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

In the Matter of	DFR Case No. INS-22-0037 OAH Case No. 2023-ABC-05778
RHEA JANS Respondent.	FINAL ORDER TO CEASE AND DESIST, AND FINAL ORDER REVOKING LICENSE AND ASSESSING CIVIL PENALTIES

HISTORY OF THE CASE

On August 25, 2022, the Department of Consumer & Business Services' Division of Financial Regulation (Department) issued Rhea Jans an Order to Cease and Desist, Proposed Orders Revoking License and Assessing Civil Penalties, and Notice of Right to an Administrative Hearing. On September 13, 2022, Ms. Jans requested a hearing.

On January 13, 2023, the Department referred the matter to the Office of Administrative Hearings (OAH). The OAH assigned Administrative Law Judge (ALJ) Samantha A. Fair to preside at hearing. On February 17, 2023, ALJ Fair convened a prehearing conference. Ms. Jans did not appear. Assistant Attorney General Jacob Gill represented the Department. Noah Olson, a Department financial enforcement officer, also appeared for the Department. ALJ Fair scheduled the hearing for May 18 and 19, 2023, and set a deadline of April 27, 2023, for the submission of witness lists and exhibits.

On April 27, 2023, the Department filed a witness list and Exhibits A1 through A15.

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On May 2, 2023, Ms. Jans requested an extension of the deadline for her to file a witness list and exhibits. On May 3, 2023, ALJ Fair established a new deadline of May 5, 2023, for Ms. Jans to file her documents.[1]

On May 18, 2023, ALJ Fair convened a video conference hearing. Ms. Jans appeared and testified. The Department was represented by Mr. Gill. Mr. Olson appeared for the Department and testified. Also testifying on behalf of the Department was Benjamin Jolliff, a Department investigator. The record closed on May 18, 2023, at the conclusion of the hearing.

On June 26, 2023 ALJ Fair issued a Proposed Order concluding that Ms. Jans violated certain provisions of the Insurance Code, including ORS 744.074(1)(h), ORS 746.100, and ORS 731.296; proposing that Ms. Jans be ordered to Cease and Desist from violating the Insurance Code; proposing to revoke Ms. Jans' Oregon resident insurance producer license; and proposing to assess civil penalties in the amount of $5,000 for violating ORS 744.074(1)(h), ORS 746.100, and ORS 744.296.

The parties were given until July 26, 2023, to file any written exceptions to the Proposed Order; however, neither party filed exceptions. Having considered the record in this matter, the Division adopts the Proposed Order as the Final Order in this case.

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ISSUES

A. Whether Ms. Jans demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of insurance producer business. ORS 744.074(1)(h).

B. Whether Ms. Jans made a false or fraudulent statement or representation on or relative to an application for insurance. ORS 746.100.

[1] Ms. Jans never submitted a witness list or exhibits.

C. Whether Ms. Jans failed to promptly and truthfully reply to the Department's inquiries. ORS 731.296.

D. Whether the Department should revoke Ms. Jans' insurance producer license. ORS 744.074(1).

E. Whether the Department should assess Ms. Jans civil penalties for any established violations. ORS 731.988(1).

F. Whether the Department should issue Ms. Jans a cease and desist order. ORS 731.252(1).

EVIDENTIARY RULINGS

Exhibits A1 through A15, offered by the Department, were admitted into the record without objection.

FINDINGS OF FACT

1. The Department first issued Ms. Jans an insurance producer license on April 26, 2018. The license remained active at least through the 2021-2023 biennium. (Ex. A14 at 1.)

2. Shea Brown and Renee Mulberry are the owners of RJS and Associate Insurance Service (RJS). (Ex. A2e at 15.) RJS employed Ms. Jans for approximately four years, originally as a receptionist, then as a personal assistant and last as an insurance producer. (Ex. A3 at 1; test. of Jans.) As an insurance producer, Ms. Jans quoted and maintained personal and commercial insurance policies for RJS' clients. (Test. of Jans.)

