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

In the Matter of: HEATHER HUNTER, an Individual, Respondent.	Case No. S-22-0035 FINAL ORDER REINSTATING CIVIL PENALTIES

HISTORY OF THE CASE

On March 17, 2022, the Department of Consumer & Business Services - Division of Financial Regulation, Finance and Corporate Securities (the Division) issued a Proposed Order Reinstating Civil Penalties to F. David Lent, dba Lent & Company, and Heather Hunter. On April 2, 2022, Ms. Hunter requested a hearing.

On April 14, 2022, the Division referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Dove Gutman to preside at hearing. ALJ Gutman convened a telephone prehearing conference on June 30, 2022. Ms. Hunter appeared and represented herself. Assistant Attorney General (AAG) Jacob Gill appeared and represented the Division. The parties agreed to hold the hearing via WebEx video conference on September 8, 2022.

On August 11, 2022, the Division issued an Amended Proposed Order Reinstating Civil Penalties, removing F. David Lent, dba Lent & Company, as a Respondent because he was deceased.

On August 24, 2022, the OAH reassigned the matter to Senior ALJ Kate Triana.

ALJ Triana held a hearing on September 8, 2022, via WebEx video conference. Ms. Hunter appeared without counsel and testified. AAG Gill represented the Division.

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Anthony Estrada, Lead Enforcement Officer for the Division, testified on behalf the Division. The record closed at the conclusion of the September 8, 2022 hearing.

ISSUE

Whether the Director may reinstate the suspended civil penalties of $60,000 from Division Case No. S-19-0020 against Heather Hunter because she and F. David Lent failed to pay the restitution required under the Consent Order within the applicable 24-month period and also failed to provide the Division with documentation of such payments.

EVIDENTIARY RULINGS

Pleadings P1 through P10 and Exhibits A1 and A2, offered by the Division, were admitted into the record without objection.

FINDINGS OF FACT

1. In 2015, Charles Frost started a business venture in the restaurant industry. Mr. Lent entered into an agreement with Mr. Frost to assist in the creation of the company concept and restaurant development. Ms. Hunter and Mr. Frost entered into an agreement for Ms. Hunter to develop a business plan for the company and create promotional materials. (Ex. A1 at 1-2.) As part of the business venture, Mr. Frost sold Notes to Oregon Investors without being licensed as an Oregon broker-dealer or securities salesperson, in violation of the Oregon Securities Law. (*Id.* at 8.)

2. Ms. Hunter and Mr. Lent were business partners and were also married. (Ex. A1 at 2; test. of Hunter.) In November of 2017, Mr. Lent had open heart surgery. Mr. Lent experienced renal and respiratory failure following the surgery. Ms. Hunter acted as a full time caregiver for Mr. Lent from November of 2017, until his death in May of 2022. (Test. of Hunter.)

3. Prior to February 19, 2020, the Division issued Notices to F. David Lent, dba Lent & Company, and to Heather Hunter, alleging violations of the Oregon Securities Law. (Test. of Estrada; Ex. A1 at 9.) The Notices provided Mr. Lent and Ms. Hunter with the

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right to request a contested case hearing to dispute the allegations. (Test. of Estrada.)

4. Following receipt of the Notices, Mr. Lent began discussing the situation with Anthony Estrada, the Division Enforcement Officer assigned to the case. (Test. of Estrada and Hunter.) Ms. Hunter did not participate in the discussions, leaving the matter for Mr. Lent to handle. (Test. of Hunter.)

5. The Division drafted an Order to Cease and Desist, Order Denying Use of Exemptions, Order Assessing Civil Penalties, and Consent to Entry of Order (Consent Order), to resolve the matter with Mr. Lent and Ms. Hunter. (Ex. A1.) The Consent Order provided, in part:

> The Director of the Department * * * has conducted an investigation into the activities of F. David Lent dba "Lent & Company" ("Lent") and Heather Hunter ("Hunter") (collectively, "Respondents"[1]) and determined that Respondents engaged in violations of the Oregon Securities Law.
>
> Respondents, without admitting or denying the Director's findings of fact or conclusions of law, wish to resolve and settle this matter with the Director.
>
> Now, therefore, as evidenced by the signature(s) subscribed on this Order, Respondents hereby CONSENT to entry of this Order.

