

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

In the Matter of **Nghi Viet Tran** and
Pacific Insurance Agency, Inc.

) **FINAL ORDER**
) Case No. INS 13-07-002

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 to take enforcement action against Nghi Viet Tran and Pacific Insurance Agency, Inc.¹

On 8/28/14, the director issued a written notice of proposed action.² The director mailed by certified and first class mail, and sent by e-mail, to the parties a copy of the notice. The notice informed the parties that the director proposed to revoke the Oregon resident insurance producer licenses issued to the parties.³ The notice also informed the parties that they had a right to a hearing, and if a party wanted a hearing then the party had to send a written request for a hearing to the director so that the director received it by 9/18/14.

Also on 8/28/14, the director timely received by e-mail from the parties a written request for a hearing.

On 9/4/14, the director referred the parties' request for a hearing to the Office of Administrative Hearings (OAH).⁴ On the same date, the director sent by e-mail to the parties a copy of the referral and all attached documents including a written notice of the rights of parties and procedures in this proceeding.⁵

¹ See Oregon Revised Statutes (ORS) 731.256.

² See ORS 183.415 and Oregon Administrative Rules (OAR) 137-003-0505.

³ See ORS 744.074.

⁴ See ORS 183.635 and OAR 137-003-0515.

⁵ See ORS 183.413.

On 9/16/14, OAH issued a written notice scheduling a telephone prehearing conference to be conducted on 10/2/14. OAH mailed by first class mail to the parties a copy of the notice.

On 10/2/14, OAH conducted a telephone prehearing conference. Both the parties and the director participated in the conference. During the conference, OAH scheduled a hearing to be conducted on 1/13/15, and also set a schedule for the director to file a motion for summary determination and the parties to file a response to the motion. Also on 10/2/14, OAH sent an e-mail to the parties confirming the above.⁶

On 10/6/14, OAH issued a written notice scheduling a hearing to be conducted on 1/13/15. OAH mailed by first class mail to the parties a copy of the notice.

On 11/14/14, the director filed with OAH a written motion for summary determination.⁷ The director mailed by first class mail to the parties a copy of the motion. The parties were entitled to respond to the motion by 11/28/14.

On 11/24/14, OAH received an e-mail from the parties requesting an extension of time from 11/28/14 to 12/19/14 to file a response to the motion.

Also on 11/24/14, OAH granted the parties' request for the extension and scheduled another telephone prehearing conference on 12/1/14.

On 12/1/14, OAH conducted the other telephone prehearing conference. Both the parties and the director participated in the conference. During the conference, OAH rescheduled the hearing to be conducted on 3/24/15, and also set a revised schedule for the parties to file a response to motion. Also on 12/1/14, OAH sent an e-mail to the parties confirming the above.

On 12/4/14, OAH issued a written notice rescheduling the hearing to be conducted on 3/24/15. OAH mailed by first class mail to the parties a copy of the notice.

On 12/19/14, the parties filed with OAH a response to the motion.

⁶ Initially, the parties were not represented by an attorney. Sometime between 9/16/14 and 10/2/14, the parties became represented by Samuel C. Kauffman, an attorney. Mr. Kauffman represented the parties at and after the prehearing conference on 10/2/14.

On 1/7/15, OAH issued a written ruling denying the motion, and confirming that the hearing would continue to be conducted as scheduled.

On 2/4/15, the director issued a written amended notice of proposed action. The director mailed by certified and first class mail, and sent by e-mail, to the parties a copy of the amended notice. The amended notice did not change the alleged misconduct or the proposed action. The amended notice added a special notice to service members.^{8 & 9} The amended notice also informed the parties that the hearing would continue to be conducted as scheduled.

On 3/24/15, OAH conducted a hearing.¹⁰ The hearing was conducted by Monica A. Whitaker, an administrative law judge of OAH. The director, by and through the Insurance Division, appeared and was represented at the hearing by Tyler E. Anderson, an Assistant Attorney General. The Insurance Division called Donna Doung, Rebecca Flores, Temple Fournier, Phuc Nguyen, and Steven Vo as its witnesses. The Insurance Division offered Exhibits A1 to A25 as its documentary evidence all of which were admitted into the record. The parties appeared and were represented at the hearing by Samuel C. Kaufman, an attorney. The parties called Nghi Viet Tran as its witness. The parties offered Exhibit R1 as its documentary evidence which was admitted into the record.

