

STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCE AND CORPORATE SECURITIES

In the Matter of

Gregory Viert and Patsy Sichley

Respondent.

Division Case No. MSD -13-0010
OAH Case No. 1303509

FINAL ORDER TO CEASE AND
DESIST AND ASSESSING CIVIL
PENALTY

HISTORY OF THE CASE

On September 20, 2013, the Division of Finance and Corporate Securities (Division) issued an Order to Cease and Desist, Proposed Order Assessing Civil Penalties and Notice of Right to a Hearing (Order) to Gregory Viert and Patsy Sichley, ordering Viert and Sichley to cease and desist from violating Oregon's Manufactured Structure Dealers and Dealerships Law and assessing a \$25,000 civil penalty. On October 8, 2013, Viert and Sichley filed a Request for Hearing on Order to Cease and Desist and Proposed Order Assessing Civil Penalties.

On December 13, 2013, the Division referred the matter to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Joe L. Allen to preside over the matter. On January 8, 2014, Senior ALJ Allen convened a telephone prehearing conference, scheduled the hearing for April 2 and 3, 2014, and set deadlines for submission of exhibits and witness lists.

On January 15, 2014, the Division issued an Amended Order to Cease and Desist, Proposed Order Assessing Civil Penalties and Notice of Right to a Hearing (Amended Order) to Viert and Sichley. The Amended Order included the required notice regarding

Division of Finance and Corporate Securities
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387





1 servicemembers' rights.¹

2 On January 30, 2014, the Division filed a Motion for Summary Determination
3 (Motion).

4 On January 30, 2014, the Division issued a Second Amended Order to Cease and
5 Desist, Proposed Order Assessing Civil Penalties and Notice of Right to a Hearing
6 (Second Amended Order) to Viert and Sichley. The Second Amended Order provided
7 citations to the sections and subsections of the statutes cited in the Order and Amended
8 Order. On February 20, 2014, Viert and Sichley filed an Amended Request for Hearing
9 on Order to Cease and Desist and Proposed Order Assessing Civil Penalties.

10 Pursuant to the schedule provided at the prehearing conference, Viert and Sichley
11 had until February 21, 2014 to file a response to the Motion. On February 19, 2014, the
12 OAH assigned Senior ALJ Samantha Fair to rule on the Motion. On February 20, 2014,
13 Viert and Sichley filed a Response to DFCS Motion for Summary Determination
14 (Response).

15 On March 4, 2014, ALJ Samantha Fair issued a Ruling on Motion for Summary
16 Determination and Proposed Order ("Proposed Order"). ALJ Fair concluded that there
17 was no genuine issue as to any material fact and granted summary determination in favor
18 of the Division. ALJ Fair also concluded that Respondents sold manufactured structures
19 in Oregon without being properly licensed by the Division, that Respondents were jointly
20 and severally liable for \$10,000 in civil penalties, and that Respondent Sichley must pay
21 an additional \$15,000 civil penalty.

22 On April 3, 2014, Respondents filed exceptions to the Proposed Order.²

23 Now, therefore, having reviewed the entire record in this matter, and having
24

25 ¹ Viert and Sichley are not active members of the military.

26 ² Respondents filed a second set of exceptions on April 14, 2014 well outside of the exception timeline.



1 reviewed, considered and rejected the exceptions filed by Respondents, the Director of
2 the Department of Consumer and Business Services (Director) issues the following
3 findings of fact, conclusions of law and final order. The Director now withdraws its
4 allegations as to Viert only regarding the unlicensed sale of manufactured structures nos.
5 247170, 252424, and 237224 and, therefore, does not include reasoning or conclusions
6 relating to those now-withdrawn allegations in this Final Order. The Director has not
7 made any changes to the findings of act and otherwise adopts the reasoning and
8 conclusions of the Proposed Order.

9 ISSUES ON SUMMARY DETERMINATION

- 10 a. Whether there is a genuine issue as to any material fact and whether the
11 Division is entitled to a favorable ruling as a matter of law. OAR 137-003-0580.
- 12 b. Whether Viert and Sichley sold manufactured structures in Oregon without
13 being properly licensed by the Division. ORS 446.671(1)(a).
- 14 c. Whether the Division may issue a cease and desist order to Viert and Sichley,
15 prohibiting them from violating ORS 446.661 to 446.756. ORS 446.748(1).
- 16 d. Whether Viert and Sichley must pay \$25,000 in civil penalties. ORS
17 446.995(2)(a).