3. Ms. Jans' business email account listed her as "Rhea Jans, Agent, New Sales" with RJS' name and contact information. (Ex. A2f at 1.)

4. On May 3, 2021, RJS placed Ms. Jans on administrative leave for one month for tardiness. (Exs. A2 at 2; A2e at 15; A3 at 1; A8 at 1.) Later that week, she returned to RJS to meet with Ms. Brown and Ms. Mulberry. (Ex. A2j at 2-3.) After this meeting, Ms. Jans no longer had access to her RJS email account. (Ex. A2 at 2.) Sometime between this

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meeting and May 19, 2021, RJS terminated Ms. Jans' employment. (Exs. A2j at 1; A3 at 3.) After terminating Ms. Jans, RJS filed an unaffiliation notice regarding Ms. Jans with the Department, reporting Ms. Jans for misconduct and fraud. (Ex. A3 at 3.)

Western Slope Policy

5. Western Slope Underground Construction LLC (Western Slope) sought full commercial insurance through RJS with Ms. Jans as the insurance agent. (Test. of Jans.) Bass Underwriters (Bass) issued a commercial general liability insurance policy to Western Slope, effective February 25, 2021, through February 25, 2022, with Ms. Jans as the listed agent. (Ex. A2c at 1.)

6. On April 5, 2021, Bass emailed Ms. Jans a copy of a Direct Notice of Cancellation that had been sent to Western Slope, advising of the prospective cancellation of the insurance policy for non-payment of the premium. (Ex. A2a at 2-3; test. of Jans.) Later that same morning, Ms. Jans emailed Bass that IPFS indicated that it never received a finance agreement for Western Slope from Bass, and she requested that Bass forward the agreement to IPFS so that the agreement could be processed. On April 6, 2021, Bass emailed Ms. Jans that the agent typically forwards the finance agreement to IPFS, although Bass had done so earlier that morning. Bass further informed Ms. Jans that IPFS indicated it would retain the first payment made under the finance agreement since it was past due and that the agent (Ms. Jans) would need to collect the first installment to send to Bass. (Ex. A2a at 1-3.)

7. Bass cancelled the Western Slope policy, effective April 15, 2021. (Exs. A2b at 2; A2c at 1, 3.)

8. On or about May 7, 2021, Western Slope called RJS and reported the cancellation of the policy. Ms. Brown reviewed RJS' records and Ms. Jans' emails. She then called Bass to seek reinstatement of the policy. (Ex. A2 at 1.) On May 7, 2021, in response to Ms. Brown's inquiries, Bass emailed an attached no loss letter (a letter signed by the insured

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confirming that no reportable losses had occurred from the April 15, 2021 cancel date), informing RJS that the no loss letter must be completed and signed by Western Slope in order for Bass to consider reinstatement of the policy. (Ex. A2b at 1-2.) Also on May 7, 2021, Ms. Brown set up a trust account for Western Slope's premium payments,[2] arranged for Western Slope to sign the no loss letter, and collected the initial premium payment from Western Slope. (Ex. A2 at 1.) Later that day, Ms. Brown responded to Bass' email and returned the signed no loss letter to Bass and forwarded the initial premium payment. (Exs. A2 at 1; A2b at 1-2.) On May 11, 2021, Bass confirmed reinstatement of the Western Slope policy with no lapse in coverage. (Exs. A2c at 7; A2d at 1.)

Cade Demers' Insurance Application

9. On February 23, 2021, Ms. Jans prepared a general commercial liability insurance application for Mr. Demers' business D5 Field Repair LLC. (Ex. A2e at 39-40.) On March 21, 2021, Ms. Jans completed a garage application and the property section describing D5 Field Repair's business property. (*Id*. at 30-36.)