On 3/31/15, OAH issued a written proposed order.¹¹ OAH mailed by first class mail to the parties a copy of the order. The order found that the parties committed all of the violations alleged, and recommended that the director take the action proposed, in the amended notice of proposed action. The order informed the parties that they could file with the director written exceptions to the proposed order by 4/30/15.¹²

⁷ See OAR 137-003-0580.

⁸ See ORS 183.415(3)(f).

⁹ The special notice to service members was included in the notice of contested case rights and procedures sent to the parties on 9/4/14. ORS 183.413(2)(p).

¹⁰ See OAR 836-003-0600.

¹¹ See ORS 183.460 and OAR 137-003-0645.

¹² See OAR 137-003-0650.

On 4/29/15, the director timely received from the parties' attorney written exceptions to the proposed order.

On 4/30/15, the director received from the parties additional comments about the proposed order.

The director considered the parties' attorney's exceptions, and the parties' comments to the extent they were exceptions and not new or additional evidence, but is not persuaded thereby that the director must or should take any action different than that proposed in the notice and recommended in the proposed order.¹³

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 director does not adopt the statement in the proposed order on page 11 that the "Division has the burden of establishing by a preponderance of the evidence ... that the proposed sanctions are appropriate." Although the record reflects that the director demonstrated revocation of the parties' licenses was appropriate, neither the authority cited in the proposed order for this proposition, nor any other law which the director is aware of, impose a burden on the director of proving the appropriateness of the director's choice of enforcement action when the chosen action is within the range of actions authorized by law and the director did not abuse the director's discretion in choosing the action.¹⁴

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¹³ See OAR 137-003-0655(5).

¹⁴ See *Olson v. State Mortuary and Cemetery Bd.*, 230 Or App 376 (2009); *In the Matter of Bailey & DeBernardi Insurance, Inc.*, case no. INS 04-09-014, final order dated 8/24/05, page 2 and footnote 2; and *In the Matter of Paula L. Birchfield*, case no. INS 03-03-011, final order dated 5/13/04 pages 2-3 and footnote 1; both citing *In the Matter of Karen M. Thatcher*, case no. INS 02-04-015, final order dated 7/18/03, page 9 footnote 5. The *Thatcher* case was appealed to the Oregon Court of Appeals. On 8/3/05, the court affirmed the final order without opinion. *Karen M. Thatcher v. DCBS*, 201 Or App 216 (2005).

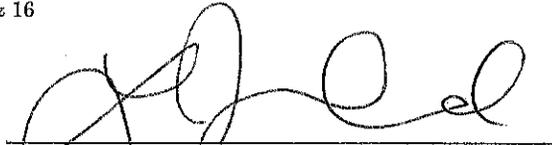
Order

The Oregon resident insurance producer licenses issued to the parties are revoked on the date of this order.

Notice of Right to Judicial Review

Each party has the right to judicial review of this order. 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.^{15 & 16}

Dated JUN 03 2015



Laura N. Cali, FCAS, MAAA
Insurance Commissioner and Chief Actuary

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¹⁵ See ORS 183.480 and ORS 183.482.

¹⁶ If a party files a petition, the party is requested to also send a copy of the petition to the Insurance Division.

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Pacific Insurance Agency, Inc.

) **CERTIFICATE of**
) **SERVICE of**
) **FINAL ORDER**
) Case No. INS 13-07-002

I certify that I sent the final order to the following person(s) on the date and by the means indicated below:

Nghi Viet Tran
515 NE Sumner Street
Portland, OR 97211-3836

US First Class Mail

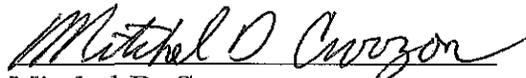
Nghi Viet Tran
President
Pacific Insurance Agency, Inc.
5263 NE Martin Luther King Boulevard
Portland, OR 97211-3235

US First Class Mail
 E-mail to nvtran@pacific-ins.net

Samuel C. Kauffman
Attorney
Kauffman Kilberg LLC
1001 SW 5th Avenue Suite 1414
Portland OR 97204-1130

E-mail to sam@kauffmankilberg.com

Dated **JUN 03 2015**


Mitchel D. Curzon
Chief Enforcement Officer

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