

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

IN THE MATTER OF: ) **PROPOSED ORDER**  
 )  
**PA H. VUE** ) OAH Case No. INS 14-06-002  
 ) Agency Case No.

**HISTORY OF THE CASE**

On June 16, 2014, the Department of Consumer and Business Services, Insurance Division (Division) issued a Notice of Proposed Action to Pa H. Vue (Licensee), seeking to revoke her Oregon resident individual insurance producer license. On June 30, 2014, received July 7, 2014, Licensee requested a hearing.

On July 8, 2014, the Division referred the hearing request to the Office of Administrative Hearings (OAH), which assigned Administrative Law Judge (ALJ) Rick Barber to preside at hearing. ALJ Barber convened a prehearing conference on August 20, 2014. Assistant Attorney General Tyler Anderson represented the Division and Ms. Vue represented herself. During the prehearing, the parties set the hearing for November 25, 2014 and also developed a schedule for a Motion for Summary Determination that the Division indicated it intended to file.

On September 19, 2014, Mr. Anderson filed the Division's Motion for Summary Determination. On September 23, 2014, I wrote to Licensee and told her that her Response was due on October 7, 2014. Licensee did not file a Response.

**For the reasons that follow, the Division's Motion is granted and all of the issues raised by Licensee's request for hearing are decided. Consequently, pursuant to OAR 137-003-0580(12), this decision is issued as a Proposed Order. The hearing scheduled for November 25, 2014, is cancelled.**

**ISSUES**

1. Whether Licensee violated ORS 744.089(2) by failing to report a criminal prosecution and by failing to provide documentation of that prosecution to the Division.
2. Whether the Division must take enforcement action against Licensee for being convicted of crimes involving dishonesty or a breach of trust.
3. Whether, if the violations occurred, Licensee's producer license should be revoked.

## NATURE OF THE REVIEW

A Motion for Summary Determination may be filed by an 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 sets forth the standard by which I review the motion and states in part:

### **Motion for Summary Determination**

\* \* \* \* \*

(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 notice or answer, if any. 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 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. Pursuant to this rule, I examine the motion and the response to determine whether there are questions of material fact that remain to be decided, and further look to determine whether the moving party (in this case, the Insurance Division) is entitled to a ruling as a matter of law.

### **RECORDS REVIEWED FOR THE MOTION**

I have read and considered the Division's Motion as well as the Affidavit of Mitch Curzon with attachments Exhibits A through H.

### **FINDINGS OF FACT**

1. Licensee has a resident individual insurance producer license through the Division, and has been licensed since March 21, 2013. Her license is set to expire on February 29, 2016. (Ex. A).

2. On April 18, 2013, a Multnomah County Grand Jury indicted Licensee, charging her with three crimes: Aggravated Theft I (ORS 164.057); Identity Theft (ORS 165.800); and Aggravated Identity Theft (ORS 165.803). Licensee was accused of committing theft of more than \$10,000 by using the identity of a deceased person (RN) to liquidate certificates of deposit in RN's account at Washington Federal Bank. Additional charges arose from Licensee's use of the personal identification of RN and another person, HL. (Ex. B). Licensee was arrested on May 24, 2014. (Ex. E).

3. On May 28, 2013, Licensee was arraigned in circuit court. On September 13, 2013, Licensee was convicted of all three crimes. (Ex. C).

4. Licensed insurance producers are required by statute (ORS 744.089(2)) to notify the Division of any criminal prosecution against them in any jurisdiction, and to provide copies to the Division of the charging documents within 30 days of the producer's initial appearance in court. (Aff. of Curzon). As of April 8, 2014, when the Division wrote a letter to Licensee, Licensee had failed to provide notice to the Division of her 2013 criminal convictions. (Ex. D; Aff. of Curzon).

5. On April 16, 2014, Licensee wrote to the Insurance Division, stating in part:

Foremost, please accept my apology for not informing the Department of Insurance in a [timely] manner. I was taken into custody and was at the county jail from May 24, 2013 through July 26, 2013.

With open communications and guidance from my attorney, I was advised by my attorney this incident may keep me from working in the banking industry for now

but should not impact me working in the insurance industry.

I ask for your consideration to look beyond what the record indicates but reference my past performance with the insurance industry and allow me to keep my license. Attached are court documents pertaining to the case along with my letter of explanation detailing the incident.

Effective May 1, 2014, my current business address will be 1710 NE 82<sup>nd</sup> Avenue, Suite A2, Portland, Oregon 97220.

(Ex. E at 1).

6. On May 21, 2014, Chief Enforcement Officer Mitchel Curzon sent an email to Licensee, asking her to confirm her “current residence address and telephone number.” On the same date, Licensee sent a reply to Curzon with her personal address and phone number. Again, Curzon wrote to Licensee and asked her to “confirm your current *business* address, telephone number, and e-mail address.” (Ex. F; emphasis in original).

7. On June 16, 2014, the Division sent its Notice of Proposed Action to Licensee. (Ex. H).

### CONCLUSIONS OF LAW

1. Licensee violated ORS 744.089(2) by failing to report a criminal prosecution and by failing to provide documentation of that prosecution to the Division.