18 FINDINGS OF FACT

19 The Driver and Motor Vehicle Services (DMV) issued Viert and Sichley a vehicle
20 dealer certificate, number DA0249, authorizing them to engage in buying, selling, or
21 dealing in new or used vehicles, effective December 27, 2002 with an expiration date of
22 December 31, 2005. (Ex. A2 at 1.)

23 In 2005, the DMV renewed Viert and Sichley's vehicle dealer certificate. (Aff.
24 Viert at 1.)

25 On December 31, 2008, the Division issued Viert a manufactured structures
26 dealer license, number MSD340, authorizing him to sell manufactured homes and/or



1 recreational vehicles. The license listed Viert as the only licensee and included an
2 expiration date for the license of December 31, 2011. (Ex. A3 at 1.)

3 In January 2009, Viert purchased a three-year bond from Old Republic Surety
4 Bond Company (Old Republic) to fulfill the bonding requirement to be a manufactured
5 structures dealer. (Aff. Viert at 2.) On November 9, 2009, Old Republic sent a
6 cancellation notice to the Division, informing it that the bond issued to Viert would be
7 cancelled, effective December 13, 2009, because Old Republic was no longer issuing
8 bonds on manufactured structures. (Ex. A4 at 1.)

9 On November 13, 2009, the Division issued a notice to Viert, informing him of
10 the following:

11
12 We have received notice from the surety bond company that the
13 surety bond covering the above-named licensee will be cancelled
14 on December 13, 2009.

15 **UNLESS WE RECEIVE PROOF OF REPLACEMENT FOR**
16 **YOUR SURETY BOND ON OR BEFORE THE BOND**
17 **CANCELLATION DATE, THE ABOVE-REFERENCED**
18 **LICENSE WILL BE CANCELLED ON THAT DATE.**
19 **REAPPLICATION WILL BE REQUIRED ONCE THE**
20 **CANCELLATION ORDER HAS BEEN ISSUED.**

21 (Ex. A5 at 1; emphasis in original.) The notice did not include any statement of a party's
22 right to hearing or a description of the procedure and time to request a hearing. Viert
23 received the notice from the Division. (Ex. A15 at 2; Aff. Viert at 4.)

24 In November 2009, Viert obtained a surety bond from Western Surety Company
25 (Western), providing coverage for his manufactured structures dealer activities, effective
26 December 13, 2009. It was in the same face amount of the Old Republic surety bond
with an expiration date of December 13, 2012. (Exs. A4 at 1; A16 at 3.) Viert did not
send a copy of the Western surety bond to the Division. Viert believed that Western sent

//



1 a copy of the surety bond to the Division. (Aff. Viert at 2.) Viert never checked with the
2 Division to ensure that it had received the copy of the surety bond. (Ex. A15 at 2.)

3 By December 28, 2009, the Division had not received any information regarding
4 a new surety bond for Viert. On that date, a Division employee noted Viert's license as
5 cancelled, effective December 13, 2009, in the Division's computer system. (Ex. A6 at
6 1.) The Division did not send Viert or Sichley any notice of this final cancellation of his
7 manufactured structures dealer license number MSD340. The Division did not send
8 Viert or Sichley any notice including a statement of rights to a hearing regarding the
9 cancellation. (Aff. Viert at 4.)

10 Viert never filed to renew the manufactured structures dealer license MSD340.
11 (Exs. A14 at 1; A15 at 2.)

12 On November 2, 2012, the Division sent a letter to Viert and Sichley, notifying
13 them that they did not currently have a manufactured structure dealer license and that
14 Viert's prior license number MSD340 was cancelled on December 28, 2009 because of
15 the cancelation of the Old Republic surety bond. In this letter, the Division advised Viert
16 that the surety bond was never replaced. (Ex. A14 at 1.)

17 On November 7, 2012, an insurance agent sent the Division a copy of the
18 Western surety bond. (Ex. A16 at 1, 3.) This surety bond had remained valid since its
19 effective date of December 13, 2009. (Aff. Viert at 4.)