(*Id.* at 1; emphasis in original.)(Internal footnotes omitted.)

6. The Consent Order provided the following Conclusions of Law:

> 32. Respondents aided Frost in the sale of unregistered securities and

[1] The Consent Order uses the term "Respondents" to refer to Ms. Hunter and Mr. Lent collectively. However, for the purpose of this proceeding (OAH Case No. 2022-ABC-05287), Ms. Hunter is the only Respondent. In this order, when the term "Respondents" is used, it refers to Ms. Hunter and Mr. Lent collectively.

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are liable for * * * violations of ORS 59.165(1) and ORS 59.055, under ORS 59.115(3).

33. Frost made * * * untrue statements of material fact to the Oregon Investors in connection with the sale or purchase of securities, in violation of ORS 59.135(2), for which Respondents are liable under ORS 59.115(3)[.] * * *

34. Frost omitted * * * material facts needed to make statements made to the Oregon Investors in connection with the sale or purchase of securities not misleading, in violation of ORS 59.135(2), for which Respondents are liable under ORS 59.115(3)[.] * * *

35. Because the Director has reason to believe that Respondents have engaged in violations of the Oregon Securities Law, the Director may issue an order to Respondents to cease and desist from violations of the Oregon Securities Law under ORS 59.245(4).

36. Because the Director has reason to believe that Respondents have engaged in violations of the Oregon Securities Law, the Director may deny Respondents the use of exemptions to the securities registration requirements under ORS 59.045(2).

(Ex. A1 at 8-9.)

7. The Consent Order ordered that:

37. As authorized by ORS 59.245(4), the Director hereby ORDERS Respondents to CEASE AND DESIST from violating any provision of the Oregon Securities Law.

38. As authorized by ORS 59.045(2) the Director hereby DENIES Respondents, and any successor business entity or any business entity

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owned, operated, or controlled by Respondents, the use of exemptions that would otherwise be available to Respondents under ORS 59.025 and ORS 59.035, concerning securities and transactions exempt from the registration requirements of the Oregon Securities Law.

39. As authorized by ORS 59.995, the Director hereby ORDERS that Respondents be jointly and severally subject to a CIVIL PENALTY, totaling $60,000, as follows:

A. $20,000 for aiding Frost, who made untrue statements of material fact to the Oregon Investors in connection with the sale or purchase of securities, in violation of ORS 59.135(2), under ORS 59.115(3).

B. $20,000 for aiding Frost, who omitted to state material facts needed to make statements made to the Oregon Investors in connection with the sale or purchase of securities not misleading, in violation of ORS 59.135(2), under ORS 59.115(3).

C. $10,000 for aiding Frost's violation of ORS 59.165(1), under ORS 59.115(3); and

D. $10,000 for aiding Frost's violation of ORS 59.055(1), under ORS 59.115(3).

40. The Director hereby suspends payment of $60,000 of the CIVIL PENALTY for a period of three years, provided Respondents:

A. Pay $10,000 in restitution to the Oregon Investors as set forth in Exhibit A, within twenty-four (24) months from the effective date of this Order, and provide the Division with documentation of such payments within that timeframe; and

B. Do not violate the Oregon Securities Law within the three-year time period.

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> 41. The suspended CIVIL PENALTY ($60,000) will be waived three years from the effective date of this Order, provided Respondents have complied with the foregoing Order terms. The Director reserves the right to immediately assess and collect the suspended civil penalty upon a determination that Respondents have violated any term of this Order.
>
> 42. Respondents stipulate and agree that the amounts assessed in Paragraphs (39) and (40) are not dischargeable under 11 U.S.C. 523(a)(7).
>
> 43. 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 available to the Director under Oregon law.

(Ex. A1 at 9-11.)

8. The Consent Order included "Exhibit A," listing the Oregon Investor's initials, investment sums, and their pro rata share of restitution. (Ex. A1 at 12.) To protect the privacy of the investors, the full names and contact information were not included in the Consent Order, as it was a public document once executed. The Division believed Respondents had the contact information for the Oregon Investors, but would have provided the information to Respondents had they requested it. (Test. of Estrada.)

