

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

IN THE MATTER OF

LOUIS G. SCRIVENS, Respondent

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PROPOSED ORDER

INS 03-10-034

HISTORY OF THE CASE

On March 22, 2004, the Director of the Department of Consumer and Business Services, Insurance Division (Director or Department) issued a Notice of Proposed Action, proposing to assess a civil penalty of \$2000 against Louis G. Scrivens (Respondent) pursuant to ORS 731.988. Respondent timely requested a hearing. The matter was referred to the Office of Administrative Hearings on April 15, 2004. On July 30, 2004, the Director issued an Amended Notice of Proposed Action.

The matter was initially set for hearing on August 31, 2004. Respondent's request for a reset was granted, and the matter was postponed. The hearing convened on December 6, 2004, before Administrative Law Judge Alison Greene Webster. Assistant Attorney General Kyle Martin represented the Department. Petitioner appeared in person and without counsel. Testifying on behalf of the Department were Craig Carter, Greg Pierce and Kasey Chase (former clients of Respondent), Robert Fusco of Arrowhead Insurance Company, and Gary Holliday, Insurance Division Investigator. Respondent testified on his own behalf. The record closed on December 6, 2004, at the close of the hearing.

ISSUES

1. Whether Respondent violated ORS 746.100 by representing on Carter's October 10, 2000 Arrowhead General Insurance Agency application for automobile insurance that the policy would be for a 12 month term when Respondent knew, or should have known, that the policy would be for a six month term only.

2. Whether Respondent violated ORS 746.100 by certifying on Carter's October 10, 2000 Arrowhead General Insurance Agency application that Carter signed the application in his presence when Respondent was not present at the time Mr. Carter signed a partially completed application.

3. Whether Respondent violated ORS 746.100 by issuing Carter an insurance binder representing that Mr. Carter was insured as of October 10, 2000 by Clarendon Insurance

Company under policy no. 36101000, when Respondent did not submit the application to Clarendon and Clarendon had not issued any policy to Carter.

4. Whether Respondent violated ORS 746.100 by signing Kasey Chase's name on an application for a fire insurance policy through Oregon Fair Plan Association when Chase did not authorize Respondent or anyone else to sign her name to the application.

EVIDENTIARY RULING

Exhibits A1 through A26, offered by the Department, were admitted into the record. Exhibits R1 through R2, offered by Respondent, were admitted into the record without objection.

FINDINGS OF FACT

1. Respondent Louis Scrivens has been licensed as an Oregon insurance agent for more than 30 years. (Test. of Respondent.)

2. In December 1992, Respondent entered into a Stipulation and Final Order with the Insurance Division wherein he acknowledged that he had materially misrepresented the terms of an insurance policy in violation of ORS 744.013(2)(f). Respondent was assessed a civil penalty in the amount of \$2,199 for this violation of ORS 744.013(2)(f). (Ex. A1.)

Carter Policy

3. On October 10, 2000, Craig Carter of West Hills, California went to Respondent's Portland office to apply for an automobile policy for a 1991 Chevrolet pickup that he was garaging in Oregon. Respondent was not present, but Carter met with Respondent's employee, Wendy Hendron.¹ Carter advised Hendron that he wanted an annual policy. He asked if Respondent could beat the premium he was currently paying on the vehicle. (Test. of Carter.)

4. Hendron looked up some information, and advised Carter that he could purchase a 12 month policy for \$220. Mr. Carter agreed to purchase this policy, as he had previously been paying \$178 for a six month policy. Carter signed and dated a partially completed Oregon Auto Insurance Application for the Arrowhead General Insurance Agency (Arrowhead). At that point, the application set forth Carter's name, his California address and phone number, the driver information and the year, make and model for the vehicle. The application also indicated the policy term was "12." (Ex. A4; test of Carter.)

5. Before Carter left Respondent's office, Hendron provided him with an "Insurance Binder" representing that, effective as of 1:00 p.m. on October 10, 2000, Carter had insurance coverage on his 1991 Chevrolet pickup through Clarendon National Insurance Company. The binder set forth a policy number, 36101000, a policy renewal date of 10-10-01 and a premium of

¹ Hendron is not a licensed insurance agent. (Ex. A25 at 12.)

