

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

In the Matter of **Francisco Javier-Aroche** ) **FINAL ORDER**  
and **Javier Insurance Agency, Inc.** ) Case No. INS 11-07-012

**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 Francisco Javier-Aroche (Aroche) and Javier Insurance Agency, Inc. (Javier Agency).

On 7/20/11, pursuant to ORS 183.415, the director issued a notice of proposed action informing the parties that the director proposed to take enforcement action against the parties, the parties were entitled to a hearing, and if they wanted a hearing then they had to send to the director a written request for a hearing so that the director received it by 8/10/11.

On 8/8/11, the director timely received from the parties a written request for a hearing. On the same date, pursuant to ORS 183.413(2), the director mailed to the party a notice of the rights of parties and procedures in this proceeding.<sup>1</sup>

On 8/23/11, OAH scheduled a hearing to be conducted on 12/8/11, and mailed to the parties a written notice informing them of the date, time, and place of the hearing.

On 9/20/11, OAH conducted a prehearing telephone conference.

On 10/31/11, the director filed with OAH a motion for summary determination pursuant to OAR 137-003-0580(2). The parties were entitled to respond to the motion by 11/14/11.

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<sup>1</sup> The notice informed the parties, *inter alia*, that Aroche could be represented by an attorney, and that Javier Agency had to be represented by an attorney. Neither party was represented by an attorney at any time during this proceeding.

On 11/15/11, OAH received from Aroche a letter dated 11/14/11 responding to the motion.

Aroche responded to the allegation that he is subject to enforcement action pursuant to ORS 744.074(1)(a) by filing on 12/16/05 an Oregon insurance producer license application on which he misstated his social security number by stating, *inter alia*, “[b]ack in 2005 I was working as a telemarketing for Riaz insurance agency. Mr. Riaz is the one, who brought me [in]to the insurance business, and after working with him as a telemarketing he asked [me] to become licensed to sale [sic] insurance [and I] agreed to it. ... When we were ready to go forward to file my application ... he had completed the application and I just singed [sic] it. I did not checked [sic] or look at it believing all [of] the information was accurate. He had all of my personal information along with the information of my relatives. He used my relative[‘s] Social Security numbers instate [sic] of my number.”

Aroche responded to the allegation that he is subject to enforcement action pursuant to ORS 744.074(1)(f) and ORS 731.428(4) by being convicted on 4/4/11 of one count each of the crimes of identity theft and forgery, both felonies, by stating that he plead guilty to both crimes “because going to trail [sic] was going to be extremely costly and the person who actually committed the crime left the country afraid of prosecution and Per many conversation [sic] with my legal counsel it was the best choice so I could get the lest [sic] sentencing.”

Aroche did not respond to the allegation that he is subject to enforcement action pursuant to ORS 744.089(2) by failing to notify the director of the above criminal proceeding.

Aroche responded to the allegation that Javier Agency is subject to enforcement action pursuant to ORS 744.074(3) by failing to notify the director of Aroche’s misconduct and take corrective action, by stating that “when such crime happened I was not employ [sic] with Javier Insurance Agency, Inc but rather with Liberty Mutual Insurance Company and they terminated my employment for such crime and they were the ones that filed [sic] to reported [sic] to the Department of

Insurance. Therefore, [it] is inaccurate to rove [sic] Javier Insurance Agency, Inc. and not Liberty Mutual Insurance.”

On 11/17/11, the director filed with OAH a response to Aroche’s letter dated 11/14/11.

The director replied to Aroche’s response to the allegation that Aroche is subject to enforcement action pursuant to ORS 744.074(1)(a) by asserting that Aroche’s reply admitted that the social security number on the application was incorrect. The director also asserted that, although Aroche said that someone else completed the application and he only signed the application without verifying the accuracy of the information on the application including the social security number, Aroche separately signed a statement on the application stating that “I, [s/Francisco Aroche], swear that I am the person named in and who completed the foregoing application. ... The statements and answers are true and complete to the best of my knowledge and belief.”

