

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

**In the Matter of** ) **Case No: INS 11-06-003**  
 )  
**YORHAM GORDON** ) **PROPOSED ORDER**  
 )  
 )

**HISTORY OF CASE**

On July 5, 2011, the Administrator of the Department of Consumer and Business Services Insurance Division issued a Notice of Proposed Action (Notice) proposing to revoke the Oregon resident individual insurance producer license issued to Yorham Gordon (Licensee) pursuant to ORS 744.074(1). Licensee timely requested a hearing challenging the proposed action. On July 12, 2011, the Division referred this matter to the Office of Administrative Hearings (OAH) for hearing.

The hearing was held on November 10, 2011 in Tualatin, Oregon. Senior Administrative Law Judge Alison Greene Webster presided. Assistant Attorney General Judith K. Anderson represented the Division. Licensee appeared in person without counsel.

The Division called the following witnesses: Yorham Gordon and Mitchel Curzon, Chief Enforcement Officer for the Division. Licensee also testified on his own behalf. The record closed at the end of the hearing on November 10, 2011.

**ISSUES**

1. Whether Licensee provided incorrect, misleading, incomplete or materially untrue information in his June 18, 2009 application for licensure, in violation of ORS 744.074(1)(a).
2. If Licensee violated ORS 744.074(1)(a) in applying for licensure, what is the appropriate sanction?

**EVIDENTIARY RULINGS**

The Division's Exhibits A1 through A7 were admitted into the record at hearing without objection.

///  
///

## **FINDINGS OF FACT**

1. Licensee was licensed in Oregon as a resident insurance producer from August 2000 to August 2002. He applied for licensure again in 2009, by submitting an application online on June 18, 2009. That application was granted, and he has been licensed in Oregon as a resident insurance producer since July 6, 2009. (Test. of Curzon.)

2. In January 2005, Licensee filed for Chapter 7 Bankruptcy in the United States Bankruptcy Court for the District of Oregon. The matter was discharged by Final Decree entered August 1, 2005. (Ex. A3.)

3. In June 2006, Licensee entered into a Consent Order with the Division of Finance and Corporate Securities (DFCS), part of the Oregon Department of Consumer and Business Services (DCBS). Without admitting or denying the allegations asserted against him, Licensee agreed, among other things, to cease and desist from offering and selling securities to persons in the State of Oregon in violation of ORS 59.055, 59.135 and 59.165 and the provisions of OAR Chapter 441 and to pay the sum of \$50,000 as a civil penalty, with \$48,000 suspended, so long as he did not violate the state's securities laws for five years. (Ex. A2.)

4. In 2007, Licensee was named as a defendant in a civil action filed in the District Court for the County of Arapahoe in Colorado. Plaintiffs Jeffrey Lavenhar and Lodestone, LLC, a Colorado limited liability company, brought action against Licensee and several other individuals and limited liability companies (including two in Oregon, International Business Development, Ltd. and Gortech International, LLC),<sup>1</sup> alleging, among other things, fraudulent misrepresentation, fraudulent concealment, conversion, civil theft, unjust enrichment, violations of the Colorado Securities Act, and breach of fiduciary duty. (Ex. A7.)

5. In an amended complaint dated October 8, 2007, the plaintiffs alleged, among other things, that Licensee and other named defendants made knowing misrepresentations of material fact to plaintiffs and fraudulently concealed other material facts. Specifically, the amended complaint alleged that Licensee and co-defendant Arieh Szigeti advised plaintiff Lavenhar that his \$250,000 investment would be invested into a transaction involving a "GE pension fund" and that the money would be wired into an account of a former federal court judge with the last name Yves. The amended complaint further alleged that Licensee and Szigeti falsely represented that others had invested through them in this same investment transaction, and had enjoyed substantial returns on their investments. In addition, the amended complaint alleged that Licensee and Szigeti concealed the true nature of the transaction and/or investment, the ultimate use of the plaintiffs' funds, whether the securities in issue were registered and whether the defendants were registered broker-dealers. The amended complaint also alleged that Szigeti and Licensee breached fiduciary duties owed to the plaintiffs by failing to advise the plaintiffs of the true nature of the transaction and/or investment, the ultimate destination of the wired funds and the persons or entities receiving those funds and by not honoring the plaintiffs' rescission and termination rights by returning the plaintiffs' investment. (Ex. A7.)

