

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

In the Matter of **Mark E. Gellinger**) **FINAL ORDER**
) Case No. INS 08-06-001

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 Mark E. Gellinger (Gellinger).

On 6/9/08, 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 6/30/08, the director timely received from the party a written request for a hearing.

On 7/2/08, the director referred the party's request for a hearing to the Office of Administrative Hearings (OAH).

On 7/14/08, OAH scheduled a hearing to be conducted on 10/1/08, and mailed to the party a written notice informing the party of the date, time and place of the hearing.

On 7/24/08, the director mailed to the party a letter dated 7/24/08 informing the party that initial notice of proposed action incorrectly stated that the director proposed to revoke the party's license, rather than only suspend it, although the notice correct cited and summarized the law as requiring the director to only suspend the party's license. Enclosed with the letter was a corrected notice of proposed action.

On 8/11/08, OAH rescheduled the hearing to be conducted on 11/23/08, and mailed to the party a written notice informing the party of the date, time and place of the hearing.

On 10/9/08, OAH issued a protective order pursuant to Oregon Administrative Rules (OAR) 137-003-0570(8), at the request of the director, to prevent the unlawful disclosure of information submitted as evidence in this case that is confidential under laws governing tax returns filed with the Oregon Department of Revenue (ODOR).

On 10/23/08, OAH conducted a hearing. 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 Mark Noble of ODOR as its witness. The Insurance Division's exhibits A1 to A7 and P1 to P5. The party appeared and represented himself. The party did not call any witnesses and did not offer any documentary evidence.¹

On 11/5/08, OAH issued a proposed order. The proposed order found that the party was subject to enforcement action as alleged, and recommended that the director take the action proposed, in the corrected notice of proposed action. 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.

Order

Pursuant to ORS 744.074(1) and ORS 305.385(4)(c), Gellinger's Oregon resident insurance producer license is suspended from the date of this order until either

¹ OAH also admitted the corrected notice of proposed action, and the protective order.

(1) Gellinger's license expires or (2)(a) the director receives a certificate issued by ODOR that Gellinger is in good standing with respect to any returns due and taxes payable to ODOR as of the date of the certificate and (b) the director issues an order terminating the suspension, whichever occurs first. If Gellinger's license expires before the director receives a certificate issued by ODOR, Gellinger's expired license shall not be renewed or a new license shall not be issued to Gellinger until (1) the director receives a certificate issued by ODOR, and (2) Gellinger meets all of the then applicable requirements for a renewed or new license.

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 December 18, 2008

/s/ Teresa D. Miller
Teresa D. Miller
Acting Administrator
Insurance Division
Department of Consumer and Business Services

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