

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

In the Matter of **Barbara J. Sicheneder**) **FINAL ORDER**
) Case No. INS 07-03-010

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 Barbara J. Sicheneder (Sicheneder).

On 4/2/07, the director issued a notice of proposed action notifying the party that the director proposed to take enforcement action against the party and the party was entitled to a hearing pursuant to ORS 183.415.

On 4/18/07, the director timely received from the party a written request for a hearing.

On 4/25/07, the director referred the party's request for a hearing to the Office of Administrative Hearings (OAH).

On 5/17/07, OAH scheduled a hearing to be conducted on 8/15/07, and mailed to the party a written notice informing the party of the date, time and place of the hearing.

OAH conducted a hearing on 8/15/07 which was continued on 11/15/07. The hearing was conducted by Rick Barber, an administrative law judge of OAH. The director, by and through the Insurance Division, appeared and was represented at the hearing by Judith K. Anderson, an Assistant Attorney General. The Insurance Division called Norma Fitzgerald, Dolores Hart, Ross Hart, Ruth Johnson, Ralph King, Roberta Taylor, and Tim Taylor, as its witnesses. The Insurance Division offered Exhibits A1 to A39 as its documentary evidence all of which were admitted into the record. The party appeared and was represented at the hearing by Adam Gould and Roger Gould, attorneys. The party called Mitch Curzon, Tom Melville, Willard "Dale" Poyer, David Robertson, Delphine Wallace, Bruce Wechter,

Evelyn Wechter, and Robert Wright, as its witnesses. The party offered Exhibits B1 to B27, except for Exhibits B1, B10, B11, B12 and B25, as its documentary evidence which were admitted into the record. OAH also included in the record certain documents, mostly pleadings, and designated them as P1 to P10.

On 2/5/08, OAH issued a proposed order. The proposed order found that the party committed all of the violations alleged, except the allegation that the party violated ORS 744.074(1)(k) by forging two persons' names, and recommended that the director take the action proposed. 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.

The director did not receive from the party or Insurance Division any exceptions to 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 reasoning of proposed order as the findings of fact, conclusions of law, and reasoning of this final order, except as follows.

The director concludes that Sicheneder violated ORS 744.074(1)(k) because the director finds, based on the evidence in the record, that it is more probably true than false¹ that Sicheneder signed, without authority, Ross and Dolores Hart's names on the request dated 8/31/05 to cancel the Harts' prior authorization of Mutual of Omaha to automatically withdrawal from the Harts' bank account the payment of the premium for the Mutual of Omaha policy. The evidence in the record is that (1) the Harts' names were signed on the form (Exhibit A12 page 4), (2) the Harts' names signed on the form are different than the Hart's authentic signatures (Exhibit A12 pages 3-4), (3) the Harts stated in their letter dated 11/18/05 complaining to the director about Sicheneder that Sicheneder did not present the form to the Harts to sign and the Harts did not sign the form (Exhibit

¹ See *Cook v. Michael*, 214 Or 513 (1958).

A12 page 3), (4) the Harts testified at the hearing that they recalled their meeting with Sicheneder on 8/31/05 and they did not sign the form, they were not in a hurry, they did not go outside, and did not sign any form on the hood of a car (Hearing recording, 8/15/07, file 3 of 3, meter readings 00:52:31 to 00:53:31, 01:13:15 to 01:14:50, and 01:18:27 to 01:18:54) as asserted otherwise by Sicheneder in an investigative interview on 8/26/06 (Exhibit A8 page 40 lines 16-20) and at the hearing (Hearing recording, 11/15/07, file 1 of 1, meter readings 01:02:50 to 01:05:53 and 01:07:42 to 01:08:45) which assertion was unsupported by Kari Anderson, who Sicheneder was training as an insurance producer and who was the only other person present on 8/31/05 in the Harts' home (Exhibit A14 pages 14 lines 5-9, page 18 line 10, page 23 lines 4-7), (5) Sicheneder signed her own name on the form (Exhibit A8 page 40 lines 14-15; Exhibit A14 page 22 lines 12-13), (6) Sicheneder delayed sending the completed form to Mutual of Omaha for almost two months after the transaction (Exhibit A8 page 40 lines 21-23; Exhibit A14 page 22 lines 22-24), (7) there was no evidence that anyone other than the Harts or Sicheneder had possession of the form or could have signed the form, and (8) Sicheneder's statements and testimony that she did not sign the Harts' names on the form are not credible because (a) the signatures on the form are different than the Hart's authentic signatures, and (b) Sicheneder demonstrated in her presentations to Jack and Betty Ford, Ross and Delores Hart, Ralph and June King, and Roberta Taylor, her propensity to make incorrect, misleading, or false statements to others when it was in her best interest to do so. Although it is possible that someone other than Sicheneder forged the Hart's names, it is more probable that she did based on the evidence in the record.

Order

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

Notice of Right to Judicial Review

A party has the right to judicial review of this order pursuant to ORS 183.480 and ORS 183.482. A party may request judicial review by sending a petition for

judicial review to the Oregon Court of Appeals. The court must receive the petition 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 date the party received the order. If the order was mailed to a party, then the date of service is the date the order was mailed to the party, not the date 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 May 5, 2008

/s/ Scott J. Kipper
Scott J. Kipper
Administrator
Insurance Division
Department of Consumer and Business Services

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