---

<sup>1</sup> Licensee registered the name International Business Development, Ltd. in Oregon, but the company was never active and is now defunct. Licensee is the principal of Gortech, International. (Test. of Gordon.)

6. Licensee, who was living in Oregon at all times pertinent to the Colorado lawsuit, declined to travel to Colorado to defend himself in the lawsuit. In an affidavit signed October 11, 2007, Licensee swore that he had many conversations with plaintiff Lavenhar, all of which took place from his home in Portland, Oregon. Licensee added that he did not have the financial resources to travel to Colorado to sit for a deposition or to appear in court. (Ex. A5 at 2.)

7. Licensee also took the position that he did not engage in any wrongdoing in dealing with the plaintiffs in Colorado, that he did not financially benefit from his dealings with them, that he was not responsible for the plaintiffs' losses and that he did not owe any fiduciary duty to the plaintiffs. Licensee believes he was named as a defendant simply due to his association and friendship with Szigeti. (Test. of Gordon.)

8. In March 2008, the Colorado court entered a judgment against Licensee, finding that the plaintiffs had been damaged by Licensee in the amount of \$270,655.83, plus post judgment interest, and that the damages caused by Licensee were "attended by circumstances of fraud, malice, and willful and wanton conduct." (Ex. A6.) The court ordered the plaintiffs a judgment against Licensee in the amount of \$270,655.83 as actual damages, plus the sum of \$270,655.83 as exemplary damages, plus attorney fees and costs incurred by the plaintiffs. (*Id.*)

9. In October 2008, the parties to the Colorado lawsuit, including Licensee, submitted a Stipulation of Payment of Judgment to the court, acknowledging that, to resolve the litigation, the defendants agreed to pay the plaintiffs the sum of \$275,000.00 on an established payment schedule. Upon receipt of the final payment, the plaintiffs agreed to dismiss all claims against all parties and further agreed that the judgments taken against defendant Szigeti and Licensee shall be deemed satisfied and paid in full. The parties also agreed that if the defendants failed to make the payments, then the plaintiffs were entitled to a judgment on the unpaid amount "against all parties that have been served, jointly and severally, except as to defendant Szigeti." (Ex. A5 at 5.)

10. On or about June 18, 2009, Licensee electronically submitted an application for an Oregon resident insurance producer license through the National Insurance Producer Registry. As part of the application, Licensee responded to seven background questions. Background question number 1 asked if the applicant had ever been convicted of, or is currently charged with, committing a crime. Licensee responded "Yes," and provided a written explanation of his 2005 misdemeanor conviction, which arose out of an arrest during a domestic dispute with his ex-wife. (Ex. A2 at 1 and 5.)

11. Background question number 3 asked: "Has any demand been made or judgment rendered against you for overdue monies by an insurer, insured or producer, or have you ever been subject to a bankruptcy proceeding?" Licensee responded, "No." (Ex. A2 at 1.)

12. Background question number 5 asked: "Are you currently a party to, or have you ever been found liable in, any lawsuit or arbitration proceeding involving allegations of fraud, misappropriation or conversion of funds, misrepresentation or breach of fiduciary duty?"

Licensee responded “Yes,” and provided the following written explanation:<sup>2</sup>

During 2001-2003 I had been an officer in a start-up. The CEO, Mr. Westenskow, had solicited investment funds and offered revenue sharing certificates to a few of his contacts. I did not know about his private arrangement but as an officer (President) I held a fiduciary responsibility. The Enforcement Dept. of the Division of Finance and Corporate Securities executed an Order against me to Cease and Desist the sale of securities (even though I never did that). Attached is the Order.