10. On April 26, 2021, a Risk Placement Services underwriter quoted an insurance policy through Atlantic Casualty Insurance for D5 Field Repair at Ms. Jans' request. The quote included an annual premium of $1,465.73 and noted that the policy would not bind until receipt of the completed, signed application. (Ex. A2e at 9, 17-25.)

11. On May 3, 2021, Ms. Jans delivered Mr. Demers' insurance application file to him and advised him that she had been placed on administrative leave. (Ex. A8 at 1.)

12. On June 7, 2021, Mr. Demers called RJS inquiring about the status of the insurance coverage for his business. After the call, Mr. Demers delivered his application forms and a premium check in the amount of $1,465.73 to RJS. Mr. Demers and Ms. Jans' signatures appeared on the forms with the date of May 10, 2021. Mr. Demers' premium

[2] RJS must set up a trust account in order to collect premium payments from an insured. Historically, RJS has not offered this service to its clients. (Ex. A2 at 1.)

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check was dated May 11, 2021. (Ex. A2e at 6-7, 11, 15, 26-27, 29.) Later that same day, RJS contacted Risk Placement Services, which confirmed that no policy had been issued and no payment received. On June 10, 2021, RJS left a voicemail message with Mr. Demers, advising him that he was not currently insured through Risk Placement Services and that RJS needed additional information to finalize the application. (*Id*. at 4, 7.) On June 10, 2021, Mr. Demers called, informing RJS that that "Rhea did this before her leave," that he no longer wished to continue with the application, and requested RJS shred the application and his check. (*Id*. at 3-4.)

13. On November 12, 2021, Mr. Demers called RJS and requested that RJS never contact him again. Mr. Demers was upset with RJS for involving him in the Department's misconduct investigation against Ms. Jans. (Ex. A2e at 1.) Mr. Demers also did not cooperate with the Department's investigation. (Test. of Jolliff.)

Luke Jans' Automotive Transaction

14. Luke Jans is Ms. Jans' husband. In 2021, he resided in Arizona while working a prevailing wage job. Ms. Jans and their children remained in Oregon. Ms. Jans and the children would periodically travel to Arizona to visit Mr. Jans. (Test. of Jans.)

15. Late on May 3, 2021, Mr. Jans called Ms. Jans and informed him that he needed automotive insurance for a Dodge Charger he was buying at Cactus Auto in Arizona. (Ex. A2j at 3-4; test. of Jans.) At 6 p.m. on May 3, 2021, Ms. Jans returned to RJS to use her business computer to log into her personal Progressive automotive insurance account to add the Dodge Charger to her policy. (Test. of Jans.) While at RJS and using her business email, Ms. Jans sent an email to Cactus Auto. The subject line to the email was "Luke Jans Temporary Insurance Card" and attached to the email was a copy of the temporary insurance card. (Ex. A2f at 1.) In the body of the email, she advised Cactus Auto that attached was "proof of coverage to this email for the above listed client Luke Jans. Please let me know if you need anything else." (*Id*.) A few minutes later, she authored a second

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email to Cactus Auto with the subject line of "Luke Jans Coverage page" and attached a copy of her insurance policy declaration page. (Ex. A2g at 1.) In the body of the email, she stated "I have attached the proof of coverages to this email so you can see the full coverage limits." (*Id*.) The declaration page for the insurance policy denoted an existing policy with Ms. Jans as the policyholder and noted the addition of a 2014 Dodge Charger to the insurance policy, effective May 3, 2021. (Ex. A2h at 1.)

16. Luke Jans was not a covered driver on Ms. Jans' policy. (Ex. A2 at 2.) Luke Jans was not a client of RJS. (Ex. A2j at 4.)

Department Investigation

17. On September 22, 2021, a Department investigator emailed Ms. Jans notifying her of an investigation into allegations of fraudulent practices, incompetence and misrepresentations. The Department investigator provided a list of questions, regarding the Demers and Jans matters, for Ms. Jans to answer by October 22, 2021. (Ex. A4 at 1-2.)