9. On February 19, 2020, Mr. Lent and Ms. Hunter each signed the Consent Order, affirming the following:

> I, [F. David Lent/Heather Hunter], state that I have read the foregoing Order and that I know and fully understand the contents hereof. I have been advised of my right to a hearing and of my right to be represented by counsel in this matter. I voluntarily consent to the entry of this Order without any force or duress, expressly waiving any right to a hearing in

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> this matter, as well as any rights to administrative or judicial review of this Order. I understand that the Director reserves the right to take further actions against me to enforce this Order or to take appropriate action upon discovery of other violations of the Oregon Securities Law by me. I will fully comply with the terms and conditions stated herein.
>
> I further assure the Director that neither I nor my officers, directors, employees, or agents will effect securities transactions in Oregon unless such activities are in full compliance with the Oregon Securities Law. I understand that this Consent Order is a public document.

(Ex. A1 at 13-14.)

10. On March 2, 2020, the Consent Order was executed by the Division. (Ex. A1 at 11.)

11. On February 9, 2022, Mr. Estrada sent an email to Mr. Lent, stating, in part:

> Please note that your deadline to pay the restitution required by the consent order, and provide documentation of the same, is 3/2/22. You may e-mail documentation to me at this address. Let me know if you have any questions. Thanks.

(Ex. A2 at 1.) Mr. Lent received Mr. Estrada's email and forwarded it to Ms. Hunter. (Test. of Hunter.) On March 3, 2022, Ms. Hunter responded to Mr. Estrada's email, stating, in part:

> Please be informed that David has been terminally ill with end-stage kidney disease since November 2020.
>
> He is now on hospice with only a few more days or weeks to live.
>
> Because of this, we are financially drained and are in no position to pay

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this restitution.

(Ex. A2 at 1.)

12. Neither Ms. Hunter nor Mr. Lent repaid any of the $10,000 in restitution to the Oregon Investors as set forth in the Consent Order. (Test. of Hunter.)

CONCLUSIONS OF LAW

The Director may reinstate the suspended civil penalties of $60,000 from Division Case No. S-19-0020 against Heather Hunter because she and F. David Lent failed to pay the restitution required under the Consent Order within the applicable 24-month period.

OPINION

The Division proposes to reinstate the suspended civil penalties of $60,000 from Division Case No. S-19-0020 against Ms. Hunter because she and Mr. Lent failed to pay the restitution required under the Consent Order within the applicable 24-month period. The Division bears the burden of proving its allegations by a preponderance of the evidence. ORS 183.450(2) and (5); *Reguero v. Teachers Standards and Practices Commission*, 312 Or 402, 418 (1991) (burden is on Commission in disciplinary action); *Dixon v. Board of Nursing,* 291 Or App 207, 213 (2018) (in administrative proceedings, the preponderance standard generally applies). Proof by a preponderance of the evidence means that the fact finder is convinced that the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp*., 303 Or 390, 402 (1987).

The facts in this case are largely undisputed. The Division issued notices to Mr. Lent and Ms. Hunter, alleging violations of the Oregon Securities Law based on their work with Mr. Frost. Mr. Lent engaged in discussions with the Division on behalf of himself and Ms. Hunter, ultimately leading to the creation and execution of the Consent Order. Ms. Hunter voluntarily signed the Consent Order, acknowledging that she read it, fully understood it, and would fully comply with the terms and conditions of it. In the 24 months following the executed Consent Order, neither Ms. Hunter nor Mr. Lent made any

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restitution payments to the Oregon Investors.

ORS 183.417(3) provides:

> (a) Unless prohibited by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. Informal settlement may be made in license revocation proceedings by written agreement of the parties and the agency consenting to a suspension, fine or other form of intermediate sanction.
> (b) Any informal disposition of a contested case, other than an informal disposition by default, must be in writing and signed by the party or parties to the contested case. The agency shall incorporate that disposition into a final order. An order under this paragraph is not subject to ORS 183.470. The agency shall deliver or mail a copy of the order to each party and to the attorney of record if the party is represented. An order that incorporates the informal disposition is a final order in a contested case, but is not subject to judicial review. A party may petition the agency to set aside a final order that incorporates the informal disposition on the ground that the informal disposition was obtained by fraud or duress.