20 On November 8, 2013, the Division issued Viert a new manufactured structures
21 dealer license, number MSD629, with Viert listed as the licensee and an expiration date
22 of November 30, 2016. (Ex. A17 at 1.)

23 As of January 24, 2014, the Division has never issued a manufactured structure
24 dealer license to Patsy Sichley. (Ex. A12 at 1.)

25 Viert and Sichley have been domestic partners for approximately 40 years. (Aff.
26 Sichley at 1.) They reside in the River Bend Mobile Home Park (River Bend), a



1 residential park located in Reedsport, Oregon, in which one resident must be at least 55
2 years old. Viert buys other manufactured structures in River Bend and then re-sells the
3 structures. Viert and Sichley do not reside in the structures that are re-sold. (Exs. A3 at
4 1; A15 at 2-3; A18 at 1.) Sichley provides Viert financial assistance to purchase the
5 structures. Sichley and Viert agreed to have her name on the title of all the manufactured
6 structures as evidence of her interest in the structures because of this financial
7 arrangement. (Aff. Sichley at 1.) Sichley and Viert also agreed to have her name on the
8 title with a right of survivorship so that she would inherit Viert's interest in the structures
9 in the event of his death without having to file a probate action. (Aff. Viert at 1.)

10 *Manufactured Structure Number 247170*

11 On December 19, 2007, Viert and Sichley purchased a 1986 Goldenwest
12 manufactured structure, number 247170. In the notice of sale document, Viert and
13 Sichley were listed as buyers and owners with rights of survivorship. The section of the
14 document that provided for new security-interest holder information was blank. (Ex. A8
15 at 1-3.) In the ownership document, Viert and Sichley were listed as owners. (*Id.* at 11.)

16 On September 25, 2011, Viert and Sichley sold this manufactured structure to
17 Michael and Julie Lilley for \$59,000. In the notice of sale document, Viert was listed as
18 the dealer. (Ex. A8 at 7-10.) In the section of the document providing for the
19 "Seller/current owner acknowledgement of sale," he signed on the first line, listed as
20 "Seller/current owner name." (*Id.* at 10.) Sichley signed on the second line, also listed as
21 "Seller/current owner name." (*Id.*) The final two lines, listed as "Security holder's
22 name," were blank. (*Id.*)

23 Prior to the September 2011 sale, the manufactured structure was advertised for
24 sale by a sign in its window. Viert was the individual who showed Michael Lilley the
25 home. (Ex. A15 at 3.)

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1 *Manufactured Structure Number 252424*

2 On July 9, 2009, Viert and Sichley purchased a 1987 Goldenwest manufactured
3 structure, number 252424. In the notice of sale document, Viert and Sichley were listed
4 as buyers and owners with rights of survivorship. The section of the document that
5 provided for new security-interest holder information was blank. (Ex. 10 at 1-4.) In the
6 ownership document, Viert and Sichley were listed as owners with rights of survivorship.
7 (*Id.* at 16.) In the bill of sale, Viert and Sichley were listed as buyers. (*Id.* at 5.)

8 On December 6, 2010, Viert and Sichley sold this manufactured structure to
9 Michael Ohlmann and Inge Liem for \$91,000. In the notice of sale document, Viert was
10 listed as the dealer. (Ex. A10 at 13-15, 18.) In the section of the document providing for
11 the “Seller’s acknowledgement of sale,” he signed on the first line, listed as “Seller
12 name.” (*Id.* at 15.) The remaining three lines were listed as “Seller/Security holder
13 name.” (*Id.*) Sichley signed on the second line, listed as “Seller/Security holder name.”
14 (*Id.*)

15 Prior to the December 2010 sale, the manufacture structure was advertised for
16 sale by an advertising sign and Viert was the individual who showed Ohlmann and Liem
17 the home. (Ex. A15 at 2.)

18 *Manufactured Structure Number 237224*

19 On May 6, 2011, Viert and Sichley purchased a 1985 Silvercrest manufactured
20 structure, number 237224. In the notice of sale document, Viert and Sichley were listed
21 as buyers and owners with rights of survivorship. The section of the document that
22 provided for new security-interest holder information was blank. (Ex. A7 at 1-3.) In the
23 ownership document, Viert and Sichley were listed as owners with rights of survivorship.
24 (*Id.* at 11.)