(Ex. A2 at 6.) Licensee attached a copy of the June 26, 2006 Order to Cease and Desist And Consent to Entry of Order as to Yorham Gordon Only. (Ex. A2 at 7-21.)

13. In the June 19, 2009 insurance application, Licensee did not disclose his 2005 bankruptcy filing in response to question 3. He also did not disclose the Colorado lawsuit, and the March 2008 judgment entered against him, in explaining his “yes” response to question 5. (Ex. A2; test. of Curzon.)

14. Licensee’s “yes” responses to background questions 1 and 5 did not automatically render him ineligible for the insurance license. The Insurance Division reviewed Licensee’s license application and, based on his written explanations and submissions, granted Licensee a resident insurance producer license effective July 6, 2009. (Test. of Curzon; Ex. A2 at 5.)

15. In January 2010, the Insurance Division received information from the Division of Finance and Corporate Securities (DFCS), another division within DCBS, that Licensee was the subject of another DFCS securities investigation. The Insurance Division then opened up its own investigative file on Licensee, pending further information from DFCS. (Test. of Curzon.)

16. In April 2011, the Insurance Division received additional information from DFCS, including the fact that Licensee had been named as a defendant in the Colorado action for fraudulent misrepresentation, fraudulent concealment, conversion, and breach of fiduciary duty, and had a default judgment entered against him. The Insurance Division then began actively investigating Licensee’s background. The Insurance Division investigator ran a comprehensive background check and discovered that the 2005 bankruptcy filing. The investigator also obtained copies of the Amended Complaint filed in the Colorado lawsuit and the March 28, 2008 Judgment entered against Licensee. (Test. of Curzon.)

17. Licensee does not recall answering “No” to question 3 on the application and acknowledges that if he did so, he did so in error. Licensee had no intention to hide from the Insurance Division the fact that he filed bankruptcy in 2005. (Test. of Gordon.)

18. Licensee intentionally chose not to disclose the Colorado lawsuit and the judgment

---

<sup>2</sup> Because Licensee responded “Yes” to question 5, he was required to submit to the Oregon Insurance Division “a) a written statement summarizing the details of each incident, b) a certified copy of the Petition, Complaint or other document that commenced the lawsuit or arbitration, and c) a certified copy of the official document which demonstrates the resolution of the charges or any final judgment.” (Ex. A2 at 3.)

against him in responding to question 5 on the application because he considered himself only “a defendant by association.” In Licensee’s assessment, he was not the plaintiffs’ fiduciary, and was not liable for or accountable for the actions of his former friend and co-defendant, Szigeti. (Test. of Gordon.)

19. As established by precedent in prior Insurance Division Final Orders, license revocation is an appropriate sanction for a licensee’s having provided incorrect, misleading, incomplete or materially untrue information on an insurance producer license application. Of the last 27 Final Orders of the Insurance Division in which a licensee was found to have violated ORS 744.074(1)(a), the Division revoked the licensee’s insurance license in all but three instances. In these other three instances, the Division assessed civil penalties against the licensee. (Test. of Curzon.)

## **CONCLUSIONS OF LAW**

1. Licensee provided incorrect, misleading, incomplete or materially untrue information in his June 18, 2009 application for licensure, in violation of ORS 744.074(1)(a).

2. The appropriate sanction for Licensee’s violations of ORS 744.074(1) is revocation of his Oregon insurance producer license.

## **OPINION**

### **A. Violations of ORS 744.074(1)**

The Division seeks to revoke Licensee's insurance agent license pursuant to ORS 744.074(1)(a) based on his providing allegedly incorrect, incomplete or misleading information on his June 18, 2009 insurance license application. The Division has the burden of proving the allegations in its Notice of Proposed Action by a preponderance of the evidence. *See* ORS 183.450(2) and (5); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position.); *Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). In this case, for the reasons set forth below, the Division has met its burden.