ORS 183.745(11) provides:

> Informal disposition of proceedings under this section, whether by stipulation, agreed settlement, consent order or default, may be made at any time.

OAR 137-003-0510 provides, in part:

> (3) Final disposition of contested cases may be by a final order following hearing or, unless precluded by law, by stipulation, agreed settlement, consent order or final order by default.
> (4) A stipulation, agreed settlement or consent order disposing of a contested case must be in writing and signed by the party or parties. By signing such an agreement, the party or parties waive the right to a contested case hearing and to judicial review. The agency or administrative law judge shall incorporate the disposition into a final order. A copy of any final order incorporating an agreement must be delivered or mailed to each party and, if a party is represented by an attorney, to the party's attorney.

The Consent Order was signed and executed by the Division and Respondents, and constituted an informal resolution of the case in accordance with ORS 183.417(3), ORS 183.745(11), and OAR 137-003-0510(3)-(4). The Consent Order suspended the $60,000 civil penalty for three years *if* Respondents complied with the terms of the Consent Order.

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One of those terms included paying $10,000 in restitution to the Oregon Investors listed in the Consent Order within 24 months of execution. Neither Ms. Hunter nor Mr. Lent paid any restitution to the Oregon Investors within that timeframe. Therefore, pursuant to the terms and conditions of the Consent Order, the Division had the right to immediately assess and collect the $60,000 in suspended civil penalties.

At hearing, Ms. Hunter argued that she should not be required to repay the $60,000 in civil penalties because it was Mr. Frost (not Respondents) who had violated the Oregon Securities Law, she was not involved in settlement discussions with the Division, she was monetarily unable to repay either the restitution or the civil penalties, and it was unfair to make her responsible for the entire $60,000 in civil penalties following Mr. Lent's death. Ms. Hunter's arguments are without merit. Ms. Hunter had the right to refuse to sign the Consent Order and to request a contested case hearing if she believed that the notice alleging she violated the Oregon Securities Laws was improper. Her reliance on Mr. Lent to negotiate with the Division and her acceptance of his advice to sign the Consent Order does not absolve her of any of her responsibilities under the Consent Order. The Consent Order was clear regarding what Mr. Lent and Ms. Hunter must do for the $60,000 in civil penalties to be suspended, and it was also clear about what would happen if they failed to do so. Nothing in the Consent Order provided for suspension of the civil penalties in the event Respondents became ill or financially unable to pay. Finally, there is no evidence that Respondents made any attempts to meet the obligations of the Consent Order or contact the Division regarding their options prior to the expiration of the 24 month period.

For the foregoing reasons, the Division may order that the entire $60,000 in civil penalties imposed on Ms. Hunter under the Consent Order be immediately due and payable as a result of her failure, and the failure of Mr. Lent, to timely satisfy the restitution condition in accordance with the terms and conditions of the Consent Order.

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EXCEPTIONS

Under ORS 183.460, a party adversely affected by a proposed order has the opportunity to file exceptions. Likewise, under OAR 137-003-0645(5), a proposed order shall include a statement that the party may file exceptions and shall include information as to where and when written exceptions must be filed to be considered by the agency. The Proposed Order in this case provided that the parties had the right to file written exceptions and written argument within 30 days from the date that the order was sent to the parties by delivering the same to the Division. On September 28, 2022, OAH served the Proposed Order on the parties, including by electronic and certified mail to Ms. Hunter. Accordingly, Ms. Hunter had until October 28, 2022 to file written exceptions. Neither Ms. Hunter nor the Division filed written exceptions within the applicable timeframe.

ORDERS

Now, therefore, the Director issues the following Order:

Heather Hunter and F. David Lent failed to timely satisfy the Restitution Conditions in accordance with the terms and conditions of the Consent Order resolving Division case number S-19-0020. The entire $60,000 in civil penalties imposed on Heather Hunter under the Consent Order is immediately due and payable.

SO ORDERED this 1st day of November, 2022.

ANDREW STOLFI, Director
Department of Consumer and Business Services

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

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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.

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