25 On July 28, 2011, Viert and Sichley sold this manufactured structure to Charles
26 Ross for \$20,000. (Ex. A7 at 13.) In the notice of sale document, Viert was listed as the



1 dealer. (*Id.* at 8.) In the section of the document providing for the “Seller’s
2 acknowledgement of sale,” he signed on the first line, listed as “Seller name.” (*Id.* at 10.)
3 The remaining three lines were listed as “Seller/Security Holder name.” Sichley signed
4 on the second line, releasing her interest in the structure. (*Id.*)

5 Prior to the July 2011 sale, the manufactured structure was advertised for sale
6 through a classified advertisement in the Thrifty Nickel. Viert was the individual who
7 showed the home to Ross. (Ex. A15 at 3.)

8 *Manufactured Structure Number 248554*

9 On August 19, 2011, Viert and Sichley purchased a 1985 Kozy manufactured
10 structure, number 248554. In the notice of sale document, Viert and Sichley were listed
11 as buyers and owners with rights of survivorship. The section of the document that
12 provided for new security-interest holder information was blank. (Ex. A9 at 1-3.)

13 On February 1, 2012, Viert and Sichley sold this manufactured structure to
14 William and Cynthia Lucas for \$36,000. In the notice of sale document, no one was
15 listed as the dealer. (Ex. A9 at 11, 13-14.) In the section of the document providing for
16 the “Seller/current owner acknowledgement of sale,” Viert and Sichley signed on lines
17 listing them as “Seller/current owner” and on lines listing them as “Security holder’s.”
18 (*Id.* at 16.) Viert and Sichley were listed as sellers on the bill of sale. (*Id.* at 12.)

19 *Manufactured Structure Number 256515*

20 On June 29, 2012, Viert and Sichley purchased a 1991 Goldenwest manufactured
21 structure, number 256515. In the notice of sale document, Viert and Sichley were listed
22 as buyers and owners with rights of survivorship. The section of the document that
23 provided for new security-interest holder information was blank. (Ex. A13 at 1-3.) In the
24 ownership document, Viert and Sichley were listed as owners with rights of survivorship.
25 (Ex. A11 at 1.)

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1 On July 2, 2012, Viert and Sichley sold this manufactured structure to Donald
2 and Dorothy Lawson for \$29,950. In the notice of sale document, Viert was listed as the
3 dealer. (Exs. A11 at 3; A13 at 7-10.) In the section of the document providing for the
4 “Seller/current owner acknowledgement of sale,” he signed on the first line, listed as
5 “Seller/current owner name.” (Ex. A13 at 10.) Sichley signed on the second line, also
6 listed as “Seller/current owner name.” (*Id.*) The final two lines, listed as “Security
7 holder’s name,” were blank. (*Id.*)

8 At the time of the July 2012 sale, Donald Lawson made the down payment and
9 the final payment for the manufactured structure to Viert. (Ex. A15 at 3.)

10 CONCLUSIONS OF LAW

11 a. There is no genuine issue as to any material fact and the Division is entitled to
12 a favorable ruling as a matter of law.

13 b. Viert and Sichley sold manufactured structures in Oregon without being
14 properly licensed by the Division

15 c. The Division may issue a cease and desist order to Viert and Sichley,
16 prohibiting them from violating ORS 446.671(1)(a).

17 d. Viert and Sichley, jointly and severally, must pay a civil penalty of \$10,000.
18 Sichley must pay an additional civil penalty of \$15,000.

19 RULING

20 *Summary Determination Standard*

21 OAR 137-003-0580 is titled “Motion for Summary Determination” and provides,
22 in relevant part:

23 (6) The administrative law judge shall grant the motion for a summary
24 determination if:

25 (a) The pleadings, affidavits, supporting documents (including any
26 interrogatories and admissions) and the record in the contested case
show that there is no genuine issue as to any material fact that is



1 relevant to resolution of the legal issue as to which a decision is
2 sought; and

3 (b) The agency or party filing the motion is entitled to a favorable ruling as
4 a matter of law.

