

**1STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

In the Matter of **Helen Tran Fong**) **FINAL ORDER**
) Case No. INS 08-12-008

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 Helen Tran Fong (Fong).

On 12/31/08, 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. The notice of proposed action included a statement that if a hearing was not conducted then the designated portion of the Insurance Division's file in this case would automatically become part of the contested case record for the purpose of proving a *prima facie* case.

The director did not receive from the party a request for a hearing and did not conduct a hearing.

The director finds that the record of this proceeding to date, including information in the designated portion of the Insurance Division's file and all materials submitted by the party if any, proves a *prima facie* case.

The director now makes the following final decision in this proceeding.

Findings of Fact and Conclusions of Law

Licensing Information

Fong has been licensed in Oregon as a nonresident insurance producer since 4/13/06. Fong's last recorded residence and business address is located in San Jose, California.

Failed to Report Criminal Action

Fong is subject to enforcement action pursuant to ORS 744.089(2) because of the following circumstances. ORS 744.074(1)(b) permits the director to take any

authorized enforcement action against a person who has applied for a license or is licensed in Oregon as an insurance producer if the person violated any insurance statute; or any rule, order, or subpoena, of the director or the insurance regulator of another state. ORS 744.089(2), an insurance statute, requires a person who is licensed in Oregon as an insurance producer to notify the director of any criminal prosecution of the person; and provide a copy of the initial complaint, order resulting from the hearing and any other relevant legal documents, within 30 days of the pretrial hearing. On 6/16/06, in the Superior Court of the State of California for the County of Santa Clara, in the criminal case *People of the State of California v. Helen Tran Fong et al*, case number 211056, Fong was charged of committing two counts of the crime of presenting a false insurance claim, a felony, pursuant to California Penal Code §550(a)(1). Fong was alleged to have committed the crime by, on or about 7/1/00 to 9/12/01, in the County of Santa Clara, California, knowingly presenting and causing to be presented, aid, abet, solicit, and conspiring with another person to knowingly present and cause to be presented, a false and fraudulent claim for the payment of a loss and injury, including payment of a loss and injury under a contract of insurance regarding Farmers Insurance Exchange. On or about 7/3/06, Fong appeared before the court to respond to the charges. Thus, Fong was required to notify the Insurance Division of the criminal action, and provide a copy of the specified documents, by 8/2/06. On 11/28/08, 849 days late, the director received from Fong a letter dated 11/25/08 notifying the director of the action and providing a copy of the indictment, the subsequent judgment, and other related documents.

Convicted of Felony Involving Dishonesty or Breach of Trust

Fong is also subject to enforcement action pursuant to ORS 731.428(4) because of the following circumstances. ORS 731.428(4) requires the director to revoke, suspend, or refuse to renew, the Oregon insurance producer license issued to a person who was convicted of, among other things, a felony involving dishonesty or a breach of trust. OAR 836-071-0321(1) defines a felony involving dishonesty as “includ[ing] but not limited to any offense constituting or involving theft, burglary,

perjury, bribery, forgery, counterfeiting, a false or misleading oral or written statement, deception, fraud, a scheme or artifice to deceive or defraud, a material misrepresentation or the failure to disclose material facts.” On or about 3/29/07, Fong was convicted, based on a plea of *nolo contendere*, by the Superior Court of the State of California for the County of Santa Clara, in the criminal case *People of the State of California v. Helen Tran Fong et al*, case number 211056, of committing two counts of the crime of presenting a false insurance claim, a felony, pursuant to California Penal Code §550(a)(1).

Enforcement Action by Other State Insurance Regulator

Fong is also subject to enforcement action pursuant to ORS 744.074(1)(i) because of the following circumstances. ORS 744.074(1)(i) permits the director to take any authorized enforcement action against a person who has applied for a license or is licensed in Oregon as an insurance producer if another state insurance regulator canceled, revoked, suspended, or refused to renew, the person’s license in that state as an insurance producer, adjuster or consultant. On or about 1/17/08, the insurance regulator for the State of California issued an order, number LBB 4364-AP (AR), revoking Fong’s California resident insurance producer license effective 2/16/08 because Fong violated California Insurance Code §1669(a), in conjunction with §1738, by having been convicted of a crime.

Failed to Report Enforcement Action by Other State Insurance Regulator

Fong is also subject to enforcement action pursuant to ORS 744.089(1) because of the following circumstances. ORS 744.074(1)(b) permits the director to take any authorized administrative action against a person who has applied for a license or is licensed in Oregon as an insurance producer if the person violated any insurance statute; or any rule, order, or subpoena, of the director or the insurance regulator of another state. ORS 744.089(1), an insurance statute, requires a person who is licensed in Oregon as an insurance producer to notify the director of any administrative action taken against the person by another state insurance regulator and provide a copy of the order within 30 days of the final disposition of the action. On or about 1/17/08, the insurance regulator for the State of California issued an

order revoking Fong's California resident insurance producer license. The action was finally disposed of on or about 2/15/08 pursuant to California Government Code §11521 and §11523. Thus, Fong was required to notify the director of the action and provide a copy of the order by 3/17/08. Fong has not notified the director of the action or provided a copy of the order.

Order

Pursuant to ORS 731.428(4) and ORS 744.074(1), Fong's Oregon nonresident 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 January 29, 2009

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

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