

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

IN THE MATTER OF:

CRAIG K. TALIAFERRO

) **RULING ON MOTION FOR SUMMARY**
) **DETERMINATION & PROPOSED**
) **ORDER**
) OAH Case No. 11-08-002
) Agency Case No.

HISTORY OF THE CASE

On September 7, 2011, the Insurance Division (Division) of the Department of Consumer & Business Services issued a Notice of Proposed Action to Craig K. Taliaferro (Respondent), seeking to revoke his insurance producer license.¹ On September 8, 2011, Respondent requested a hearing. The Division referred the hearing request to the Office of Administrative Hearings (OAH) on September 9, 2011. Administrative Law Judge (ALJ) Rick Barber was assigned to preside at hearing, which was scheduled for December 1, 2011.

On October 19, 2011, Senior Assistant Attorney General Kelly Gabliks filed a Motion for Summary Determination, along with supporting documents, on behalf of the Division. The motion advised Respondent that he had 14 days to respond to the motion. Respondent did not file a response to the motion. **As a result of the decision in this document, the hearing scheduled for December 1, 2011, is cancelled.**

ISSUE

Whether Respondent's individual insurance producer license should be revoked pursuant to ORS 744.074(1).

NATURE OF THE REVIEW

Pursuant to OAR 137-003-0580, a Motion for Summary Determination may be filed by the agency or a party not less than 28 days before the date set for hearing, requesting a ruling on the legal issues in the contested case. The rule, quoted in part below, sets forth the standard by which I review the motion:

¹ The Division filed an Amended Notice on October 11, 2011, with one minor change. The Amended Notice also informed Respondent that he need not file another hearing request because he had already filed one against the earlier Notice.

Motion for Summary Determination

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(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.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(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.

(9) A party or the agency may satisfy the burden of producing evidence through affidavits. Affidavits shall be made on personal knowledge, establish that the affiant is competent to testify to the matters stated therein and contain facts that would be admissible at the hearing.

(10) When a motion for summary determination is made and supported as provided in this rule, a non-moving party or non-moving agency may not rest upon the mere allegations or denials contained in that party's or agency's pleading. When a motion for summary determination is made and supported as provided in this rule, the administrative law judge or the agency must explain the requirements for filing a response to any unrepresented party or parties.

(11) The administrative law judge's ruling may be rendered on a single issue and need not resolve all issues in the contested case.

(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.

OAR 137-003-0580.

DOCUMENTS CONSIDERED

In rendering this decision, I have considered the Division's motion and the nine attached exhibits. Pursuant to the administrative rule quoted above, I have interpreted the evidence in a matter most favorable to Respondent, the non-moving party.

FINDINGS OF FACT

1. Respondent has been licensed in Oregon as a Resident Individual Insurance Producer from July 18, 2005 to July 31, 2007, and since September 4, 2007. (Ex. 1). His license was suspended from November 8, 2010 to March 8, 2011, pursuant to a Final Order issued by the Division on November 3, 2010. (Ex. 2). Respondent became aware of the suspension no later than November 4, 2010. (Ex. 3).

2. On November 17, 2010, Respondent recommended an insurance product to Delmer and Lilly Koskovich, and then sold it to them. Respondent explained the product, convinced them to buy the product, and then had an associate sign the form for his company. (Ex. 4).

3. Respondent was found in contempt of court (Contempt I) in Lane County Circuit Court on January 28, 2011, and was sentenced to 20 days in jail, required to undergo a mental health evaluation, and given several other requirements of bench probation. (Ex. 5). Respondent did not report this conviction to the Division until he told an investigator about it on July 7, 2011. (Ex. 1 at 2).

4. The Division keeps a database of licensing information on all of the insurance producers in Oregon, and the producers are required to keep the Division apprised of business and home addresses. As of October 19, 2011, the database showed Respondent's business address as H & R Insurance Planners, 405 2nd Avenue SE, in Albany, Oregon. (Ex. 6). Respondent never worked in that office, although he would mail applications for Equitable Insurance to that address. (Ex. 9). From 2009 to the present, Respondent worked in the "Turning 65 Store" in Eugene, and sold insurance from that location. It was there that the Koskovich transaction occurred. Respondent did not provide this address to the Division. (Ex. 7).