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

7 (8) Each party or the agency has the burden of producing evidence on any
8 issue relevant to the motion as to which that party or the agency would have
9 the burden of persuasion at the contested case hearing[.]

10 * * * * *

11 (12) If the administrative law judge's ruling on the motion resolves all
12 issues in the contested case, the administrative law judge shall issue a
13 proposed order in accordance with OAR 137-003-0645 incorporating that
14 ruling or a final order in accordance with 137-003-0665 if the
15 administrative law judge has authority to issue a final order without first
16 issuing a proposed order.

17 Pursuant to OAR 137-003-0580(6)(a) the ALJ, in making her ruling, considered
18 the Division's motion and Respondents' response. After a review of the record, the ALJ
19 determined that there were no issues of material facts that are relevant to the resolution
20 of the legal issues and that the Division is entitled to a favorable ruling as a matter of law
21 and granted the Division's Motion for Summary Determination. Although Respondents
22 state in their exceptions that the ALJ incorrectly applied the summary determination
23 standard, the standard was correctly applied.

24 *Selling Manufactured Structures without a License*

25 The Division sought to issue a cease and desist order and assess civil penalties
26 against Viert and Sichley based upon allegations that they sold multiple manufactured
structures in Oregon without being licensed by the Division as manufactured structure
dealers. As the proponent of the allegations, the Division has the burden to establish, by
a preponderance of the evidence, that the allegations are correct and that the proposed
sanctions are appropriate. ORS 183.450(2) ("The burden of presenting evidence to



1 support a fact or position in a contested case rests on the proponent of the fact or
2 position”); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of
3 burden of proof is that the burden is on the proponent of the fact or position). Proof by a
4 preponderance of the evidence means that the fact finder is persuaded that the facts
5 asserted are more likely than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303
6 Or 390, 402 (1987).

7 ORS 446.671(1) provides, in part:

8 (1) Except as provided in ORS 446.676, a person commits the
9 crime of acting as a manufactured structure dealer without a
10 license if the person does not have a valid, current
11 manufactured structure dealer license issued under ORS
12 446.691 or 446.696 or a temporary or limited manufactured
13 structure dealer license issued under ORS 446.701 or 446.706
14 and the person:

15 (a) Sells, brokers, trades or exchanges a manufactured structure,
16 or offers to sell, trade or exchange a manufactured structure,
17 either outright or by means of any conditional sale, consignment
18 or otherwise[.]

19 ORS 446.676 provides, in part:

20 ORS 446.671 does not apply to the following manufactured
21 structures or persons:

22 * * * * *

23 (2) The owner of a manufactured structure, as shown by a
24 document evidencing ownership issued by any jurisdiction if the
25 person owned the manufactured structure for personal, family or
26 household purposes. If the person sells, trades, displays or offers
for sale, trade or exchange two or more manufactured structures
during a calendar year, the person has the burden of proving that
the person owned the structures primarily for personal, family or
household purposes.

* * * * *

(6) The security interest holder of a manufactured structure as
shown by a document evidencing ownership issued by any
jurisdiction[.]

25 //
26 //



1 *Patsy Sichley*

2 Sichley asserted that she did not need to be licensed as a manufactured structures
3 dealer because her interest was “akin to that of a security interest.” (Response at 8.)
4 Although she and Viert may have understood their arrangement as Sichley simply
5 providing him financial assistance to purchase the manufactured structures, she was listed
6 as an owner with right of survivorship in the purchase documents for all five
7 manufactured structures. The notice of sale documents for each purchase provided a
8 section specifically designed for recording a security interest and allowing such security
9 interest holders to perfect the security interest pursuant to ORS 446.611. However, Viert
10 and Sichley did not utilize those sections in the purchase documents for any of the five
11 manufactured structures. Sichley was also listed as an owner in the ownership documents
12 for all five manufactured structures. The ALJ found and the Director concurs that the
13 evidence indicates that Sichley was an owner, not merely a security interest holder, for
14 the five manufactured structures. When she released her interest in the manufactured
15 structures in the subsequent sales, she was releasing her ownership interest, not her
16 security interest, in those structures.³