18. On October 5, 2021, Ms. Jans responded to the Department's questions. In regards to the Jans matter, Ms. Jans confirmed that she had added a vehicle to her personal insurance policy that she would be driving when she and their children visited Mr. Jans in Arizona. She also advised that Mr. Jans procured his own insurance as a driver of the vehicle. She further reported that she received no commission when she added the vehicle to her personal insurance policy. In regards to the Demers matter, Ms. Jans told the Department that "after May 3 I no longer spoke to him about anything with that policy quote. I gave him his quote And was clear when I told him that I would not be able to work with him further until I was taken off administrative leave." (Ex. A8 at 1.) Shortly after receiving Ms. Jans' October 5, 2021 response, the Department investigator informed Ms. Jans that he found the email "cumbersome" and requested she respond again by answering each question individually. (Ex. A9 at 1.) The Department extended the time for her to respond to November 5, 2021. (Test. of Jolliff.)

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19. On November 5, 2021, Ms. Jans emailed her individual responses to the list of Department questions, as follows:

> "Did you engage in any insurance related work while on administrative leave? No
>
> "Did Cade Demers provide you a check for an insurance policy on 05/11/21? * * *. No he did not
>
> "Did you meet Cade Demers at your home on 06/07/21? NO
>
> "Did you ever insure a vehicle for your ex-husband? No
>
> "Did you have any insurable interest in the vehicle? Yes"
>
> (Ex. A7 at 2.)

Ms. Jans also agreed that it would be dishonest behavior to insure a vehicle without a driver on the policy and a policyholder must have an insurable interest in a vehicle to insure it. (*Id*.) She completed her statement with the following explanation:

> "I insured a vehicle that was purchased for me by my husband to transport our children while visiting him. My husband also carried his own insurance on this vehicle covering himself. I received no commission for this and insured the vehicle on my policy until I no longer was driving it. the vehicle was then sold as I would no longer need a vehicle to drive while i was away. Mr Demers was informed the day I went on leave by myself to bring all the policy docs I provided him to RJS and Associates at his convenience as I was on leave. He understood and from what [I] can gather everything else was done through RJS."
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> (*Id*. at 3.)

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20. On February 16, 2022, the Department asked Ms. Jans to provide additional information regarding the Demers and the Jans transactions, no later than February 25, 2022. (Ex. A11 at 1-2.) On February 28, 2022, after receiving no reply, the Department sent the inquiry again requesting a response by March 2, 2022. (Ex. A12 at 1; test. of Jolliff.) The Department received no response from Ms. Jans. (Test. of Jolliff.)

21. On April 18, 2022, the Department made a final request for further information from Ms. Jans. (Ex. A15 at 3.) On April 24, 2022, Ms. Jans responded to the Department's last inquiry, noting that she had not had access to her email for some time. (*Id*. at 1.) When working for RJS, Ms. Jans used the RJS-provided computer for her business and personal affairs. She did not own a computer until March 29, 2022. When she ceased working for RJS, she continued to access her emails via her cellphone. In mid-January, her cellphone became non-functional, and she did not acquire a new one until the end of March 2022. (Test. of Jans.)

22. In the April 18, 2022 inquiry, the Department sought the following:

> "In your response dated 11/05/21, you stated, "No", when asked if you ever insured a vehicle for your ex-husband. Please provide a detailed explanation as to why the Division received information, documentation, and statements made by you via text message that you in fact insured a vehicle for Luke Jans;
>
> * * * * *
>
> "Why was Luke Jans not listed (on Ms. Jans' insurance) as a driver on the vehicle, even though he was the purchaser?"
>
> (Ex. A15 at 2.)

In response, Ms. Jans stated, as follows:

> "At our last meeting on May 12th I informed Renee and Shea that I was insuring the vehicle as I would be driving it every month when I flew to Arizona to drop my children off with their father. I was insuring myself as a driver.

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* * * * *

Luke obtained his own insurance through the dealership but I wanted my own coverage and it was more cost effective for me to add it to my own current policy."

