

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

In the Matter of **James F. Mustoe.**

) **FINAL ORDER**

) Case No. INS 03-11-015

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 James F. Mustoe (Mustoe).

On 12/12/03, the director issued a notice of proposed action, pursuant to ORS 183.415 and related rules. The notice informed the party that the director proposed to take certain enforcement action against the party, the party was entitled to a hearing, and the party had to request a hearing in writing within 21 days if the party wanted a hearing. The notice also informed the party that the record of the proceeding then to date, including the designated portion of the Insurance Division's file on the party, would automatically become part of the contested case record for purposes of proving a prima facie case if the party 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 the party and found that it proves a prima facie case.

Therefore, the 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

Mustoe has been licensed in Oregon as a nonresident insurance agent since 3/9/95. Mustoe's current license number is 130926. Mustoe's last recorded residence address is located in Norristown, Pennsylvania. Mustoe's last recorded

business address is M & M Underwriting, Inc., located in Plymouth Meeting, Pennsylvania.

Agent Not Licensed in Resident State

Mustoe is subject to enforcement action pursuant to ORS 744.063(1)(a) because of the following circumstances. ORS 744.063(1)(a) requires a person licensed in Oregon as a nonresident insurance agent to be also licensed in the person's state of residence as a resident insurance producer. Mustoe is a resident of Pennsylvania. On 12/3/02, the insurance regulator for the State of Pennsylvania issued an order, number SC02-08-040, revoking Mustoe's Pennsylvania resident insurance agent license and assessing Mustoe a civil penalty of \$25,000. The insurance regulator took the action because Mustoe acted as an insurance agent for and transacted business on behalf of an unlicensed insurer. Therefore, Mustoe has not qualified for an Oregon nonresident insurance agent license since 12/3/02.

Enforcement Action by Other State Insurance Regulator

Mustoe is subject to enforcement action pursuant to ORS 744.074(1)(i) in two instances because of the following circumstances.

1. On 12/3/02, the insurance regulator for the State of Pennsylvania issued an order, number SC02-08-040, revoking Mustoe's Pennsylvania resident insurance agent license as described above.

2. On 3/27/03, the insurance regulator for the State of Texas issued an order, number 03-0214, revoking Mustoe's Texas nonresident insurance agent license. The insurance regulator took the action because, *inter alia*, "[s]ince as early as July 1, 1999, [Mustoe, OTR Truckers Association, OTR Truckers Health & Welfare Fund aka OTR Healthcare Fund, and Rusk L. Jones] conducted or engaged in the business of insurance in Texas as unlicensed and unauthorized insurers by selling healthcare coverage under a healthcare plan purported and claimed to be established, maintained, and operated in accordance with [ERISA]."

Failed to Report Enforcement Action by Other State Insurance Regulator

Mustoe violated ORS 744.089(1) in two instances by engaging in the following conduct. ORS 744.089(1) requires a person licensed in Oregon as an insurance

agent to notify the Insurance Division of any administrative action taken against the person, and provide a copy of the order, within 30 days of the final disposition of the action.

1. On 12/3/02, the insurance regulator for the State of Pennsylvania issued an order, number SC02-08-040, revoking Mustoe's Pennsylvania resident insurance agent license and assessing Mustoe a civil penalty of \$25,000 as described above. The action was finally disposed of on 12/3/02. Mustoe was required to notify the Insurance Division of the action, and provide a copy of the order, by 1/2/03. On 1/21/03, 19 days late, the Insurance Division received from Mustoe a letter dated 1/2/03 notifying the Insurance Division of the action and but did not provide a copy of the order.

2. On 3/27/03, the insurance regulator for the State of Texas issued an order, number 03-0214, revoking Mustoe's Texas nonresident insurance agent license and assessing Mustoe an administrative penalty of \$12,000.00, as described above. The action was finally disposed of on 3/27/03. Thus, Mustoe was required to notify the Insurance Division of the action, and provide a copy of the order, by 4/26/03. Mustoe has not notified the Insurance Division of the action or provided a copy of the order.

Order

Pursuant to ORS 744.074(1), the Oregon license as an insurance agent issued to Mustoe is revoked on the date of this order.

Notice of Right to Judicial Review

The party has the right to appeal the order to the Oregon Court of Appeals pursuant to ORS 183.480 and 183.482. If a party wants to appeal the order, the party must file a petition for judicial review with the Court of Appeals within 60 days from the date this order was served on the party. If the order was personally delivered to a party, then the date of service is the day the party received the order. If the order was mailed to a party, then the date of service is the day the order was mailed to the party, not the day the party received the order. If a party does not file a petition for judicial review within the 60-day time period, then the party will lose

the right to appeal this order. If a party appeals the order, the party should also send a copy of the petition to the Insurance Division by delivering it to the Labor and Industries Building, 350 Winter Street NE, Room 440 (4th Floor), Salem, Oregon; or mailing it to PO Box 14480, Salem, OR 97309-0405, or faxing it to 503-378-4351; or e-mailing it to mitchel.d.curzon@state.or.us.

Dated March 3, 2004

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

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