

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
INSURANCE DIVISION**

**In the Matter of** ) **Case No: INS 02-10-016**  
 )  
**MICHAEL C. EATON** ) **PROPOSED ORDER**  
 )

**HISTORY OF CASE**

On January 15, 2003, the Director of the Department of Consumer and Business Services, Insurance Division (the director or department) issued a Notice of Proposed Action (Notice) proposing to revoke the Oregon insurance agent license issued to Michael C. Eaton (Respondent) pursuant to ORS 744.013(2)(a)(1999). Respondent requested a hearing challenging the proposed action. On January 17, 2003, the department referred this matter to the Office of Administrative Hearings (OAH), formerly the Hearing Officer Panel<sup>1</sup> for hearing.

On November 20, 2003, Administrative Law Judge Ella D. Johnson conducted a hearing in this matter. Assistant Attorney General Kathleen Dahlin represented the department. Respondent appeared by telephone from Florida and represented himself *pro se*. The department called Insurance Division Investigator Ruth C. Johnson and Respondent as witnesses. Respondent also testified on his own behalf. The record closed on November 20, 2003.

**ISSUES**

(1) Whether Respondent violated ORS 744.013(2)(g) in six instances from December 3, 1999 to November 13, 2000 by misrepresenting to American Standard Insurance Company of Wisconsin (ASIC)<sup>2</sup> that an insured under an auto insurance policy issued by ASIC was covered under a homeowner insurance policy also issued by ASIC, and therefore, entitled to a 20 percent discount in the premium on the auto insurance policy.

(2) Whether these violations, if proven, warrant revocation of Respondent's Oregon insurance agent license.

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<sup>1</sup> The name of the Hearing Officer Panel was changed to the Office of Administrative Hearings by House Bill 2526, which became effective on the Governor's signature on May 22, 2003.

<sup>2</sup> The reference to ASIC also includes American Family Insurance inasmuch as they are part of the same insurance company.

## EVIDENTIARY RULINGS

The department's Exhibits A1 through A46 were received into the record without objection.

### FINDINGS OF FACT

(1) Respondent was first licensed as an insurance agent in Oregon on January 27, 1998. Respondent's license expired due to non-renewal on January 31, 2003. Respondent now lives in Coconut Creek, Florida. (Ex. A1) During this period of time, Respondent worked with two other agents who were subsequently terminated which left him to work their files. He became overwhelmed. (Test. of Respondent.)

(2) Agents are responsible for knowing the underwriting rules in writing policies. ASIC's underwriting rules allowed for a 20 percent Auto and Home Premium Advantage Discount (Advantage Discount) on auto insurance provided that the insured also had a homeowner or renter policy on their primary residence with ASIC which was effective the same date that the Advantage Discount was applied to the auto policy. ASIC required that an active homeowner policy number be entered into the computer in order for the discount to be processed or within 30 days the agent would receive notification of the problem in the form of a "ticket" and within 40 days from the date the discount was added, the discount would be removed. (Exs. A3, A43, A44.) An agent could generally receive a policy number for a new homeowner policy within 24 hours of notifying the company. (Ex. 46.)

(3) Teresa Green was Respondent's unlicensed customer services representative. One of her duties was to perform data entry. (Ex. 45.) Due to ASIC's underwriting rules and the perceived delay in processing new homeowner policies, Ms. Green began using Janice Abbagliato's homeowner policy number to reserve the discount for insureds who did not as yet have an ASIC homeowner policy. Later, Respondent told her to use his homeowner insurance policy number in case there was a problem. When she received the insured's new policy number, she would try to replace the false policy number with the correct number, but sometimes she forgot to change the numbers. Respondent told her that he had authorization from ASIC District Manager Shawn Hunter for this practice. (Exs. 45, 46; test. of Johnson.)

(4) On December 18, 1999, Respondent added the Advantage Discount to the auto policy issued to insureds Erick Burkinshaw and Brandy Butchek. Respondent used the homeowner policy number 36PO1544-01 OPT MCE002 belonging to James Fransico Burley to qualify Erick Burkinshaw and Brandy Butchek for the discount. On January 18, 2000, the discount was taken off and then put back on using Mr. Burley's policy number. On December 20, 2000, the discount was again removed. No homeowner policy was ever issued to Erick Burkinshaw and/or Brandy Butchek. (Exs. A9 – A15, A39, A43.)