(*Id*.)

CONCLUSIONS OF LAW

1. Ms. Jans demonstrated incompetence and untrustworthiness the conduct of insurance producer business.

2. Ms. Jans made false and fraudulent representations relative to an application for insurance.

3. Ms. Jans failed to promptly and truthfully reply to the Department's inquiries.

4. The Department should revoke Ms. Jans' insurance producer license.

5. The Department should assess Ms. Jans civil penalties for the established violations.

6. The Department should issue Ms. Jans a cease and desist order.

OPINION

The Department proposes to discipline Ms. Jans based on allegations that she engaged in incompetent, untrustworthy or financially irresponsible conduct; that she made false or fraudulent statements or representations; and that she failed to promptly and truthfully reply to the Department's inquires. As the proponent of the allegations, the Department has the burden to establish, by a preponderance of the evidence, that the allegations are correct and that it is entitled to impose the discipline. ORS 183.450(2) ("The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position"); *Reguero v. Teachers Standards and Practices Commission,* 312 Or 402, 418 (1991) (burden is on Commission in disciplinary action);

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Dixon v. Board of Nursing, 291 Or App 207, 213 (2018) (in administrative actions, burden of proof is by a preponderance of the evidence). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely than not true. *Riley Hill General Contractor v. Tandy Corp*., 303 Or 390, 402 (1987).

Incompetence, Untrustworthiness or Financial Irresponsibility

In its Notice, the Department asserts that Ms. Jans violated ORS 744.074(1)(h) by demonstrating incompetence, untrustworthiness or financial irresponsibility in her handling of Western Slope's insurance policy.

As reflected in the Findings of Fact, ORS 744.074(1) provides, in part:

> "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:
>
> * * * * *
>
> (h) Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]"

On April 5, 2021, shortly after Bass issued the Western Slope policy, Ms. Jans, as the listed insurance producer on the Western Slope policy, received notice from Bass that the policy would be cancelled for lack of payment. Ms. Jans responded to the notice, discovered that the finance agreement had never been forwarded to IFPS, and learned that RPS would need to obtain the premium payment from Western Slope. Ms. Jans testified that she informed Western Slope's owner to submit the payment, and she was waiting to receive the payment. She took no further action, and Bass cancelled the policy. Subsequently, during the course of a single day, Ms. Brown, upon receiving notice of the cancellation of the policy, reviewed RJS' records, contacted Bass and Western Slope,

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obtained the no loss letter from Bass, forwarded it to Western Slope, received the completed no loss letter and premium payment from Western Slope, set up a trust account and deposited the payment, and forwarded a payment and the completed no loss letter to Bass. Thus, Ms. Brown accomplished the reinstatement of the policy with no lapse in coverage with one day's diligent work. Ms. Jans had 10 days to prevent the April 15, 2021 cancellation, and she had from April 15, 2021, through May 3, 2021 (the date RJS placed her on administrative leave), to reinstate the policy. Western Slope's immediate responsiveness to Ms. Brown's contacts also establish that, more likely than not, Ms. Jans failed to contact Western Slope about the forthcoming cancellation and the urgency of forwarding the premium payment to RJS, and she definitely failed to follow up with Western Slope. This evidence demonstrated that Ms. Jans, in the approximate month she had between her receipt of the notice of a pending cancellation and her placement on administrative leave, failed to take the necessary steps to (1) prevent the April 15, 2021 cancellation of the policy, or (2) reinstate the policy after the April 15, 2021 cancellation for her client Western Slope.

By failing to take the necessary steps to prevent a cancellation of a policy and to follow-up by taking the necessary steps to reinstate a cancelled policy, Ms. Jans demonstrated incompetence and untrustworthiness in the conduct of insurance business in Oregon, in violation of ORS 744.074(1)(h).