\$220.00. Hendron noted on the binder that Carter had paid the premium in cash. She then signed Respondent's name to the binder as the authorized representative.² (Ex. A6.)

6. Carter left Respondent's office believing that he had purchased an annual policy. He was given the insurance binder, but was not provided with a copy of the application he had signed. (Test. of Carter.)

7. At a later point in time, Respondent completed the remainder of Carter's Oregon Auto Insurance application, including the additional automobile information and the coverages and limits of liability section. The application set forth a total policy premium of \$200.00. Respondent then signed and dated the application as the Producing Agent. Respondent's signature appears in a box at the bottom of the application, just below the following printed "Producer's Statement":

I certify that to the best of my knowledge all information contained herein is correct, the statements herein are those of the applicant who has signed this application in my presence and that the applicant and the undersigned are retaining a duplicate signed copy hereof. I am legally qualified to submit this application on behalf of the applicant. I understand that this policy is not bound until I receive a binder number through one of the Company's electronic binding systems and have collected the proper premium.

(Ex. A4; test of Respondent.)

8. At the time Respondent signed Carter's application, he knew that Carter had not signed the application in his presence. (Test. of Respondent.)

9. On October 11, 2000, Respondent submitted to Arrowhead the completed insurance application for a 12 month policy and a check for \$200.00, drawn on his company's client trust account. (Ex. A5; test. of Respondent.)

10. Arrowhead is a "general agent" that manages underwriting and billing on behalf of carriers. At the time, Arrowhead had two carriers issuing automobile policies in Oregon, Clarendon National Insurance and The General Insurance Company of Trieste & Venice US Branch (Generali). (Test. of Fusco.)

11. On October 29, 2000, Generali issued automobile policy no. 25D8090266-06 to Carter. The Declarations page set forth, among other things, a policy period of October 10, 2000 to April 8, 2001. (Ex. A7.) The Generali did not offer 12 month automobile policies in Oregon. The information and underwriting guidelines Respondent received from Arrowhead in October 1999, advised that Generali did not offer annual policies. (Test. of Fusco.)

² Respondent authorized Hendron to sign his name to the binders whenever she received premium money, because the binders also served as a receipt for payment. (Test. of Respondent; Ex. A25 at 18.)

12. A few weeks later, after Carter received the Generali policy in the mail, he called Respondent's office to inquire about the policy term. Carter spoke to Hendron, who said that she would get back to him. (Test. of Carter.) Hendron noted on a copy of the Generali Declarations page that Carter wanted an annual policy. She signed Respondent's name to the note, which she then sent to the insurer. (Ex. A8.)

13. On January 16, 2001, Hendron sent Carter the following note: "Craig, I called on both of your policies. Your auto [sic] they only write 6 month policies. So your renewal will be coming up in April. On your motor home, they don't offer susp. coverage. Please let me know what you want to do." (Ex. A9.) Carter received this note, but believed, based on the insurance binder, that he had paid for 12 months of coverage through Clarendon Insurance. During December and January, Carter also discussed the matter with Respondent, who said that he was looking into the issue. (Test. of Carter.)

14. On April 23, 2001, Carter was involved in a motor vehicle accident in California. Although Carter believed that he had insurance, the Generali policy had expired on April 8, 2001. When Carter learned that he was uninsured at the time of the accident and that Respondent had placed the policy with Generali rather than Clarendon, he filed a complaint about Respondent with the Department. (Test. of Carter; Ex. A3.)

15. If Respondent had insured Carter through Clarendon Insurance during the time period in issue, the premium would have been \$126.00 for a six month policy. (Ex. A18; test of Holliday.)

Chase/Pierce Policy

16. In July 2003, Kasey Chase contacted Respondent regarding coverage for a rental property that she and Gregory Pierce owned at 8610 SE Gray Street in Portland. Chase had previously insured the rental property with State Farm, but the premium kept increasing and she wanted to shop for new coverage. (Test. of Chase; test. of Pierce.)

17. Chase and Pierce live next door to their rental property. They purchased the residence at 8610 SE Gray Street from Arthur Schulberger in 2001 pursuant to a land sale contract. That contract required that Chase and Pierce maintain insurance on the residence. (Test. of Pierce.)