RULING

The Division contends that Respondent's insurance producer license should be revoked for multiple violations of ORS 744.074, which states in part:

Authority of director to place licensee on probation or to suspend, revoke or refuse to issue or renew license. (1) 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:

* * * * *

(b) Violating any insurance laws, or violating any rule, subpoena or order of the director or of the insurance commissioner of another state or Mexico or Canada.

Generally, the Division must prove its case by a preponderance of the evidence. *Sobel v. Board of Pharmacy*, 130 Or App 374, 379 (1994), *rev den* 320 Or 588 (1995) (standard of proof under the Administrative Procedures Act is preponderance of evidence, absent legislation adopting a different standard). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely true than not. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987).

In a Motion for Summary Determination, I may only grant the motion if there are no remaining issues of material fact and if the moving party is entitled to a ruling as a matter of law. I must consider all of the evidence presented in a light most favorable to the non-moving party—in this case, in a light most favorable to Respondent. However, Respondent offered neither evidence nor argument regarding this motion. Looking at the evidence in the record, it is undisputed that Respondent violated several insurance laws and an order of the Director.

Respondent transacted business in violation of the Director’s Final Order in Case INS 09-06-005. The Division’s November 3, 2010 Final Order suspended Respondent’s insurance producer license from November 8, 2010 to March 8, 2011. Respondent was aware of the suspension before the time period began. Despite that knowledge, Respondent continued to work at the Turning 65 Store and negotiated and sold a policy to the Koskoviches on November 17, 2010. (Ex. 4).

Only a licensed insurance producer may sell, solicit or negotiate the sale of insurance. ORS 744.053. When Respondent sold the policy to the Koskoviches, he was aware that his license was suspended. He violated ORS 744.053 and, by so violating, also violated ORS 744.074(1)(b).

Respondent failed to apprise the Division of his Contempt conviction. On January 27, 2011, Respondent was found guilty of Contempt I in Lane County Circuit Court. Pursuant to ORS 744.089(2), he was required to advise the Division of this conviction within 30 days. He did not do so; the Division did not find out about the conviction until July 7, 2011, when its investigator interviewed Respondent on a different matter. (Ex. 1). By violating this statutory provision, Respondent again violated ORS 744.074(1)(b).

Respondent failed to report his correct address to the Division. ORS 744.068(4)(a) requires insurance producers (licensees) to apprise the Division of any change of address of their place of doing business in the state. As of October 2011, Respondent’s record with the Division showed his address to be with H & R Insurance Planners in Albany—but he never worked there. From 2009 to the present, Respondent was working at the Turning 65 Store in Eugene, but he never provided that business address to the Division. Respondent violated ORS 744.068(4)(a) and ORS 744.074(1)(b).

The Sanction. The facts of the three violations have been established by the Division's exhibits, and there are no remaining questions of material fact to be decided. The remaining question is whether, those facts being true, the Division is entitled to a ruling as a matter of law. I conclude that the Division is entitled to such a ruling.

As quoted above, ORS 744.074 gives the Division the right to revoke a producer license if there are violations of the insurance laws or an order of the Director. The Notice and the Amended Notice both indicate the Division's desire to exercise that right. Therefore, the Division may, as a matter of law, revoke Respondent's insurance producer license for the violations set forth above.

Proposed Order. Under OAR 137-003-0580, quoted above, a Ruling on Motion for Summary Determination shall be considered a Proposed Order, together with the appropriate exception language, if the ruling resolves all of the issues in the case. That is the situation here.

Accordingly, there will be no hearing in this case. The hearing set for December 1, 2011 is hereby cancelled. I am issuing this Ruling as a Proposed Order, with Exceptions language attached.

ORDER

I propose the Division issue the following order:

That the Amended Notice of Proposed Action dated October 11, 2011 be AFFIRMED.

/s/ Rick Barber

Administrative Law Judge
Office of Administrative Hearings

Notice of Right to File Exceptions 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. 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 1st day of December 2011, I mailed the foregoing **RULING ON MOTION FOR SUMMARY DETERMINATION & PROPOSED ORDER** in Reference No. **1108002**.

BY FIRST CLASS MAIL:

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| <p>Craig K Taliaferro 2350 Palmer Ave Eugene, OR 97401-4926</p> <p>Judith Anderson AAG General Counsel Division Assistant Attorney General, DOJ 1162 Court Street NE Salem OR 97301-4096</p> | |
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VIA ELECTRONIC MAIL:

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

/s/ Charles J Ramsey
Charles J Ramsey
Hearing Coordinator