In the Notice, the Department also alleged that Ms. Jans demonstrated incompetence and untrustworthiness in regards to her handling of Mr. Demers' application for insurance by: (1) failing to provide Mr. Demers' insurance file to RJS when placed on leave; (2) accepting Mr. Demers' premium payment when on leave; and (3) failing to timely submit the application and premium payment to RJS. However, the ALJ found the evidence unpersuasive that Ms. Jans took these actions in regards to Mr. Demers' application for insurance. The ALJ found the evidence conflicting on whether RJS allowed

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agents to remove documents from the office. Ms. Jans testified that she had notified the RJS owners of the Demers' application and deliverance of the file to Mr. Demers. Testimony of Jans. RJS owners asserted in a communication with the Department that such action was against RJS policy (unless an owner did it), but these same owners instructed Ms. Jans to return all RJS documents to RJS when they terminated her employment. (Exhibits A2e at 15; A2j at 2). Therefore, the evidence failed to establish that, more likely than not, RJS was unaware of Ms. Jans' delivery of Mr. Demers' application file to Mr. Demers.

The Department presented additional evidence such as a RJS receptionist's email sent to the owners after Mr. Demers' June 7, 2021 phone call. However, the email contained an imprecise summary of Mr. Demers' representations and potential assumptions made by the receptionist.[3] The remaining evidence was minimalistic as RJS had virtually no contacts with Mr. Demers, and Mr. Demers did not cooperate with the Department's investigation. Although Mr. Demers and Ms. Jans' signature lines on the application were dated May 10, 2021, there was no further evidence to indicate that was the date they actually signed the application. Ms. Jans testified that they post-dated their signatures, and Mr. Demers represented that Ms. Jans' assistance occurred prior to her administrative leave. In light of Ms. Jans' persistent denials of further post-leave interactions with Mr. Demers, Mr. Demers' email representation that her assistance occurred prior to her leave, and his refusal to cooperate with the Department, the evidence was insufficient to support the Department's allegations regarding Ms. Jans' handling of Mr. Demers' insurance application.

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[3] The receptionist indicated that Mr. Demers had been without insurance all this time. The ALJ found it improbable that Mr. Demers cancelled any existing insurance before he received confirmation of the issuance of a new policy, especially when he was aware that his agent was on administrative leave. The ALJ suspected that the receptionist made this assumption. Without additional evidence, it could not be determined what exact representations Mr. Demers made to the receptionist.

False or Fraudulent Statement or Representation

In its Notice, the Department asserts that Ms. Jans violated ORS 746.100 by making false or fraudulent representations regarding the Luke Jans' transaction.

ORS 746.100 provides:

> "No person shall make a false or fraudulent statement or representation on or relative to an application for insurance, or for the purpose of obtaining a fee, commission, money or benefit from an insurer or insurance producer."

ORS Chapter 746 does not define the word "fraudulent." It is therefore necessary to consider the analytical approach set forth in *PGE v. Bureau of Labor and Industries,* 317 Or 606 (1993) and *State v. Gaines,* 346 Or 160, (2009) to discern the meaning of the phrase, as it is used in ORS 746.100. *See also Tye v. McFetridge*, 342 OR 61, 69 (2006) (the task is the same in interpreting an administrative rule as that involved in determining the meaning of a statute). In *PGE*, the Oregon Supreme Court explained that to determine legislative intent, a court begins by examining a statute's text, and its statutory context, giving words of common usage their plain, natural, and ordinary meaning. If the legislative intent is unambiguous, the court stops at that first level of analysis. *PGE*, 317 Or at 610-11. For the plain, natural, and ordinary meaning, one looks to the dictionary definition of the word. "Fraud" means "an instance or act of trickery or deceit * * * an intentional misrepresentation * * * for the purpose of inducing another in reliance upon it to part with some valuable thing * * *." *Webster's Third New Int'l Dictionary* 904 (unabridged ed 2002).

