

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

IN THE MATTER OF) **PROPOSED ORDER GRANTING MOTION**
) **FOR RULING ON LEGAL ISSUES**
DEBORAH A. PELIKAN,) **(SUMMARY JUDGMENT)**
Respondent)
) Agency Case No. INS 04-10-011

HISTORY OF THE CASE

On November 9, 2004, the Director of the Department of Consumer and Business Services, Insurance Division (Director or Department) issued a Notice of Proposed Action, proposing to revoke the Oregon individual insurance agent license issued to Deborah A. Pelikan (Respondent) pursuant to ORS 744.074(1). Respondent timely requested a hearing. The matter was referred to the Office of Administrative Hearings on November 18, 2004.

The matter was set for hearing on January 27, 2005, and assigned to Administrative Law Judge Alison Greene Webster of the Office of Administrative Hearings. On December 2, 2004, the Department filed a Motion for Ruling on Legal Issues (Summary Judgment) pursuant to OAR 137-003-0580, alleging that there is no genuine issue of material fact and, as a matter of law, the Department is entitled to a ruling in its favor in this matter. Respondent responded to the motion by letter dated December 7, 2004. Respondent did not challenge the basis for the Department's motion, but asked instead that the hearing be postponed until April or May 2005, pending her release from prison.

ISSUE

Whether, under ORS 731.428(4), the Director is entitled to revoke Respondent's insurance agent's license based on Respondent's felony convictions for theft and aggravated theft in February 2004.

EVIDENTIARY RULING

Exhibits 1 through 13, offered by the Department in connection with its motion, were admitted into the record.

FINDINGS OF FACT

1. Respondent Deborah Pelikan was licensed by the Oregon Insurance Division as a resident insurance agent from November 26, 1993 through November 30, 1998. Her license was renewed on April 26, 1999 and expired on November 30, 2004. (Ex. 1.)

2. In October 2002, Respondent was indicted in the Multnomah County Circuit Court on multiple criminal counts involving violations of ORS 163.205 (criminal mistreatment in the first degree), ORS 164.055 (theft in the first degree) and ORS 164.057 (aggravated theft in the first degree). (Ex. 2.)

3. On February 23, 2004, following a not guilty plea and a verdict of guilty by trial, Respondent was convicted of 13 felony offenses: one count of criminal mistreatment in the first degree, six counts of theft in the first degree and six counts of aggravated theft in the first degree. Respondent was also ordered to pay more that \$273,000 in restitution to the estate of her victim, Freda L. Eakin. (Ex. 3.)

4. To date, Respondent has not applied to the Director for a written consent to engage or participate in the business of insurance following her February 2004 convictions for theft in the first degree and aggravated theft in the first degree.

CONCLUSION OF LAW

The Director is entitled to revoke Respondent's insurance agent's license pursuant to ORS 731.428(4) based on her felony convictions for theft and aggravated theft in February 2004.

OPINION

Under OAR 137-003-0580(6), an ALJ is authorized to grant a motion for legal ruling if: (a) the pleadings, affidavits, supporting documents and the record in the contested case show that there is no genuine issue of material fact that is relevant to resolution of the legal issue; and (b) the agency or party filing the motion is entitled to a favorable ruling as a matter of law.

In this case, the Department has produced evidence that, at all times pertinent to this action, Respondent was a licensed insurance agent in Oregon. The Department has also shown that in February 2004, while licensed as an insurance agent, Respondent was convicted of 13 felony offenses, including six counts of theft in the first degree and six counts of aggravated theft in the first degree. The Department asserts that because of these felony theft convictions, Respondent is prohibited by federal law from engaging or participating in the insurance business unless she obtains written consent to do so from the Director. The Department further asserts that, in the absence of an application for written consent, the Director is required to revoke or suspend Respondent's license.

ORS 731.428 addresses written consent to engage or participate in the insurance business. It provides as follows:

(1) A person who is prohibited by 18 U.S.C. § 1033 from engaging or participating in the business of insurance because of a conviction of a felony involving dishonesty or a breach of trust or conviction of a crime under 18 U.S.C. § 1033 may apply to the Director of the Department of Consumer and Business Services for a written consent to engage or participate in the business of insurance.

(2) The director shall establish by rule a procedure and standards by which the director may issue a written consent to engage or participate in the business of insurance to a person convicted of a crime described in subsection (1) of this section.¹

(3) The director shall not issue a license under the Insurance Code to an applicant who has been convicted of a crime referred to in subsection (1) of this section unless the director also issues a written consent.

(4) If a person issued a license under the Insurance Code has been convicted of a crime referred to in subsection (1) of this section or is subsequently the subject of such a conviction, the director shall revoke, suspend or refuse to renew the license. The person may apply to the director for a written consent as provided in subsection (1) of this section.

18 U.S.C. § 1033 addresses crimes by persons engaged in the insurance business whose activities affect interstate commerce. Under subparagraph (e)(1) of this section, any individual who willfully participates in the insurance business and "who has been convicted of any criminal felony involving dishonesty or a breach of trust" is subject to sanction. Under subparagraph (e)(2), a person who has been convicted of any criminal felony involving dishonesty or a breach of trust may engage or participate in the business of insurance only if he or she has the written consent of the insurance regulatory authority.

As noted above, Respondent has been convicted of six counts of first degree theft and six counts of first degree aggravated theft in an Oregon court. First degree theft and first degree aggravated theft are felony crimes involving dishonesty. *See State v. Gallant*, 307 Or 152, 157 (1988) (holding that the crime of theft constitutes dishonesty); *see also* ORS 164.055(3) (theft in the first degree is a Class C felony); ORS 164.057(2) (aggravated theft in the first degree is a Class B felony). Because Respondent has been convicted of felony crimes involving dishonesty, she is prohibited by federal law from engaging in the insurance business in the absence of a written consent from the Director. Respondent has not applied to the Director for written consent to engage in the insurance business following her felony convictions. Under ORS 731.428(4), the Director is required to revoke or suspend Respondent's insurance license. There

¹ As required by this statute, the Director has promulgated OAR 836-071-0323 et seq., setting forth the procedures and standards for issuing a written consent to a licensee convicted of a felony offense involving dishonesty or breach of trust that is subject to 18 U.S.C. § 1033.

is, therefore, no genuine issue of material fact that is relevant to the resolution of this matter. The Department has the authority to take the proposed action, and is entitled to a favorable ruling as a matter of law.²

ORDER

The Department's Motion for Ruling on Legal Issues (Summary Judgment) is GRANTED.

I recommend that the Department issue a final order revoking Deborah A. Pelikan's insurance license pursuant to ORS 731.428.

IT IS SO ORDERED.

/s/ Alison Greene Webster
Alison Greene Webster, Administrative Law Judge
Office of Administrative Hearings

MAILING AND ISSUE DATE: December 27, 2004

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:

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

² Because the ruling on the Department's motion resolves all issues in the contested case, there is no need for a hearing. Respondent's request for a postponement is therefore moot.