

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

In the Matter of **Michael K. Frazier**

) **FINAL ORDER**
) Case No. INS 04-06-021

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 Michael K. Frazier (Frazier).

On 8/30/04, the director issued a notice of proposed action notifying the party that the director proposed to take enforcement action against the party and that the party was entitled to a hearing, pursuant to ORS 183.415 and Oregon Administrative Rules (OAR) 137-003-0001.

On 9/13/04, the director timely received from the party a written request for a hearing.

On 9/14/04, the director referred the party's request for a hearing to the Office of Administrative Hearings (OAH).

On 10/5/04, OAH scheduled a hearing to be held on 1/25/05.

OAH held a hearing on 1/25/05 and continued it on 2/24/05. The hearing was conducted by Catherine P. Coburn, an administrative law judge of OAH. The director, by and through the Insurance Division, appeared and was represented at the hearing by Kyle J. Martin, an Assistant Attorney General. The Insurance Division called Claire Plannette and Tonya Thompson as witnesses. The Insurance Division offered Exhibits A1 to A25 as documentary evidence. All of the Insurance Division's exhibits were admitted into the record. The party appeared and was represented at the hearing by Dan G. McKinney, an attorney. The party called

Michael K. Frazier as a witness. The party offered Exhibits R1 to R15¹ as documentary evidence. All of the party's exhibits were admitted into the record.

On 3/21/05, OAH issued a proposed order pursuant to ORS 183.460, and OAR 137 -003-0645 and 137-003-0650. The proposed order found that the party committed all of the violations that were alleged in the notice of proposed action, and recommended that the director take the action proposed in the notice. The proposed order informed the party that they could file with the director written exceptions to the proposed order within 30 days after the proposed order was sent to the party.

On 4/19/05, the director timely received from the party written exceptions to the proposed order.

On 5/3/05, the director received from Insurance Division a written response to the party's exceptions.

The director considered the party's exceptions and the Insurance Division's response. The director is not persuaded by the party's exceptions that the director must or should take any action different than that proposed in the notice of proposed action or recommended in the proposed order.

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 1, the reference to the party's Exhibit R14 is corrected to R15 because the party offered up to Exhibit R15 and all of the party's exhibits were admitted.

On page 6, the statement "and its position concerning the proposed sanction" is not adopted because neither the appellate case cited in the proposed order nor any other law which the director is aware of, imposes on the director a burden of

¹ The proposed order erroneously indicated that the party offered only up to Exhibit R14 when the party actually offered up to Exhibit R15, and all of the party's exhibits were admitted.

proving, by any evidentiary standard, the appropriateness of the director's choice of enforcement action when such action is within the range of actions authorized by law.²

Order

Pursuant to ORS 744.074(1), Frazier's Oregon resident individual insurance producer license is revoked on the date of this order.

Notice of Right to Judicial Review

The party may be entitled to have the final order reviewed by the Oregon Court of Appeals pursuant to ORS 183.480 and 183.482. A party may institute a proceeding for judicial review by filing with the court a petition for judicial review 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 files a petition, the party is requested to also send a copy of the petition to the Insurance Division.

Dated July 18, 2005

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

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² See *In the Matter of Karen M. Thatcher*, Case No. INS 02-04-015, Final Order, page 9 footnote 5.