16 Sichley also asserted that she “never actively participated” in the purchase or sale
17 of the manufactured structures, and, therefore, she did not need to be licensed. (Aff.
18 Sichley at 1.) Resolution of this issue requires an interpretation of the phrase “the person:
19 sells * * * a manufactured structure * * *.” Legislative enactments are subject to the
20 tools of statutory construction enunciated in *PGE v. Bureau of Labor and Industries*, 317
21 Or 606 (1993). In *PGE*, the Oregon Supreme Court explained that to determine

22 _____
23 ³ Although in several of the sale documents she signed the line as a “seller/security holder,” there were no
24 other lines on which she could have signed that had “seller” only other than the line already completed by
25 Viert. Because she was an owner in the original purchase documents and on the ownership documents, she
26 was still an owner at the time of the sale of the structures. She did not become a security holder just by
signing a signature line that used the term “security holder.” To be a security holder, she must have
perfected her security interest pursuant to the mechanism provided by ORS 446.611, which she never did
for any of the structures in issue.



1 legislative intent, a court begins by examining a statute’s text, giving words of common
2 usage their plain meaning. If the legislative intent is unambiguous after review of the text
3 and context of the statute, the court stops at that first level of analysis. *PGE* at 610-11.

4 As a verb, “sells” has the following relevant meaning:

5 to give up (property) to another for money or other valuable
6 consideration: hand over or transfer title to (as goods or real
7 //
8 estate) for a price <*sold* his books> <*sold* his house> <*sold* his
9 stock> * * *.

10 *Webster’s Third New Int’l Dictionary* 2061 (unabridged ed 2002). Pursuant to this
11 definition, “active participation” is not a requirement of a sale. It is not necessary that a
12 seller be the individual who prepared and placed a sale sign in the window of the
13 manufactured structure; placed the Thrifty Nickel advertisement; personally accepted the
14 purchase funds; or showed the manufactured structure to prospective buyers. In their
15 exceptions, Respondents state that the ALJ failed to consider how inactive Sichley was in
16 purchasing and selling the five manufactured structures. However, so long as a sale took
17 place, the degree of participation in the sale of manufactured structures does not relieve
18 an individual who sells manufactured structure dwellings from the need to be licensed by
19 the Division.

20 In the five transactions at issue, Sichley and Viert, as owners, gave up the
21 manufactured structures and transferred title to third parties for money and admitted
22 doing so in their response. As an owner, Sichley agreed to the sale terms with those third
23 parties and released her ownership interest in the structures pursuant to the terms of the
24 sale. As the ALJ correctly concluded, Sichley, in conjunction with the co-owner Viert,
25 sold the manufactured structures.⁴

26 ⁴ Even if Sichley and Viert had a private agreement regarding the distribution of the proceeds of the sale such that Sichley did not receive any of the proceeds, Sichley still sold the structures in exchange for money as those were the terms of the sales transaction. The subsequent distribution of the proceeds



1 Finally, Sichley asserted that the Division is equitably estopped at enforcing its
2 Order because it failed to advise her that she must have her own manufactured structure
3 dealer license. When such licenses were originally issued by the DMV, both Sichley and
4 Viert were listed on the manufactured structure dealer license number DA0249. When
5 the Division issued the new manufactured structures dealer license number MSD340,
6 only Viert was listed as a licensee on the license.

7 Equitable estoppel is rarely applicable against state agencies and should be
8 applied cautiously. *Employment Div. v. Western Graphics Corp.*, 76 Or App 608, 612
9 (1985). Generally, equitable estoppel has been applied “only in cases where the
10 individual asserting estoppel has been deprived of a benefit that would have been
11 received but for the government’s misleading conduct.” *Id.* at 612-614. A claimant is
12 not entitled to “a windfall as a result of the government’s mistake and erroneous advice.”
13 *Id.* Because only Viert’s name appeared on the MSD340 license, there was nothing in
14 the license itself to suggest that Sichley was an included individual. Additionally,
15 Sichley merely alleged that the Division should have informed her or Viert that she was
16 not covered by the MSD340 rather than alleging that the Division engaged in misleading
17 conduct.