ORS 744.074(1)(a) provides as follows:

The Director of the Department of Consumer and Business Services may place a licensee on probation or suspend, revoke or refuse to issue or renew an insurance producer license and may take other actions authorized by the Insurance Code in lieu thereof or in addition thereto, for any one or more of the following causes:

(a) Providing incorrect, misleading, incomplete or materially untrue information in the license application.

In this case, the Division asserts that Licensee provided an incorrect answer to background question 3 of the application, and an incomplete or misleading response to background question 5. The Division further asserts that, consistent with its determination in prior cases where an applicant or licensee provides false or misleading information in a license application, revocation is warranted.

### *Response to Background Question 3*

As noted above, background question 3 asked, among other things, whether Licensee had “ever been subject to a bankruptcy proceeding?” Licensee responded, “No,” which was incorrect in light of his 2005 bankruptcy filing. Licensee does not recall answering this question incorrectly, but the fact remains he did so. He also asserted at hearing that he may not have read the question through to the end, and answered “No” because he had never been sued for overdue monies. Regardless, Licensee’s incorrect answer to background question 3 constitutes a violation of ORS 744.074(1).

### *Response to Background Question 5*

Background question 5 asked whether Licensee had ever been found liable in any lawsuit or involving allegations of fraud, misappropriation or conversion of funds, misrepresentation or breach of fiduciary duty. Licensee answered affirmatively and disclosed that he was subject to a DFCS Cease and Desist Order, but he did not disclose the Colorado lawsuit and the judgment finding him liable for damages in excess of \$540,000 due to fraudulent misrepresentation and/or fraudulent concealment.

Licensee’s failure to disclose the Colorado complaint and judgment in responding to question 5 also constitutes a violation of ORS 744.074(1). The “yes” response was correct, but his written explanation, specifically his omitting any mention of the Colorado lawsuit, rendered the application information incomplete and misleading. Licensee asserted that he did not need to disclose the Colorado complaint and judgment because he did nothing wrong, the allegations against him were untrue, the case subsequently settled, and Szigeti has paid most of the judgment. But, again, fact remains that Licensee was found legally liable in this lawsuit involving allegations of fraud, conversion of fund and breach of fiduciary duty. That he disagreed with, or disputed, the Colorado judgment is of no consequence. In response to question 5, Licensee should have included a summary of the Colorado lawsuit, a copy of the complaint, the judgment against him and the Stipulation for Payment or Judgment. His failure to do so rendered the information in the license application incorrect, misleading and incomplete.

## **B. Sanction**

The Insurance Division proposes to revoke Licensee’s insurance license, asserting that such a sanction is consistent with prior Final Orders of the Division and appropriate considering the nature of Licensee’s violations in this instance. Licensee acknowledges that his answer to question 3 was incorrect, and that his answer to question 5 was incomplete, but he asserts that revocation is an excessively harsh sanction and out of proportion to his misdeeds.



### **Notice of Right to File Exception to Proposed Order**

If the proposed order is adverse to a party, then the party has the right to file written exceptions to the order and present written argument concerning those exceptions pursuant to ORS 183.460. A party may file the exceptions and argument by sending them to the Insurance Division by delivering them to the Labor and Industries Building, 350 Winter Street NE, Room 440 (4th Floor), Salem, Oregon; or mailing them to P.O. Box 14480, Salem, Oregon 97309-0405; or faxing them to 503-378-4351; or e-mailing them to [mitchel.d.curzon@state.or.us](mailto:mitchel.d.curzon@state.or.us). The Insurance Division must receive the exceptions and argument within 30 days from the date this order was sent to the party.

CERTIFICATE OF SERVICE

On 22nd day of November 2011, I mailed the foregoing Proposed Order in Reference No. **1106003**.

**BY FIRST CLASS MAIL:**

<p>Yorham Gordon 18309 NW Chemeketa Lane Apt B Portland, OR 97229-3535</p> <p>Judith Anderson AAG General Counsel Division Assistant Attorney General, DOJ 1162 Court Street NE Salem OR 97301-4096</p>	
---	--

**VIA ELECTRONIC MAIL:**

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

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