STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION

In the Matter of:	Case No. S-23-0013
MARTIN L. HUDLER, an Individual, Respondent.	AMENDED FINAL ORDER TO REINSTATE CIVIL PENALTY, ENTERED BY DEFAULT

On March 23, 2023, the Director of the Department of Consumer and Business Services for the State of Oregon ("Director"), by and through the Division of Financial Regulation ("Division"), served a Proposed Order to Reinstate Civil Penalty ("Notice") on Martin Hudler ("Respondent").[1]

The Notice offered Respondent an opportunity for a hearing if requested within 20 days of service of the Notice. The Notice further informed Respondent that if a hearing was not conducted because Respondent did not timely request a hearing or otherwise defaulted, then the designated portion of the Division's file and all materials submitted by Respondent in this case would automatically become part of the contested case record for the purpose of proving a prima facie case.

Respondent's deadline to timely request a hearing was April 12, 2023. Respondent's attorney accepted a certified mailing of the Notice on March 28, 2023. Neither Respondent nor his attorney submitted a timely hearing request.

On April 13, 2023, at 5:59 PM, Respondent submitted a late hearing request via e-mail, in which he provided the following explanation:

> "I left Oregon on March 7, 2023, and have been continually gone until yesterday morning. Yesterday I was involved in an automobile

[1] The Division served copies of the Notice to Respondent and his counsel.

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

> accident while driving from Los Angeles to Sunriver and I spent the day nursing sore back and neck on top of everything else I'm dealing with, regardless, and today were my first full days back, and today I began opening mail. I have not been served, I haven't received a certified latter, but I did receive your letter mailed Dated March 23, 2023, and the enclosed proposed orders. Strangely, you apparently mailed a copy to Charles Markley who is my current attorney on this matter, and in the countless times I spoke to him, he never mentioned ever receiving any such notice from you."

On April 17, 2023, the Division e-mailed Respondent to clarify that the March 23, 2023 mailing contained a Notice, rather than proposed orders, and to note that his attorney had also been served with a copy. The Division offered Respondent the opportunity to offer additional explanation or argument as to why the Director should accept his late hearing request.

On April 28, 2023, Respondent submitted a Response to the Proposed Order Assessing Civil Penalties ("Response"). The Response addressed medical ailments that purportedly prevented Respondent from making payments at issue in the Notice. The Response did not address the late hearing request.

Respondent provided no additional explanation or argument concerning his late hearing request.[2]

Pursuant to OAR 137-003-0501(7):

> "'Good cause' exists when an action, delay, or failure to act arises from an excusable mistake, surprise, excusable neglect, reasonable reliance on the statement of a party or agency relating to procedural requirements, or from fraud, misrepresentation, or other misconduct of a party or agency participating in the proceeding."

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

[2] On May 2, 2023, the Division notified Respondent's attorney that the Director did not find good cause for Respondent's late hearing request and would issue a Default Order. On May 5, 2023, the Director issued a Default Order against Respondent due to his failure to submit a timely hearing request. Respondent requested judicial review with the Court of Appeals. The Court found the Director's explanation for the denial of Respondent's late hearing request did not explain the factual findings on which the director relied to deny the request or how those factual findings led to the legal determination on which that denial was based. Consequently, the Court vacated the Default Order and remanded the matter for reconsideration. Following issuance of the Court's opinion, the Director offered Respondent another opportunity to supplement the explanation and/or argument he'd provided in support of his late hearing request. Respondent did not submit anything further.

In determining whether Respondent had established good cause for his failure to submit a timely hearing request, the Director considered the statements in his April 13, 2023 e-mail. In particular, the Director considered that: Respondent had been out of the state from March 7, 2023 through April 12, 2023; Respondent was in an automobile accident on the day he returned to Oregon and did not open mail until April 13, 2023; and that Respondent's counsel, with whom Respondent had had "countless" conversations, had not mentioned the Notice to him. In evaluating Respondent's request, the Director accepted all of Respondent's statements as being truthful.

This matter arose due to Respondent's failure to make payments in accordance with a prior consent order. On January 13, 2023, Respondent's attorney submitted a letter to the Director, supported by a declaration from Respondent, requesting that the Director relieve Respondent of the obligation to make the payments required under the order. On February 13, 2023, the Division e-mailed Respondent's attorney to notify him that the Director declined to modify or waive the payment terms of the consent order, and that if Respondent failed to make his overdue payment within two weeks the Director would initiate an enforcement action to pursue penalties. Respondent failed to make the payment and the Director issued the Notice.

Respondent elected to be represented by counsel in this matter. The Director directed communications to Respondent's attorney and treated him as Respondent's agent and representative.

The Director notified Respondent that an enforcement action was forthcoming and Respondent chose to leave the state for an extended period of time without securing a means of responding to time-sensitive mailings. Presumably, he relied on his attorney to address legal documents and deadlines.

In this case, Respondent's attorney received the Notice approximately 15 days prior to the hearing request deadline. Respondent has provided no explanation for why his

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

attorney failed to submit a hearing request on his behalf. Respondent did not claim his attorney failed to receive the Notice, nor has he claimed that he lacked the opportunity to confer with his attorney regarding this matter. Rather, he noted that he and his attorney had spoken "countless" times in the three months following his attorney's January 13, 2023 letter.

