

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

In the Matter of **J. Timothy Horst**) **FINAL ORDER**
) Case No. INS 11-02-001

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 J. Timothy Horst (Horst).

On 4/27/11, the director issued a notice of proposed action informing the party that the director proposed to take enforcement action against the party, the party was entitled to a hearing pursuant to ORS 183.415, but since the party had requested a hearing on 4/18/11 then the party did not need to again request a hearing.

On 4/27/11, the director referred the party's request for a hearing to the Office of Administrative Hearings (OAH).

On 5/9/11, OAH scheduled a hearing to be conducted on 7/8/11.

On 6/9/11, the director filed with OAH a motion for a summary determination. The party did not respond to the motion.

On 7/1/11, OAH informed the party that the hearing would be canceled because OAH "would resolve the case through the summary determination process."

On 8/29/11, OAH issued a proposed order granting the director's motion for summary determination; and finding that the party committed all of the violations alleged, and recommending that the director take the action proposed, in the notice of proposed action. The proposed order informed the party that they could file with the director written exceptions to the proposed order by 9/28/11.

The director did not receive from the party 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.

On page seven, in the first paragraph, the proposed order stated that “[u]nder ORS 731.988(1), the [director] has the authority to issue a civil penalty of up to \$10,000 for each of the 13 violations for a total of \$130,000.” Although ORS 731.988(1) authorizes the director to assess *a person other than an individual* a civil penalty of up to \$10,000 for each offense, it authorizes the director to assess an *individual* only up to \$1,000 for each offense. Since the party in this case is an individual, and the party violated four different laws in 13 instances, the director may assess the party only up to \$13,000, not \$130,000. Nevertheless, as correctly indicated in the proposed order, the director “has elected to seek a civil penalty of \$3,400, [which is] well less than the statutory maximum and within the [director’s] statutory discretion.”

Order

Pursuant to ORS 731.988(1), Horst is assessed a civil penalty of \$3,400. The payment shall be made in the form of a check payable to the "Department of Consumer and Business Services" for the full amount due. The payment shall be delivered or mailed to the Insurance Division at the Labor and Industries Building, 350 Winter Street NE Room 300, Salem, Oregon 97301-3880; or mailed to the Insurance Division at PO Box 14480, Salem, OR 97309-0405. Pursuant to ORS 183.090(2), the payment is due on, and shall be received by the Insurance Division by, the 71st calendar day after the date of this order, unless the party timely requests judicial review of the 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 by delivering or mailing it to the Insurance Division at Labor and Industries Building, 350 Winter Street NE Room 300, Salem, Oregon 97301-3880; or mailing it to PO Box 14480, Salem, OR 97309-0405; or faxing it to 503-378-4351; or e-mailing it to mitchel.d.curzon@state.or.us.

Dated October 4, 2011

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

//
//
//