite may request the Oregon Court of Appeals to review this order by filing a written petition for judicial review with the court within 60 calendar days after the date this order was sent to Hite.

Dated May 6, 2003

/s/ Cory Streisinger
Cory Streisinger
Director
Department of Consumer and Business Services