The burden to satisfy the hearing request obligation is slight. The only requirement is that it be made in writing. No particular language is required. Many requests are a sentence or two long and communicated via e-mail.

After considering the facts and argument presented by Respondent, the Director has determined he failed to meet his burden of establishing good cause for his late hearing request. Respondent's attorney, his legal representative, was properly served with the Notice, received it over two weeks before the request deadline, and failed to take the minimal steps required to secure Respondent's right to a hearing. Respondent was in frequent communication with his attorney and chose to leave the state for an extended period of time after being notified that an enforcement action was imminent. Respondent's failure to submit a timely request was neither reasonable nor excusable.

Additional facts may have led the Director to make a different determination. Respondent was afforded many opportunities to clarify and/or supplement his position in support of his late request. He repeatedly declined to do so.

The OAR Model Rules of Procedure for Contested Cases authorize an agency to accept a late hearing request *only if*, absent an applicable exception, good cause exists for the late request.[3] Because the Director did not find good cause for Respondent's late request the agency is prohibited from accepting it.

Because none of the facts Respondent presented in support of his late hearing request were in dispute, there was no need to conduct a hearing and no hearing was

[3] *See* OAR 137-003-0528(1)(b)(A).

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

conducted.

FINDINGS OF FACT

The Director FINDS that:

1. On June 14, 2022, Respondent and the Director entered into a consent order in Division of Financial Regulation ("Division") case number S-18-0049, a true and correct copy of which is attached hereto as Exhibit A (the "Consent Order").

2. Under the Consent Order, Respondent agreed to pay civil penalties imposed by the Director in the total amount of $120,000 (the "Civil Penalties").

3. Under the Consent Order, Respondent agreed that his obligation to pay $80,000 of the Civil Penalties would be suspended only as long as Respondent satisfied certain conditions, including the requirement that Respondent pay the remaining $40,000 according to a designated schedule ("Payment Conditions"). In particular, the Order required Respondent to make eight $5,000 installment payments by the following deadline and dates:

A. Within 30 days of the date the Order was fully executed;

B. September 15, 2022;

C. January 15, 2023;

D. April 15, 2023;

E. September 15, 2023;

F. January 15, 2024;

G. April 15, 2024; and

H. June 15, 2024.

4. Under the Consent Order, Respondent agreed that the Civil Penalties would not be waived if Respondent failed to comply with any term set forth in the Order.

5. Respondent's initial payment was due within 30 days of the date the Consent Order was fully executed, or July 14, 2022. Respondent did not make the payment until

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

on or around July 21, 2022.

6. Respondent's second payment was due by September 15, 2022. Respondent did not make the payment until on or around October 4, 2022.

7. Respondent's third payment was due by January 15, 2023. On January 13, 2023, Respondent submitted a Declaration describing his adverse medical condition and stating that he was unable to honor the Payment Conditions.

8. To date, Respondent has made no further payments.

9. On February 27, 2023, The Director declared the $80,000 in suspended Civil Penalties to be due and payable as a result of Respondent's failure to satisfy the Payment Conditions.

10. Furthermore, the balance of the non-suspended civil penalties due and owing from Respondent to the Director under the Consent Order is currently $10,000. That sum will grow if/as Respondent fails to make payments required under the Payment Conditions.

CONCLUSIONS OF LAW

The Director CONCLUDES that:

11. The Consent Order resolved Division case number S-18-0049 in accordance with, *inter alia*, ORS 183.417(3), ORS 183.745(11), and OAR 137-003-0510(3)-(4).

12. The Consent Order is a valid and enforceable final order not subject to the provisions of ORS 183.470 and OAR 137-003-0665(5).

13. The failure of Respondent to satisfy the Payment Conditions made the suspended Civil Penalties imposed under the Consent Order due and payable as of February 27, 2023.

14. Respondent is personally obligated to pay the $80,000 in suspended Civil Penalties imposed under the Consent Order.

/ / /

/ / /

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

ORDERS

Now therefore, the Director issues the following ORDER:

15. As authorized by the Consent Order resolving Division case number S-18-0049 in accordance with ORS 183.417(3), ORS 183.745(11), and OAR 137-003-0510(3)-(4), a true and correct copy of which is attached hereto as Exhibit A, the Director hereby ORDERS that the $80,000 in suspended civil penalties imposed on Respondent under the Consent Order be IMMEDIATELY DUE AND PAYABLE as a result of the failure of Respondent to timely satisfy the Payment Conditions in accordance with the terms and conditions of the Consent Order.

16. This is a "Final Order" under ORS 183.310(6)(b). Subject to this provision, the entry of this Order does not limit further remedies that may be available to the Director under Oregon law.

SO ORDERED this 9th day of September, 2025.

SEAN O'DAY, Interim Director
Department of Consumer and Business Services

/s/ Dorothy Bean
Dorothy Bean, Chief of Enforcement
Division of Financial Regulation

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

NOTICE OF RIGHT TO JUDICIAL APPEAL

You are entitled to judicial review of this order in accordance with ORS 183.482. You may request judicial review by filing a petition with the Court of Appeals in Salem, Oregon, within 60 days from the date this order is served. Note that under ORS 59.295(2), in the absence of a timely demand for a hearing, no person shall be entitled to judicial review of the order.