(5) On November 15, 1999, Respondent wrote an ASIC auto policy for Jon Weirick and Natasha Mitchell and gave them a 20 percent Advantage Discount for also having their homeowner policy with ASIC. On February 15, 2000, Respondent used homeowner policy

number 36P-10142-01 OPT ID MCE002 for another insured named Steve Weirick to receive the discount. Although related as father and son, Steve Weirick and Jon Weirick lived in different residences. On November 10, 2000, Respondent replaced the homeowner policy number belonging to Steve Weirick with Respondent's own homeowner policy number. On December 20, 2000, Respondent replaced his policy number with homeowner policy number 36D-06368-01 OPT ID MCE002 for insured Natasha Mitchell. The Advantage Discount was subsequently removed and then added back and then removed and not put back on the auto policy. The discount should not have been applied until July 10, 2000. (Exs. A4 – A8, A39, A43; test. of Johnson.)

(6) On July 13, 2000, Respondent wrote an ASIC auto policy for John Percich and gave him a 20 percent Advantage Discount for also having his homeowner policy with ASIC. Respondent used homeowner policy number 36PO-5604-01 for another insured named Janice Abbagliato to receive the discount. The insured's ASIC homeowner policy was not written for six months, until January 23, 2001. The insured had four theft claims during the six-month period, two of which were paid. (Ex. A3.)

(7) On July 20, 2000, Respondent added the Advantage Discount to the auto policy of Jessica Bella. Respondent used the homeowner policy number 36P-05604-01 OPT ID MCE002 belonging to Janice Abbagliato to qualify Ms. Bella for the discount. On November 20, 2000, the policy number belonging to Ms. Abbagliato was replaced with homeowner policy number 36D-30967-01 belonging to insureds Jeffrey Wack and Jessica Bella. The Advantage Discount should not have been applied until December 4, 2000. (Exs. A16- A24, A39, A43.)

(8) On August 26, 2000, Respondent added the Advantage Discount to the auto policy of Mitica Leontescu and used homeowner policy number 36P05604014 belonging Janice Abbagliato to qualify the policy for the 20 percent discount. (Exs. 39, 43.) The Advantage Discount should not have been applied to the auto policy until March 1, 2001. (Ex. A43.)

(9) On November 13, 2000, Respondent added the Advantage Discount to the auto policy belonging to insureds Daryl and Lori Brosig. Respondent used his own homeowner policy number 36P-00247-01 OPT ID MCE002 to qualify insureds Daryl and Lori Brosig for the discount. On December 20, 2000, Respondent replaced his own homeowner policy number with homeowner policy number 36D-14590-01 OPT ID MCE002 belonging to the insureds. The discount should not have been applied until November 16, 2000. (Ex. A25 – A38, A39, A43.)

(10) In December 2000, ASIC discovered that Respondent was providing the Advantage Discount for some time to many of his clients who did not qualify for the discount. To qualify the insureds for the discount, Respondent had used the policy numbers of other insureds who had homeowner or renter insurance policies. He even used his own homeowner policy number to qualify a number of insureds for the 20 percent Advantage Discount and then changed it to the insured's policy number after the insured's homeowner or renter policy was written. Respondent also used the policy number for the insured named Janice Abbagliato numerous times. Mr. Hunter told Respondent that he could not continue this practice and directed Respondent to conduct an audit of his active policies to determine on which auto policies had used another insured's homeowner policy number to qualify for the discount. The logins on the insureds'

policies at issue here indicated that they were personally entered by Respondent. (Exs. 3, 45, 46; test. of Johnson.)

(11) On May 4, 2001, Kenneth W. Martin, ASCI Regional Services Manager, notified the department that Respondent's agent agreement was terminated for cause on April 17, 2001 for intentional misconduct pursuant to ORS 744.175(2)(d). Mr. Martin stated that Respondent had knowingly violated company underwriting rules and rates by applying discounts on insureds that did not meet the eligibility requirements for the discount. (Exs. 2, 3.)

### CONCLUSIONS OF LAW

(1) Respondent violated ORS 744.013(2)(g) in six instances from December 3, 1999 to November 13, 2000 by misrepresenting to ASIC that an insured under an auto insurance policy issued by ASIC was insured under a homeowner policy also issued by ASIC, and therefore, entitled to a 20 percent discount in the premium on the auto policy.