18 Respondents state in their exception that the ALJ failed to consider their evidence
19 regarding equitable estoppel. The ALJ applied the correct standard, considered
20 Respondents’ evidence, rejected it, and found that because there was no evidence that the
21 Division engaged in any misleading conduct, the principles of equitable estoppel were
22 not applicable to this matter.

23 During the period December 2010 through July 2012, Sichley sold five
24 manufactured structures when she did not have a valid, current manufactured structure
25 _____
26 pursuant to any separate agreement between Sichley and Viert did not impact the terms of the actual sales
transaction with the third party purchasers.



1 dealer license. Because she was an owner, not a security interest holder, of the five
2 manufactured structures in issue, she is not entitled to the exception to ORS 446.671
3 provided by ORS 446.676(6). Additionally, she and Viert held the manufactured
4 structures as investment properties, not for personal, family, or household purposes. The
5 ALJ found and the Director concurs that Sichley is not entitled to the exception to ORS
6 446.671 provided by ORS 446.676(2).⁵ Pursuant to ORS 446.671(1)(a), Sichley was
7 required to be licensed as a manufactured structures dealer when she sold the structures.
8 Because she did not have such a license during this period, she sold all five structures in
9 violation of ORS 446.671(1)(a).

10 *Gregory Viert*

11 On December 31, 2008, Viert obtained a manufactured structures dealer license
12 from the Division. License MSD340 expired on December 31, 2011 pursuant to its own
13 terms as shown on the face of the issued license. Viert did not attempt to renew this
14 license or obtain a new manufactured structures dealers license until November 8, 2013.
15 Therefore, for the period December 31, 2011 until November 8, 2013, Viert did not have
16 a current, valid manufactured structures dealer license. During that period, he sold two
17 manufactured structures, manufactured structure number 248554 on February 1, 2012,
18 and manufactured structure number 256515 on July 2, 2012, without a license. Like
19 Sichley, he held the properties as investment properties, not for personal, family, or
20 household use; therefore, Viert is not entitled to the exception for licensing contained in
21 ORS 446.676(2). Viert asserted that he made limited, if any, profit in the sales of the
22 manufactured structures at issue. However, as previously determined, “sells” involves
23 the exchange of the structure for money. Profit is not relevant to this definition.

24 //

25 ⁵ The remaining exceptions provided in ORS 446.676 are not applicable as they involve such persons as
26 real estate licensees or brokers, financial institutions, escrow agents, etc.



1 Therefore, Viert sold the two manufactured structures, numbers 248554 and 256515,
2 without a current valid license in violation of ORS 446.671(1)(a).

3 *Issuance of Cease and Desist Order*

4 ORS 446.748(1) provides:

5 If the Director of the Department of Consumer and Business
6 Services has reason to believe that a person has engaged, is
7 engaging or is about to engage in a violation of ORS 446.661 to
8 446.756 or a rule adopted under ORS 446.661 to 446.756, the
9 director may issue an order directed to the person to cease and
10 desist from the violation or threatened violation.

11 In its Second Amended Order, the Division sought an order against Viert and
12 Sichley to cease and desist from violating Oregon Manufactured Structure Dealers and
13 Dealership Laws, which includes ORS 446.661 through ORS 446.756. However, ORS
14 446.748(1) restricts the order to cease and desist to those statutes or rules that a person
15 has violated, is violating or is about to violate.

16 As previously discussed, the Division alleged and proved that Viert and Sichley
17 sold manufactured structures when not licensed by the Division as manufactured
18 structure dealers in violation of ORS 446.671(1)(a). The Division did not allege or prove
19 that Viert and Sichley violated any other provisions of the Oregon Manufactured
20 Structure Dealers and Dealership Laws. Therefore, the ALJ found that the Division is
21 entitled to issue an order to Viert and Sichley to cease and desist from further violations
22 of ORS 446.671, the statute that Viert and Sichley violated.

23 Viert and Sichley must cease and desist from further violations of ORS 446.671.

24 *Assessment of Civil Penalty*

25 ORS 446.995(2) provides, in part:

26 The department may impose a civil penalty, in an amount not to
exceed \$5,000 for each manufactured structure improperly sold,
brokered or exchanged, or offered or displayed for sale, against a
person that:

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(a) Violates a provision of ORS 446.661 to 446.756 or a rule adopted by the department relating to the sale of manufactured structures if the person does not possess a license required by ORS 446.671 or by rule pursuant to ORS 446.666[.]