2. The Division must take enforcement action against Licensee for being convicted of crimes involving dishonesty or a breach of trust.

3. Licensee’s producer license should be revoked.

### OPINION

The Insurance Division contends that its Notice of Proposed Action in this case should be affirmed because there are no material questions of fact remaining and because the Division is entitled to a ruling in its favor as a matter of law. Pursuant to the rule quoted above, I review all of the evidence in this case in a light most favorable to Licensee, who is the non-moving party.

The Division contends that Licensee: 1) failed to report a criminal prosecution to the Division, in violation of ORS 744.089(2); and 2) was convicted of crimes involving dishonesty or a breach of trust. The Division has established both violations.

### Failing to Report Criminal Prosecution

ORS 744.089 states in part:

**Report of administrative action taken against insurance producer. \* \* \* \* \***

(2) *Not later than the 30th day after the initial pretrial hearing date*, an insurance producer shall report to the director any criminal prosecution of the insurance producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

The Division contends that Licensee's failure to apprise the Division of her criminal prosecution in Multnomah County violated this administrative rule. I agree with the Division.

It is undisputed that Licensee did not contact the Division with information about her arrests and convictions until after the Division contacted her almost a year later, in April 2014. In her letter of explanation to the Division, Licensee indicated that she had been incarcerated from May 24, 2013 (shortly before her arraignment) until July 26, 2013. However, while this might explain the initial delay in reporting to the Division, Licensee waited at least nine more months before contacting the Division about her arrests and convictions. The Division is entitled to a ruling in its favor as a matter of law.

**Conviction of Crimes Involving Dishonesty**

The Division further contends that the crimes for which Licensee was convicted in September 2013 were crimes involving dishonesty or a breach of trust. ORS 744.074 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.

\* \* \* \* \*

(f) Having been convicted of a felony, of a misdemeanor involving dishonesty or breach of trust, or of an offense punishable by death or imprisonment under the laws of the United States. The record of the conviction shall be conclusive evidence of the conviction.

(Emphasis added). Under this statute, conviction of any felony or of a misdemeanor involving dishonesty or a breach of trust is a basis for action by the Director, up to and including

revocation of a producer's license.

Interestingly, the Notice contends that Licensee committed "a felony involving dishonesty," while the statute as written allows for the Director to act for *any* felony and for *misdemeanors* involving dishonesty or a breach of trust. The Division need not show that the felonies for which Licensee was convicted involved dishonesty or a breach of trust under the statute. However, OAR 836-071-0321 states:

For purposes of OAR 836-071-0323 to 836-071-0346:

(1) A felony offense involving dishonesty includes but is not limited to any offense constituting or involving theft, burglary, perjury, bribery, forgery, counterfeiting, 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, or any felony the commission of which is determined by the Director to have involved some element of deceit, misrepresentation, untruthfulness or falsification.

(2) A breach of trust includes but is not limited to any offense constituting or involving misuse, misapplication or misappropriation of anything of value held as a fiduciary, including but not limited to a trustee, administrator, executor, conservator, receiver, guardian, agent, employee, partner, officer, director or public servant, or anything of value of any public, private or charitable organization.

Whether using the statutory standard or the more stringent standard in the rules, it is clear that the crimes for which Licensee was convicted were felonies and involved both dishonesty and a breach of trust. Licensee stole \$10,000 or more from victim RN, and did so using two false identities.<sup>1</sup>

## **Sanction**

Having established that Licensee failed to report the criminal prosecution in a timely manner and having established that Licensee was convicted of three felonies, the Division has indicated its intent to revoke her producer license. Licensee did not respond to the motion or make any arguments seeking a different sanction. Under ORS 744.074(1), the Division has established that Licensee's resident insurance producer license should be revoked.

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<sup>1</sup> Although Licensee did not provide a Response to the motion, the Division's exhibits contain her explanation for the activities leading to the conviction, and her contention that the crimes did not occur as the court found. However, those facts have already been decided against her under a "beyond a reasonable doubt" standard, and I am not free to make new findings of fact on those points.

## ORDER

I propose the Department of Consumer and Business Services, Insurance Division issue the following order:

The Division's Notice of Proposed Action dated June 16, 2014, is AFFIRMED, and the hearing set for November 25, 2014 is canceled.

Rick Barber

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Administrative Law Judge  
Office of Administrative Hearings

### **NOTICE OF OPPORTUNITY FOR ADMINISTRATIVE REVIEW**

**NOTICE:** Pursuant to ORS 183.460, the parties are entitled to file written exceptions to this proposed order and to present written argument concerning those exceptions to the Director. Written exceptions must be received by the Department of Consumer and Business Services within 30 days following the date of service of this proposed order. You may send exceptions via email to [mitchel.d.curzon@state.or.us](mailto:mitchel.d.curzon@state.or.us), or via mail to:

Mitchel D. Curzon  
Chief Enforcement Officer  
Oregon Insurance Division  
PO Box 14480  
Salem, OR 97309-0405

CERTIFICATE OF SERVICE

On 14th day of October 2014, I mailed the foregoing Proposed Order in Reference No. **14-06-002.**

BY FIRST CLASS MAIL:

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VIA ELECTRONIC MAIL:

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