On May 3, 2021, Ms. Jans sought insurance coverage for the Dodge Charger through her personal automotive insurance policy. Thus, the representations she subsequently made to Cactus Auto, the auto dealership at which Luke Jans was purchasing a vehicle, were "relative to" her application for insurance coverage for the Dodge Charger.

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See ORS 746.100. In emails with Cactus Auto, Ms. Jans advised Cactus Auto that, attached to the emails, were a temporary insurance card for Luke Jans and an insurance coverage page showing vehicle coverage for Luke Jans. She further identified Luke Jans as a "client," while using her business identification as an agent with RJS. In fact, Luke Jans was not an RJS' client, and he was not a listed driver on Ms. Jans' personal auto insurance policy. Thus, Ms. Jans' representations to Cactus Auto (that the insurance card and policy coverage included Mr. Jans and that Mr. Jans was a RJS client) were false. In addition, Ms. Jans provided this assurance of Luke Jans' auto insurance coverage to Cactus Auto to facilitate Mr. Jans' purchase of the Dodge Charger. Thus, her statements were not just false but also fraudulent as they were made for the purpose of inducing Cactus Auto to complete the sales transaction with Mr. Jans.

By representing that Mr. Jans was a client of RJS and had coverage (by providing an insurance card and a declaration page) for the Dodge Charger under her insurance policy to the seller of the Dodge Charger, Ms. Jans made three false and fraudulent representations relative to an application for insurance, in violation of ORS 746.100.

Prompt and Truthful Replies

In its Notice, the Department asserts that Ms. Jans violated ORS 731.296 by failing to promptly and truthfully respond to the Department's inquiries.

ORS 731.296 provides, in part:

> "The Director of the Department of Consumer and Business Services may address any proper inquiries to any insurer, licensee or its officers in relation to its activities or condition or any other matter connected with its transactions. Any such person so addressed shall promptly and truthfully reply to such inquiries using the form of communication requested by the director[.]"

On September 22, 2021, the Department notified Ms. Jans that she was the subject of an investigation regarding fraudulent practices, incompetence and misrepresentations.

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Ms. Jans timely responded to the initial inquiry, and, when the Department requested that she respond again with specific answers to the Department's specific questions, she timely responded to that request on November 5, 2021. However, Ms. Jans failed to respond to the Department's February 16 and 28, 2022 requests for further information. On April 24, 2022, she finally responded to the Department's April 18, 2022 inquiry. Although Ms. Jans testified to her lack of ownership of a personal computer and phone from mid-January until March 29, 2022, she was aware that the Department was investigating her based on significant allegations and she failed to communicate with them for approximately five months. As a licensee subject to a known investigation, Ms. Jans was on notice that she needed to remain in contact with the Department. Thus, when she ceased checking her emails (the mechanism by which the Department submitted its proper inquiries to her), the burden was on Ms. Jans to find an alternate mechanism to check her emails or contact the Department directly to provide it an alternative mechanism for communication. The Department sent proper inquires to Ms. Jans on February 16 and 28, 2022, to which Ms. Jans failed to promptly reply, in violation of ORS 731.296.

In its final inquiry to Ms. Jans, the Department requested explanations for her "no" answers regarding the Luke Jans' transaction. Specifically, the Department requested an explanation for the documentation that the Department received indicating that Ms. Jans had arranged for automotive insurance coverage for Luke Jans. In her response to this inquiry, Ms. Jans reiterated her statement that she included the Dodge Charger on her automotive insurance policy in anticipation of driving the vehicle when visiting her husband in Arizona. However, Ms. Jans failed to inform the Department that, although she never listed Luke Jans on her insurance policy, she represented to Cactus Auto that she had done so. Ms. Jans' failure to provide this information to the Department, which information would explain her representations in the documents the Department had, was a deliberate omission of material fact. Because Ms. Jans was evasive and deliberately omitted the facts

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pertinent to the Department's inquiry, Ms. Jans' reply to the Department's inquiry was untruthful and a violation of ORS 731.296.