The Division seeks to assess Viert and Sichley a civil penalty in the amount of \$5,000 per manufactured structure sold in violation of ORS 446.671(1)(a) with joint and several liability.

Respondents state in their exceptions that the ALJ did not consider mitigating factors in assessing the civil penalty Respondents did not cite to any statute or rule that requires the Division to consider mitigation⁶. In two previous manufactured structure dealer cases, *In the Matter of Daniel K. Harmon*, OAH Case No. 1303372, Division Case No. MSD 13-0073 (2013) and *In the Matter of Nathan and Crystal Schrader*, OAH Case No. 1303247, Division Case No. MSD 13-0011, (2013) the ALJ assessed the maximum civil penalties. The legislature set the maximum civil penalty for unlicensed manufactured structure dealer violations at \$5,000 per violation.

In support of their exception, Respondents cited to two cases that are not applicable to this matter. *Gambie v. Oregon Medical Board* (A149454) discussed prior acts of a license holder in relation to violation of a prior order. The issue in *Cuff v. DPSST*, 345 OR 462,198 P.3d (2008) was whether newly adopted statutory and rule standards were applicable to justify revocation of a correction officer's certification based on conduct occurring before the adoption of the new standards. The Court went on to state that nothing in the applicable statute, ORS 181.662(1)(c), or applicable rule, OAR 259-008-0010(6) precluded the Court from considering any and all conduct bearing on the moral fitness of a law enforcement officer, including conduct that occurred years ago.

⁶ Several state Agencies by rule provide that mitigating circumstances may be considered in assessing a civil penalty. See OAR 839-015-0510 (Bureau of Labor and Industries), OAR 736-080-0050 (Oregon Parks and Recreation), OAR 800-030-0025 (Board of Tax Practitioners), OAR 845-006-0500 (Oregon Liquor Control Commission).



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ORDERS

Based on the foregoing, the Director issues the following ORDERS:

Order to Cease and Desist

As authorized by ORS 446.748 the Director hereby ORDERS Respondents Gregory Viert and Pasty Sichley to CEASE AND DESIST from violating Oregon Manufactured Structure Dealers and Dealerships Laws.

As authorized by ORS 446.995 the Director hereby ORDERS Respondents Gregory Viert and Patsy, jointly and severally, to pay a CIVIL PENALTY of \$10,000 (ten thousand dollars) for two violations of the ORS 446.671.

As authorized by ORS 446.995 the Directory hereby ORDERS Respondent Patsy Sichley to pay an additional CIVIL PENALTY of \$15,000 (fifteen thousand dollars) for three violations of the ORS 446.671.

However, in light of the unique circumstances of this case, as outlined in the Order, and the relative disparity in the roles of Viert and Sichley, the Director hereby SUSPENDS imposition of the \$15,000 civil penalty against Sichley for a period of 5 (five) years subject to the following conditions:

- (1) The remaining \$10,000 civil penalty is paid within 90 (ninety) days of entry of this Order and;
- (2) Sichley complies with all other terms of this Order.

Failure to timely pay the \$10,000 civil penalty or comply with terms of this Order could result in the imposition and collection of the remaining \$15,000 civil penalty.

In accordance with ORS 183.745(2), the civil penalty assessed herein shall become due and payable 10 days after the order becomes final by operation of law or on appeal.

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AUTHORITY OF THE DIRECTOR TO SEEK OTHER
REMEDIES UNDER OREGON LAW

This Order is a “Final Order” under ORS 183.310(6)(b). Subject to that provision, the entry of this Order does not limit other remedies that are available to the Director under Oregon law.

IT IS SO ORDERED.

Dated this 24th day of June, 2014.

PATRICK M. ALLEN, Director
Department of Consumer and Business Services

/s/ David Tatman
David C. Tatman, Administrator
Division of Finance and Corporate Securities

NOTICE OF RIGHT TO JUDICIAL REVIEW

You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review is in accordance with ORS 183.482(1) to the Oregon Court of Appeals.

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