

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

In the Matter of **Francis J. Dierickx**) **FINAL ORDER**
) Case No. INS 04-04-003

History of the Proceeding

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 Francis Joseph Dierickx (Dierickx).

On April 21, 2004, the director issued a notice of proposed action pursuant to ORS 183.415 notifying the party that the director proposed to take enforcement action against the party and that they were entitled to a hearing pursuant to ORS 183.415.

On April 30, 2004, the director timely received from the party a written request for a hearing.

On May 4, 2004, the director referred the party's request for a hearing to the Office of Administrative Hearings (OAH).

On May 21, 2004, OAH scheduled a hearing to be held on August 26, 2004.

On July 19, 2004, OAH issued an amended notice of hearing changing the location of the hearing.

On July 23, 2004, OAH issued a second amended notice of hearing correcting the address of the location of the hearing.

On August 26, 2004, OAH held a hearing. The hearing was conducted by Ella D. Johnson, an administrative law judge of OAH. The director, by and through the Insurance Division, appeared and was represented at the hearing by Kathleen Dahlin, an Assistant Attorney General. The Insurance Division called Debra Bunch and Gary Holiday as its witnesses. The Insurance Division offered Exhibits A1 to A33 as its documentary evidence. All of the Insurance Division's exhibits were admitted into the record. The party appeared and represented himself. The party

testified on his own behalf. The party offered Exhibits R1 to R32 as its documentary evidence. All of the party's exhibits were admitted into the record.

On November 8, 2004, OAH issued a proposed order pursuant to ORS 183.460 and OAR 137 -003-0645. The proposed order found that the party committed all of the violations that were alleged in the notice and recommended that the director take the action initially proposed in the notice. The proposed order informed the party that he could file with the director written exceptions to the proposed order within 30 days after the proposed order was sent to the party, pursuant to OAR 137-003-0650. On the same date, OAH mailed a copy of the proposed order to the party.

The director did not receive from the party any exceptions to the proposed order.

Therefore, the director now makes the following final decision in this proceeding.

Findings of Fact, Conclusions of Law and Opinion

The director adopts, and incorporates herein by this reference, the findings of fact, conclusions of law, and opinion of proposed order as the facts, conclusions, and reasoning of this final order except as follows.

On page 5, the statement "and the propriety of the sanction" is deleted to make it clear that the director does not have the burden of proving the propriety of the sanction when the enforcement actions that the director proposes to take in a particular case is within the range of actions authorized by law. ¹

On page 2 in paragraph numbered 6, and on page 5 in paragraph numbered 8, the date of the application is corrected from "September 4, 2004" to "September 4, 2002." See Exhibit A19 page 6; proposed order page 4 paragraph numbered 8, and page 7 last paragraph.

Order

Pursuant to ORS 731.988, Dierickx is assessed a civil penalty of \$3,000. The payment shall be made in the form of a check payable to the "Department of Consumer and Business Services" for the full amount due. The payment shall be

¹ See *In re Karen M. Thatcher*, Case No. INS 02-04-015, Final Order, page 9 footnote 5.

delivered to the Insurance Division at the Labor and Industries Building, 350 Winter Street NE, Room 440 (4th Floor), Salem, Oregon; or mailed to the Insurance Division at PO Box 14480, Salem, OR 97309-0405. Pursuant to ORS 183.090(2), the payment is due on, and shall be received by the Insurance Division by, the 71st calendar day after the date of this order, unless the party timely appeals the order.

Notice of Right to Judicial Review

The party may have 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.

Dated March 2, 2005

/s/ Joel Ario
Joel Ario
Administrator
Insurance Division
Department of Consumer and Business Services

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