18. Respondent viewed the property, and then took additional information from Chase over the telephone. Chase provided Respondent with, among other things, the purchase price for the property (\$145,000), the year the dwelling was built (1960), the ground floor area square footage (2000), and the name of the contract of sale holder. (Ex. A19; test. of Respondent.)

19. Respondent quoted Chase a premium for coverage on the rental home. Chase accepted the policy as quoted. She believed the policy would cover the replacement value for the house on the property. Chase wrote a check for the premium and delivered it to Respondent's office. Respondent was not in at the time, but Chase left the check in an envelope on a bulletin board outside his office. (Test. of Chase; test. of Pierce.)

20. Based on the information from Chase, Respondent completed an application for insurance with Oregon FAIR Plan Association. Section 9, the Underwriting Information portion of the application, requires that the insured be "declined cancelled or non-renewed by at least two companies in the standard market." Respondent wrote on the application that both Safeco and Farmers had declined, cancelled or non-renewed the policy based on the age of the dwelling. But, Chase had not been declined, cancelled or not-renewed by either of these insurers. Respondent wrote that the insured had been denied by these two companies after calling agents for the companies and asking whether the insurer would underwrite such a policy. (Ex. A19; test. of Respondent; test. of Chase.)

21. Respondent signed Chase's name on the Oregon FAIR Plan Application and submitted the application and check to the insurance company. (Test. of Respondent.) Chase did not authorize Respondent to sign her name on the application. (Test. of Chase.) Respondent did not review the application with Chase or explain to her the nature of the Oregon FAIR Plan Association policy before he submitted the application. (Test. of Chase.)

22. On July 29, 2003, Respondent wrote to Chase requesting her signature on a blank insurance application. (Ex. R1.) On August 7, 2003, Respondent sent another note to Chase and Pierce asking for a tax printout showing the value of the 8610 SE Gray property. (Ex. R2.)

23. Oregon FAIR Plan Association subsequently issued a fire, extended coverage and vandalism policy (policy no. DP0028005-0) covering the dwelling for \$81,000. (Ex. A20.) Although the application requested coverage of \$145,000, the insurer issued the policy for \$81,000 based on its research of the property's actual cash value. (Ex. A21.)

24. After the Oregon FAIR Plan policy was issued, Shulberger advised Chase and Pierce that it did not satisfy the requirements of their land sale contract because it did not cover the replacement cost of the structure. Shulberger told Pierce that he had purchased his own policy on the property, and requested that Pierce pay \$100 to reimburse him for that policy. (Test. of Pierce.)

25. When Chase and Pierce realized that the policy was not the replacement value policy they thought it was, they cancelled it and obtained other coverage on the property through a different agent and insurer. They complained to both Respondent and the insurer, and subsequently received a full refund of the premium paid. (Test. of Pierce.)

CONCLUSIONS OF LAW

1. Respondent violated ORS 746.100 by representing on Carter's October 10, 2000 Arrowhead General Insurance Agency application for automobile insurance that the policy would be for a 12 month term.

2. Respondent violated ORS 746.100 by certifying on Carter's October 10, 2000 Arrowhead General Insurance Agency application that Mr. Carter signed the application in his presence.

3. Respondent violated ORS 746.100 by issuing Carter an insurance binder representing that Mr. Carter was insured as of October 10, 2000 by Clarendon Insurance Company under policy no. 36101000.

4. Respondent violated ORS 746.100 by signing Kasey Chase's name on an application for a fire insurance policy through Oregon Fair Plan Association.

OPINION

As set forth above, the Department asserts that Respondent violated ORS 746.100 in four instances, three times in connection with the Carter's insurance application and once in connection with Chase's insurance application. DCBS seeks to impose a civil penalty of \$2000 against Respondent, \$500 for each alleged violation.

The Department has the burden of proving the allegations and the propriety of the proposed sanction by a preponderance of the evidence. ORS 183.450(2) and (5); *Harris v. SAIF*, 292 Or 683, 690 (1982) (burden of proof 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 of proof in administrative hearings is preponderance of the evidence). In this case, for the reasons set forth below, the Department has met its burden.