Revocation of License and Assessment of Civil Penalties

ORS 744.074(1) provides, in part:

> "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:
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> * * * * *
>
> "(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.
>
> * * * * *
>
> "(h) Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]"

ORS 731.988 provides, in part:

> "(1) A person that violates any provision of the Insurance Code, any lawful rule or final order of the Director of the Department of Consumer and Business Services or any judgment that a court makes in response to the director's application, shall forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the director that does not exceed $10,000 for each offense. The civil penalty for individual insurance producers, adjusters or insurance consultants may not exceed $1,000 for each offense. Each violation is a separate offense.
>
> * * * * *
>
> "(8) Civil penalties under this section must be imposed and enforced in accordance with ORS 183.745[.]"

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In its Notice, the Department proposed revoking Ms. Jans' insurance producer license and assessing her civil penalties in the amount of $1,000 for each violation of ORS 744.074(1)(h) and ORS 746.100 and a civil penalty of $1,000 for her violation of ORS 731.296. As shown above, the Department established that Ms. Jans violated ORS 744.074(h) in her handling of Western Slope's policy, violated ORS 746.100 by making three false and fraudulent statements to Cactus Auto, and violated ORS 731.296 by failing to promptly and truthfully answer the Department's inquiries.

Her conduct included the following acts and results:

A. Ms. Jans had a month to either prevent Western Slope's policy cancellation or reinstate the policy. Her failure to competently manage Western Slope's policy resulted in the cancellation of that policy, subjecting Western Slope to significant risk if a claim had occurred;

B. On May 3, 2021, shortly after she was placed on administrative leave, Ms. Jans falsely represented that she was performing business on RJS' behalf by claiming Luke Jans as a client and falsely represented on two occasions that Luke Jans had auto coverage on her policy to induce Cactus Auto to sell a car to Luke Jans; and

C. During the course of the Department's investigation, she failed to respond to the Department's communications for approximately six months and failed to truthfully answer Department inquiries regarding the Luke Jans' incident.

In light of her persistent violations, her lack of responsiveness and truthfulness in her interactions with the Department, the fraudulent nature of the Luke Jans' violations, and Western Slope's exposure to harm caused by her incompetence, the Department should revoke Ms. Jans' insurance producer license and assess her civil penalties of $1,000 for the violation of ORS 744.074(1)(h), $1,000 for each of three violations of ORS 746.100, and $1,000 for her violation of ORS 731.296, for a total of $5,000 in civil penalties.

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Orders to Cease and Desist

ORS 731.252(1) provides, in part:

> "Whenever the Director of the Department of Consumer and Business Services has reason to believe that any person has been engaged or is engaging or is about to engage in any violation of the Insurance Code, the director may issue an order, directed to such person, to discontinue or desist from such violation or threatened violation[.]"

As explained above, the Department established that Ms. Jans violated multiple provisions of the Insurance Code. Therefore, pursuant to ORS 731.252(1), Ms. Jans must cease and desist from any further violations of ORS 731.296, ORS 744.074 and ORS 746.100.

ORDER

Now, therefore, the Department issues the following ORDERS:

1. Pursuant to ORS 731.252, The Division hereby ORDERS that Rhea Jans CEASE AND DESIST from violating ORS 731.296, ORS 744.074 and ORS 746.100.

2. Pursuant to ORS 744.074 (1)(h), the Division hereby REVOKES Rhea Jans' resident insurance producer license.

3. Pursuant to ORS 731.988, the Division hereby assesses CIVIL PENALTIES in the amount of $5,000 as follows:

    a. $1,000 for violating ORS 744.074(1)(h);

    b. $3,000 for violating ORS 746.100 in three instances; and

    c. $1,000 for violating ORS 731.296.

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4. The civil penalties are due and payable 10 days after the final order imposing the civil penalties becomes final by operation of law or on appeal.

IT IS SO ORDERED.

Dated this 18th day of September, 2023.

Andrew R. Stolfi, Director
Department of Consumer and Business Services

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

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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