The director replied to Aroche’s response to the allegation that Aroche is subject to enforcement action pursuant to ORS 744.074(1)(f) and ORS 731.428(4) by asserting that Aroche’s reply admitted that he was convicted of the crimes of identity theft and forgery.

The director replied to Aroche’s response to the allegation that Javier Agency is subject to enforcement action pursuant to ORS 744.074(3) by asserting that Aroche’s reply admitted to being convicted of the crimes, and did not deny failing to report the criminal action to the director, and further did not deny being an individual licensee authorized to represent Javier Agency, and an officer or manager, of Javier Agency when Aroche was convicted of the crimes on 4/4/11, as opposed to when Aroche committed the crimes on or about 11/18/10.

On 11/22/11, OAH issued a proposed order. The proposed order granted the director’s motion, canceled the hearing, and found that the parties committed all of the violations alleged, and recommended that the director take the action proposed, in the notice of proposed action. The proposed order informed the parties that they

could file with the director written exceptions to the proposed order within 30 days after the proposed order was sent to the parties.

On 12/22/11, the director timely received from Aroche written exceptions to the proposed order.

Aroche objected to the proposed conclusion that he is subject to enforcement action pursuant to ORS 744.074(1)(a) by stating, *inter alia*, that “I did not fill the application with the incorrect social security number. I in fact, I singed [sic] the application without reading it ... but this [was] a simple mistake and was not done intentionally.”

Aroche did not object to the proposed conclusion that he is subject to enforcement action pursuant to ORS 744.074(1)(f) and ORS 731.428(4).

Aroche did not object to the proposed conclusion that he is subject to enforcement action pursuant to ORS 744.89(2).

Aroche objected to the proposed conclusion that Javier Agency is subject to enforcement action pursuant to ORS 744.074(3) by stating “[w]hen the alleged crime happened I was not the principal or owner of Javier Insurance Agency, Inc. in fact [it] was administrative [sic] dissolve [sic] on 7-23-2010, and was not opened for business; therefore [it] was under no obligation to report such allegation (The Crime) due to the fact that I was not an employee of such Company.”

Aroche objected to the statement in the proposed order, page 3, fifth numbered paragraph, that “[i]n January 2011, Aroche was arrested by the Oregon State Police....” Aroche stated that “I have never being [sic] arrested by the Oregon State Policy in my life.”

The director considered Aroche’s exceptions. The director is not persuaded that the director must or should take any action against Aroche different than that proposed in the notice and recommended in the proposed order. However, the director is persuaded that the director must dismiss the proposed and recommended action against Javier Agency.

ORS 744.074(1)(a) permits the director to take any authorized enforcement action against a person who [p]rovid[es] incorrect...information in the license

application. The law requires an applicant to provide correct information. The law does not require the applicant to know that the information provided is incorrect.

In this case, on 10/21/05, Aroche signed an application for an Oregon resident individual insurance producer license. Aroche certified that he completed the application and the information was true and complete to the best of his knowledge. However, Aroche did not complete the application and did not read the completed application to make sure the information provided was correct. The application stated that Aroche's social security number was 603-##-#### when his assigned social security number was 541-##-####. Aroche sent or caused to be sent the application to the director. On 12/16/05, the director received the application. Thus, as alleged in the notice and found in the proposed order, Aroche is subject to enforcement action pursuant to ORS 744.074(1)(a) by providing incorrect information on an Oregon insurance license application.

ORS 744.074(1)(f) permits the director to take any authorized enforcement action against a person who has applied for a license in Oregon as an insurance producer if the person was convicted of a felony. 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. Oregon Administrative Rules (OAR) 836-071-0321(1) defines a felony involving dishonesty as "includ[ing] but not limited to any offense constituting or involving ... 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."

