

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

In the Matter of **Cherie G. Smith** and ) **FINAL ORDER**  
**Best Insurance Consultants, LLC** ) Case No. INS 12-08-008

**History of the Proceeding**

The Director of the Oregon Department of Consumer and Business Services (director), by and through the Insurance Division, commenced this administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 731.256, to take enforcement action against Cherie G. Smith (Smith) and Best Insurance Consultants, LLC (Best).

On 8/22/12, pursuant to ORS 183.415, the director issued a notice of proposed action informing each party that the director proposed to take enforcement action against the party, the party was entitled to a hearing, and if the party wanted a hearing then the party had to send to the director a written request for a hearing so that the director received it by 9/12/12.

On 9/7/12, the director timely received from the parties a written request for a hearing.

On 9/19/12, the director referred the party's request for a hearing to the Office of Administrative Hearings (OAH), and mailed to the parties a notice of the rights and procedures in this proceeding.

On 11/8/12, OAH conducted a prehearing telephone conference in which the director and the parties participated.

On 11/9/12, OAH issued a notice of hearing scheduling a hearing to be conducted on 3/22/13.

On 1/25/13, the director filed with OAH a motion for summary determination.

On 2/8/13, the parties filed with OAH a response to the motion.

On 2/15/13, the director filed with OAH a reply to the response.

On 2/26/13, OAH issued a proposed order. The order granted the motion, and canceled the hearing scheduled to be conducted on 3/22/13. The order 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 order informed the parties that they could file with the director written exceptions to the order within 30 days after the order was sent to the parties.

The director did not receive from the parties any exceptions to the proposed order.

On 2/27/13, the director sent an e-mail to OAH and the parties saying:

We think that the proposed order dated 2/26/13, on page 6, line 16, omits the word 'not' in the following sentence:

Although Smith has since had one of her felony convictions modified and reduced to a misdemeanor, the modification does not change the fact she has been convicted of multiple crimes involving dishonesty or breach of trust.

Attached are the original uncorrected version and the corrected version of the proposed order.

If both of you agree, I propose we merely accept the corrected version as the official version of the proposed order.

The correction would not extend the due date for any written exceptions to be filed with us.

Please let me know if you agree with the proposal by reply e-mail.

On 2/27/13, OAH sent an e-mail to the director saying "You are correct that I inadvertently omitted the word 'not' from the sentence in question. I agree with your proposal."

On 3/5/13, having not received any response from the parties, the director sent an e-mail to the parties saying "we have not received from you a response to our e-mail dated 2/27/13. Please reply to this e-mail indicating whether your clients agree with the proposal that we merely accept the corrected version as the official version of the proposed order as explained in our e-mail."

The director did not receive any response from the parties about the proposal. 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:

The proposed order is corrected by inserting on page 6, line 16, the word 'not' in the following sentence:

Although Smith has since had one of her felony convictions modified and reduced to a misdemeanor, the modification does not change the fact she has been convicted of multiple crimes involving dishonesty or breach of trust.

The director does not adopt the proposed order to the extent that it states, finds, or concludes that Smith is subject to enforcement action pursuant to ORS 744.074(1)(a), as alleged in the notice of proposed action, because ORS 744.074(1)(a) does not apply to an individual insurance consultant license, and the notice did not cite to ORS 744.013(2)(b) which does apply to an individual insurance consultant license.

The director does not adopt the proposed order to the extent that it states, finds, or concludes that Best is subject to enforcement action pursuant to ORS 744.074(3), as alleged in the notice of proposed action, because ORS 744.074(3) does not apply to a business entity insurance consultant license, and the notice did not cite to ORS 744.013(3) which does apply to a business entity insurance consultant license.

### **Order**

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

Smith's unexpired Oregon resident individual insurance consultant license is revoked on the date of this order pursuant to ORS 731.428(4).

Best's expired Oregon resident business entity insurance producer license is revoked on the date of this order pursuant to ORS 744.074(3).

Best's expired Oregon resident business entity insurance consultant license is not revoked.<sup>1</sup>

### **Notice of Right to Judicial Review**

Each 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 May 8, 2013

/s/ Louis Savage  
Louis Savage  
Insurance Commissioner

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<sup>1</sup> Nothing in this order precludes the director from commencing another proceeding to take enforcement action against Best for violation of ORS 744.013(3) or any other applicable law.