(2) The department has proven these violations and revocation of Respondent's Oregon insurance agent license is warranted.

### OPINION

The issues to be resolved in this agent sanction case are whether Respondent violated ORS 744.013(2)(g) in six instances and whether these violations warrant revocation of Respondent's Oregon insurance agent license. In this regard, the department has the burden of proving the allegations and the propriety of the sanction by a preponderance of the evidence. *See* ORS 183.450(2) and (5); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position.); *Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of evidence means that the fact finder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989).

#### Violations

The department alleges that Respondent violated ORS 744.013(2)(g) (1999) in six instances. ORS 744.013(2)(g) (1999) provides in relevant part:

(2) The director may take any disciplinary action under subsection (1)<sup>3</sup> of this section on one or more of the following grounds:

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<sup>3</sup>Subsection 1 of ORS 744.013 states:

(1) If the Director of the Department of Consumer and Business Services finds with respect to an applicant or licensee that one or more of the grounds set forth in subsection (2) of this section exist, the director may take the following disciplinary actions:

\* \* \* \* \*

(g) Use of a fraudulent or dishonest practice by the licensee in the conduct of business under the license, or demonstration therein that the licensee is incompetent, untrustworthy or a source of injury and loss to the public or others.

The evidence establishes that Respondent was providing the Advantage Discount to insureds who did not qualify for the discount. To qualify the insureds for the discount, Respondent used the policy numbers of other insureds who had homeowner or renter insurance policies. He used his own homeowner policy number to qualify a number of insureds for the 20 percent discount on the auto insurance. He changed the number sometimes in excess of six months later to the insured's correct homeowner policy number after the insured's policy was written.

Respondent testified that the practice was in response to problems he and other agents had with the insurer's billing system. He also attributed the use of other insured's homeowner policy numbers to typographical errors by his unlicensed customer service representative, Ms. Green. He blamed what he viewed as the wrongful termination of his agent contract on the insurer's desire to save money by getting rid of experienced productive agents and assigning the policies to agents making half as much as the experienced agents. I do not find Respondent's efforts to shift the blame to others to be credible or persuasive. Even if Ms. Green was the individual who entered the false numbers into the data system, Respondent conceded that as the licensed agent, he was ultimately responsible for what went on in his agency. Moreover, as argued by the department, the false numbers were not typos but rather the product of a conscious decision to circumvent the underwriting rules and rates by intentionally listing the homeowner policy numbers of others to fraudulently obtain the discount for his clients. Consequently, I find that the department has met its burden of proving that Respondent violated ORS 744.013(2)(g) in six instances.

### Sanction

The department proposes revocation of Respondent's resident agent license. ORS 744.013(1)(a)(1999) gives the director authority to, *inter alia*, revoke an insurance agent's license for violations of the Oregon Insurance Code. Here, I have found that Respondent has violated ORS 744.013(2)(g) in six instances. In that regard, the record reflects that Respondent used the fraudulent or dishonest practice of using other's homeowner policy numbers to provide his clients with a 20 percent discount on their auto insurance when they did not qualify for the discount. This pattern of using this fraudulent or dishonest practice demonstrates that

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(a) The director may refuse to renew or may suspend or revoke a license issued under ORS 744.002 or the authority under a license to engage in any category of insurance business or any class of insurance.

Respondent is incompetent, untrustworthy or a source of injury and loss to the public or others. Accordingly, the department's Notice of Proposed Action is affirmed.

**ORDER**

I recommend that the department issue a final order revoking Michael C. Eaton's Oregon insurance agent license.

**IT IS SO ORDERED.**

Dated this 17<sup>th</sup> day of December 2003.

/s/ Ella D. Johnson  
Ella D. Johnson, Administrative Law Judge  
Office of Administrative Hearings

**NOTICE OF OPPORTUNITY FOR ADMINISTRATIVE REVIEW**

NOTICE: Pursuant to ORS 183.460, the parties are entitled to file written exceptions to this Proposed Order and to present written argument concerning those exceptions to the Director. Written exceptions must be received by the Department of Consumer and Business Services within 30 days following the date of service of this Proposed Order. Mail exceptions to:

Department of Consumer and Business Services  
Mitchel D. Curzon, Chief Enforcement Officer  
Oregon Insurance Division  
350 Winter Street NE, Room 440  
Salem, OR 97301-3883