In this case, on 4/4/11, in the Circuit Court of the State of Oregon for Washington County, in the criminal case *State v. Francisco Aroche*, case number C110214CR, Aroche was convicted, based on a plea of guilty, of committing one count of the crime of identity theft, a felony, pursuant to ORS 165.800 and one count of the crime of forgery, a felony, pursuant to ORS 165.013. According to the Criminal Information dated 3/8/11, Aroche committed the crime of identify theft by "on or about [11/18/10], in Washington County, Oregon, [Aroche] did unlawfully,

with intent to deceive and defraud obtain, possess, transfer, create, utter and convert to [Aroche's] own use the personal identification of another person.” According to the Information, Aroche committed the crime of forgery by “on or about [11/18/10], in Washington County, Oregon, [Aroche] did unlawfully, knowingly and with intent to injure and defraud falsely make, complete, alter and utter a letter from the Oregon Department of Transportation, a written instrument that was and purposed to be a public record, [Aroche] knowing the written instrument to be forged.” Thus, as alleged in the notice and found in the proposed order, Aroche is subject to enforcement action pursuant to ORS 744.074(1)(f) and ORS 731.428(4) be being convicted of two felonies both of which involved dishonesty.

ORS 744.089(2) 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.

In this case, Aroche has been licensed in Oregon as a resident individual insurance producer since 3/27/06. On 2/3/11, Aroche appeared before a court to respond to, *inter alia*, the criminal charges described herein. Aroche was required to notify the director of the criminal action, and provide a copy of the specified documents, by 3/7/11. Aroche never notified the director of the action or provided a copy of the specified documents. Thus, as alleged in the notice and found in the proposed order, Aroche is subject to enforcement action pursuant to ORS 744.089(2) by failing to notify the director of the criminal prosecution described herein.

ORS 744.074(3) permits the director to revoke the Oregon business entity insurance producer license issued to a business entity when the director determines that an individual, who was employed by or otherwise authorized to act for the business entity, and was licensed in Oregon as an individual insurance producer, violated a provision of the Insurance Code or related rules, and the partners, officers, or managers of the business entity knew or should have known of the individual's violation but the partners, officers, or managers did not report the violation to the director or did not take any corrective action or both. The law

implies that there is a business relationship between the individual licensee and the business entity licensee and as a result the business entity licensee could, and should or did, know about, and take corrective action relative to, the individual licensee's violation, whenever it occurred. The law does not require that the individual licensee's violation occur during the existence of the business relationship.

In this case, Aroche failed to notify the director of the criminal prosecution by 3/7/11 and was convicted of the two felonies involving dishonesty on 4/4/11. Aroche had been the president of Javier Agency while it was registered with the Oregon Secretary of State Corporation Division from 5/27/08 to 7/23/10. However, the record does not contain any evidence that Javier Agency existed on or after 3/7/11. Nor does the record contain any proof of Aroche's relationship with Javier Agency on or after 3/7/11. Thus, contrary to the allegation in the notice of proposed action and findings and conclusion in the proposed order, but only due to a lack of evidence in the record, Javier Agency is not subject to enforcement action pursuant to ORS 744.074(3) by failing to report to the director Aroche's violations and taking any corrective action.

Finally, regarding the statement in the proposed order that Aroche was arrested by the Oregon State Police in January 2011, the record indicates that on 1/6/11, Aroche was voluntarily interviewed, arrested, cited, and released by an Oregon state trooper. *See* Motion for Summary Determination dated 10/31/11, Exhibit 6, pages 7-8.

After considering the exceptions, 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 the proposed order as the findings of fact, conclusions of law, and reasoning of this final order, except as follows.

The director does not adopt the proposed order to the extent that it states, finds, or concludes that Javier Agency is subject to enforcement action pursuant to ORS 744.074(3).

### **Order**

Pursuant to ORS 731.428(4) and ORS 744.074(1), Aroche's Oregon resident individual insurance producer license is revoked on the date of this order.

The enforcement action proposed against Javier Agency's Oregon resident business entity insurance producer license is dismissed.<sup>2</sup>

### **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, OR 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](mailto:mitchel.d.curzon@state.or.us).

Dated February 15, 2012

/s/ Louis Savage  
Louis Savage  
Acting Administrator  
Insurance Division  
Department of Consumer and Business Services

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<sup>2</sup> Nothing in this order precludes the director from commencing another proceeding to take enforcement action against Javier Agency for violation of ORS 744.074(3) or any other applicable law.