

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

In the Matter of	)	<b>RULING ON MOTION FOR</b>
	)	<b>SUMMARY DETERMINATION;</b>
	)	<b>PROPOSED ORDER</b>
<b>J. TIMOTHY HORST, Respondent</b>	)	Case No. INS 11-02-001

On April 27, 2011, the Insurance Division of the Department of Consumer and Business Services (Division) issued a Notice of Proposed Action to J. Timothy Horst proposing to assess a civil penalty of \$3,400 against Mr. Horst based upon alleged violations of the Insurance Code. Mr. Horst timely requested a hearing. The Division referred the matter to the Office of Administrative Hearings (OAH) on April 28, 2011. The OAH assigned the case to Senior Administrative Law Judge (ALJ) John Mann. The matter was scheduled for hearing on July 8, 2011.

On June 9, 2011, the Division filed a Motion for Summary Determination. The Motion included a statement of Mr. Horst's right to file a response and the procedures for doing so. Mr. Horst did not file a response. On July 1, 2011, the OAH advised the parties that ALJ Mann would resolve the case through the summary determination process and that the July 8, 2011 hearing was cancelled. ALJ Mann then took the matter under advisement.

**ISSUES**

Whether the Division is entitled to a favorable ruling as a matter of law on the following issues:

1. Whether Mr. Horst forged another person's name on an application for insurance or on any other document related to an insurance transaction in violation of ORS 744.074(1)(k).
2. Whether Mr. Horst made a false or fraudulent statement on or relative to an insurance application in violation of ORS 746.100.
3. Whether Mr. Horst failed to notify the Director of a change in his business address in violation of ORS 744.068(4)(a).
4. Whether Mr. Horst failed to notify the Director of a change in his residence address in violation of ORS 744.068(4)(c).

5. Whether the Division may impose a civil penalty of \$3,400 for the above violations.

### **DOCUMENTS CONSIDERED**

I considered the Division's Motion for Summary Determination, including Exhibits A1 through A12.

### **FINDINGS OF FACT**

1. J. Timothy Horst has been licensed as a resident individual insurance producer since September 15, 2008. (Ex. A1.)

2. On April 13, 2010, the Division received a letter from Foster & Associates, Inc. stating that the company had terminated Mr. Horst for falsifying an applicant's signature on several insurance application forms. (Ex. A2.)

3. On February 11, 2010, Mr. Horst signed Robert O. Eldridge's name to a form from Midland National Life Insurance Company. The form, labeled Statements About Life Insurance Illustrations (Illustrations form), was required to be completed and submitted to the insurance company along with the application. Mr. Eldridge previously signed other forms required for the application, but had not signed the Illustrations form. Mr. Horst tried to contact Mr. Eldridge, by telephone and by e-mail, but was not able to reach him. Mr. Eldridge did not return Mr. Horst's phone calls and did not respond to his e-mails. Mr. Horst therefore signed Mr. Eldridge's name on the Illustrations form to expedite the application process. (Ex. A10<sup>1</sup> at 32:00 – 41:00; Ex. A4 at 5.)

4. Mr. Eldridge did not authorize Mr. Horst to sign his name on any documents and was not aware that Mr. Horst had done so. (Ex. A10 at 42:00 – 43:00.)

5. On February 22, 2010, Mr. Horst signed the name of Charles Meyer a total of seven times on six documents related to Mr. Meyer's application for a life insurance policy from Western Reserve Live Assurance Company of Ohio. (Ex. A5 at 3, 9, 13, 14, 15, 16, and 17; Ex. A0 at 49:00 through 59:00.)

6. Mr. Myer did not authorize Mr. Horst to sign his name on any documents and was not aware that Mr. Horst had done so. (Ex. A10 at 50:00-58:00.)