Violation No. 1

ORS 746.100 prohibits persons from making "a false or fraudulent statement or representation on or relative to an application for insurance, or for the purpose or obtaining a fee, commission, money or benefit from an insurer or agent." The Department alleges that Respondent violated ORS 746.100 in connection with Carter's application for automobile insurance by falsely stating on the application that the policy was to be for 12 months.

Respondent does not dispute that the insurance application and the binder that Hendron gave to Carter state that the policy was for a 12 month term. Respondent asserts, however, that based on the \$220 premium, it was not reasonable for Carter to believe that he had purchased an annual policy. Respondent also argues that Carter was notified in January 2001 that Generali only wrote six month policies.

Notwithstanding Respondent's position, it is immaterial for purposes of the alleged violation whether Carter should have known that he had not purchased an annual policy.³ Both the completed application and the binder issued to Carter indicate that he had purchased a policy with a 12 month term. Respondent knew that the representation on the application that the policy was to be for 12 months was false. The application was submitted to Generali, which issued Carter a policy with a six month term.

³ Furthermore, based on the fact that Carter had previously been paying \$178 for a six month policy, and Clarendon would have charged a \$128 premium for a six month policy, Carter may have reasonably believed that he had purchased an annual policy from Clarendon for a premium of \$220.

Violation No. 2

The Department next alleges that Respondent made a false statement and violated ORS 746.100 when he signed Carter's application and certified that Carter had signed the application in his presence. The evidence supports this finding. Respondent was not present when Carter signed and dated the partially completed application. Respondent knew when he completed and signed the application that Carter had not signed the document in his presence. Respondent also knew that, contrary to his certification on the application, he could not attest to the accuracy of all the information contained therein. Respondent therefore made a false statement in this regard.

Violation No. 3

The Department alleges that Respondent made a false or fraudulent representation relative to an insurance application when his employee Hendron provided Carter with an insurance binder representing that Carter was insured by Clarendon Insurance company as of October 10, 2000.

Respondent acknowledged that he directed Hendron to issue insurance binders to clients as a receipt for payment. He authorized Hendron to sign the binders on his behalf. The binder issued to Carter in connection with his application for automobile insurance indicated that, in exchange for a \$220 premium payment, he was insured by Clarendon Insurance, policy no. 36101000, for 12 months beginning October 10, 2000. Respondent did not submit Carter's application to Clarendon, and Clarendon did not insure Carter's vehicle. Consequently, the representations on the insurance binder were false. Respondent is liable for these false representations made to Carter with regard to his insurance application.

Violation No. 4

The Department alleges that respondent violated ORS 746.100 on an application for a fire policy through Oregon FAIR Plan Association when he falsely indicated that the applicant, Chase, had signed the application. Chase had not signed the application. Respondent acknowledged at hearing that he completed the application on Chase's behalf. He also admitted that he signed Chase's name to the application without her authority to do so. Thus, the violation has been established.

Sanction

ORS 731.988 governs civil penalties for violations of the Insurance Code. It provides in pertinent part:

- (1) Any person who violates any provision of the Insurance Code, any lawful rule or final order of the Director of the Department of Consumer and Business Services or any judgment made by any court upon application of the director, shall forfeit and pay to the

General Fund of the State Treasury a civil penalty in an amount determined by the director of not more than \$10,000 for each offense. In the case of individual insurance producers, adjusters or insurance consultants, the civil penalty shall be not more than \$1,000 for each offense. Each violation shall be deemed a separate offense.

Here, the Department proposes a civil penalty of \$2,000, or \$500 for each alleged offense. The Department has established that Respondent violated ORS 744.100 on four occasions. The proposed penalty is warranted, reasonable and well within the Department's authority. I therefore affirm the Department's action.

ORDER

I recommend that the Department issue a final order assessing Louis G. Scrivens a civil penalty in the amount of \$2,000.

IT IS SO ORDERED:

Dated this 17th day of December, 2004.

/s/ Alison Greene Webster
Alison Greene Webster, 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 these 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:

Mitchel D. Curzon
Chief Enforcement Officer
Oregon Insurance Division
PO Box 14480
Salem, OR 97309-0405