7. On February 22, 2010, Mr. Horst signed a document labeled Agent's Report in connection with Mr. Meyer's insurance application. On the form, Mr. Horst marked a box labeled "yes" to indicate that he had viewed Mr. Meyer's identification "during face to face sale." (Ex. A5 at 19.) He listed the identification as a California driver license, and listed the license number and expiration date. (*Id.*) Mr. Horst never met Mr. Meyer

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<sup>1</sup> Exhibit A10 is an audio recording of a sworn interview of Mr. Horst by Division investigators conducted on November 17, 2010.

in person and never viewed his driver license or any other identification. Mr. Meyer gave Mr. Horst his driver license information over the phone. (Ex. A12 at 7 and 8.)

8. In August 2009, Mr. Horst changed his business address from 9020 SW Washington Square Road, Suite 550, Tigard, Oregon to 17040 SW Pilkington Road, Suite 210, Lake Oswego, Oregon. In March 2010, Mr. Horst stopped working at the Lake Oswego address. Mr. Horst did not inform the Division of the changes in his business addresses because he assumed the appointing insurance companies would do so. (Ex. A12 at 4-5.)

9. In November 2010, Mr. Horst began working for Combined Insurance Company of America (Combined) at 1600 NW Compton Dr., Suite 210, Beaverton, Oregon. The company closed its local office in late 2010 and has not opened a new location. Mr. Horst continued to work for Combined, working out of his home. Mr. Horst did not inform the Division that he changed his business address in late 2010 because he assumed Combined would do so. (Ex. A12 at 5.)

10. In September 2009, Mr. Horst changed his residence from 16953 Kara Lane, Lake Oswego, Oregon to 6251 SW Southwood Drive, Portland, Oregon. Mr. Horst did not notify the Division of this change because he did not conduct business from his home and did not keep insurance records there. (Ex. A12 at 3.)

11. The Division mailed a letter to Mr. Horst, dated February 1, 2010, with questions about a number of issues under investigation. At Mr. Horst's request, the Division e-mailed an electronic version of the letter to Mr. Horst. (Ex. A12.)

12. On March 1, 2010, Mr. Horst e-mailed his answers to the Division. In response to specific questions, Mr. Horst acknowledged that he had not previously informed the Division of his business and residential address changes. (Ex. A12 at 4-5.)

## **CONCLUSIONS OF LAW**

The Division is entitled to a favorable ruling as a matter of law on the following issues:

1. Mr. Horst forged another person's name on an application for insurance or on any other document related to an insurance transaction in violation of ORS 744.074(1)(k).

2. Mr. Horst made a false or fraudulent statement on or relative to an insurance application in violation of ORS 746.100.

3. Mr. Horst failed to notify the Director of a change in his business address in violation of ORS 744.068(4)(a).

4. Mr. Horst failed to notify the Director of a change in his residence address in violation of ORS 744.068(4)(c).

5. The Division may impose a civil penalty of \$3,400 for the above violations.

### **RULING AND OPINION**

The Division filed a Motion for Summary Determination seeking a favorable ruling as a matter of law disposing of all issues in this case. OAR 137-003-0580 sets forth the legal standard that applies to a motion for summary determination. The rule provides, in relevant part:

(6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

\* \* \* \* \*

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

\* \* \* \* \*

(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling or a final order in accordance with OAR 137-003-0665 if the administrative law judge has authority to issue a final order without first issuing a proposed order.

The Division alleged that Mr. Horst violated four separate provisions of the insurance code. Each allegation is addressed separately below.

#### **1. Forged Signatures**

ORS 744.074(1)(k) allows the Division to discipline an insurance producer for:

Forging another person's name to an application for insurance or to any document related to an insurance transaction.

The Division presented evidence to demonstrate that Mr. Horst forged the signatures of two clients on insurance application forms. The evidence demonstrated one forged signature of one client, and a total of seven forged signatures for the other client. In November 2010, Division investigators interviewed Mr. Horst, under oath, about the allegations in this case. In that interview, Mr. Horst admitted to the alleged forgeries. In light of that sworn admission, the Division established that there are no genuine issues as to any material fact with regard to the allegations. The Division is therefore entitled to a favorable ruling that Mr. Horst forged client signatures on documents related to insurance transactions a total of eight times. Each forgery constituted a separate violation of ORS 744.074(1)(k).

## **2. False or Fraudulent Statement Relative to an Insurance Application.**

ORS 746.100 provides:

No person shall make a false or fraudulent statement or representation on or relative to an application for insurance, or for the purpose of obtaining a fee, commission, money or benefit from an insurer or insurance producer.

On February 22, 2010, Mr. Horst signed a document labeled Agent's Report in connection with a client's insurance application. Mr. Horst checked a box labeled "yes" in response to a question that asked if he had checked the client's identification during a face to face transaction. Below that box, he wrote that he had checked the client's California driver license and supplied the license number and expiration date. In a March 1, 2010 written response to Division questions, Mr. Horst admitted that he had never met with Mr. Meyer in person and had never seen his license. Mr. Horst admitted that Mr. Meyer gave him his license information during a phone conversation. His statement on the insurance form that he had reviewed the license during a face to face meeting was false and violated the statute. The Division is entitled to a favorable ruling on that issue.

## **3. Failure to Notify the Director of Change in Business Address.**

ORS 744.068(4) provides, in relevant part:

An insurance producer shall notify the director of any of the following changes not later than the 30th day after the date of the change:

(a) A change of address or telephone number of the principal place of business or any location at which the insurance producer transacts business under the license in this state.

Mr. Horst changed his business address in August 2009, March 2010, and November or December 2010. He did not notify the Division of any of these changes until he responded to an inquiry in March 2011. That response was untimely with regard to all three changes to his business address. In that response, Mr. Horst admitted that he had not previously informed the Division of the change because he assumed that the appointing insurance companies he was working for would do so. Nevertheless, ORS 744.068(4)(a) makes each producer responsible for making sure that the Division is notified. Mr. Horst is therefore personally responsible for the violation, even if he assumed that someone else had made the required notification. The Division is entitled to a favorable ruling that Mr. Horst violated ORS 744.068(4)(a) on three separate occasions.

#### **4. Failure to Notify the Director of Change in Residence.**

ORS 744.068(4) provides, in relevant part:

An insurance producer shall notify the director of any of the following changes not later than the 30th day after the date of the change:

\* \* \* \* \*

(c) A change of residence. This paragraph applies only to a resident insurance producer.

Mr. Horst changed his residence in September 2009. In March 2011, in response to the Division's inquiry, Mr. Horst admitted that he had not notified the Division of this change because he did not conduct business from his home and did not keep insurance records there. Based on this assertion, it appears likely that Mr. Horst mistakenly believed that he was required to notify the Division solely of his business-related addresses. That is incorrect. ORS 744.068(4)(c) required Mr. Horst to notify the Division when he changed his residence. He failed to do so within 30 days as required. The Division is entitled to a favorable ruling on that issue.

#### **5. Civil Penalty.**

ORS 731.988(1) provides:

Any person who violates any provision of the Insurance Code, any lawful rule or final order of the Director of the Department of Consumer and Business Services or any judgment made by any court upon application of the director, shall forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the director of not more than \$10,000 for each offense. In the case of individual insurance producers, adjusters or insurance consultants, the civil penalty shall be not more than \$1,000 for each offense. Each violation shall be deemed a separate offense.



CERTIFICATE OF SERVICE

On 29th day of August 2011, I mailed the foregoing **RULING ON MOTION FOR SUMMARY DETERMINATION; PROPOSED ORDER** in Reference No. **1102001**.

BY FIRST CLASS MAIL:

J Timothy Horst 6518 SW Firlock Way, Apt 1 Portland, OR 97223-7947  Judith Anderson General Counsel Division Assistant Attorney General, DOJ 1162 Court Street NE Salem OR 97301-4096	
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VIA ELECTRONIC MAIL:

Mitchel Curzon  
Chief Enforcement Officer  
Insurance Division  
Department of Consumer and Business Services

\_\_\_\_\_/s/ Charles Ramsey  
Charles J Ramsey  
Hearing Coordinator