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

In the Matter of: KEVIN J. LEE, Respondent.	FINAL ORDER TO CEASE AND DESIST, REVOKING RESIDENT INSURANCE PRODUCER AND RESIDENT INSURANCE CONSULTANT LICENSES, DENYING EXEMPTIONS, AND ASSESSING CIVIL PENALTIES OAH Case No. 2022-ABC-05528 DFR Case No. INS-19-0008

HISTORY OF THE CASE

On June 29, 2020, the Department of Consumer & Business Services, Division of Financial Regulation (Division) issued an Order to Cease and Desist; Proposed Order Revoking Resident Insurance Producer and Resident Insurance Consultant Licenses; Proposed Order Denying Use of Exemptions; Proposed Order Assessing Civil Penalties; and Notice of Right to Administrative Hearing (Notice Order) to Kevin J. Lee. On July 7, 2020, Mr. Lee requested a hearing.

On May 17, 2022, the Division issued an Amended Notice Order to Mr. Lee, amending a portion of its findings and conclusions.

On August 9, 2022, the Division referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Elizabeth Jarry to preside at the hearing.

On August 25, 2022, ALJ Jarry convened a prehearing conference by telephone. Mr. Lee appeared and was represented by attorney Scott Mullins. Assistant Attorney General Jacob Gill represented the Division, and Caroline Smith, Enforcement Officer, appeared for

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the Division. ALJ Jarry set a hearing for November 29 through December 1, 2022.

On September 23, 2022, Mr. Lee filed a Motion for Order of Discovery and for Issuance of Subpoena Duces Tecum by DCBS to "PW" (Motion). On September 30, 2022, the Division filed a Response to Respondent's Motion for Order of Discovery and for Issuance of Subpoena Duces Tecum by DCBS to "PW." On October 6, 2022, ALJ Jarry issued a Ruling on Motion for Order of Discovery, denying Mr. Lee's Motion.

On November 15, 2022, the parties submitted a Stipulated Protective Order for approval. On November 16, 2022, ALJ Jarry issued the Stipulated Protective Order.

On November 15, 2022, Patricia Waggener filed a motion to quash a subpoena issued to her by Mr. Mullins on behalf of Mr. Lee. On November 17, 2022, Mr. Lee filed a Response to Witness Patricia Waggener's Motion to Quash Subpoena to Produce Documents. On November 18, 2022, the Division filed a Response to Motion to Quash by Potential Witness Patricia Waggener. On November 21, 2022, ALJ Jarry issued a Ruling on Motion to Quash Subpoena, denying the motion.

On November 29, 2022, ALJ Jarry convened the hearing in Salem, Oregon. Mr. Mullins represented Mr. Lee, who appeared. Mr. Gill represented the Division, and Ms. Smith appeared on behalf of the Division. The Division called the following witnesses: Ms. Waggener; Mr. Lee; Marianne Clausing-Lee, Mr. Lee's spouse; and Ms. Smith. Mr. Lee testified on his own behalf and called the following witnesses: Ms. Waggener; and Ms. Clausing-Lee. The record remained open until January 20, 2023, for receipt of the parties' written closing arguments. On January 17, 2023, the Division submitted an unopposed request to extend the deadline for closing arguments. On January 19, 2023, ALJ Jarry granted the request and extended the record open period to February 3, 2023.

On February 3, 2023, Mr. Lee submitted the Respondent's Closing Brief. On February 4, 2023, the Division submitted the Closing Argument of the Division of Financial

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Regulation.[1] On February 4, 2023, Mr. Lee filed a request to strike the Division's Closing Argument, contending that he was prejudiced by the Division's late submission. On February 6, 2023, the Division disputed Mr. Lee's request. Also on February 6, 2023, ALJ Jarry denied Mr. Lee's request to strike the Division's Closing Argument and reopened the record to admit it. Also on February 6, 2023, ALJ Jarry provided the parties with the opportunity to submit responses to the closing arguments, which the parties declined. The record closed on February 6, 2023.

On April 7, 2023, ALJ Jarry issued a Proposed Order concluding that Mr. Lee violated certain provisions of the Oregon Securities Law and Insurance Code, including ORS 59.135(2) through (4), ORS 59.165(6), ORS 731.296, ORS 744.074, and ORS 744.644; proposing that Mr. Lee be ordered to cease and desist from violating ORS 59.135(2) through (4), ORS 59.165(6), ORS 731.296, ORS 744.074, and ORS 744.644, proposing the revocation of Mr. Lee's resident insurance producer and resident insurance consultant licenses, proposing the denial of securities and transactions exemptions that would otherwise be available, and proposing the assessment of civil penalties in the total amount of $61,000 against Mr. Lee for violations of ORS 59.135(2) through (4), ORS 59.165(6), and ORS 731.296.

On May 7, 2023 Mr. Lee timely filed exceptions ("the Exceptions") to the Proposed Order. The Division has considered the Exceptions. The Exceptions raised issues and arguments that are immaterial and irrelevant. Also, the Exceptions inaccurately characterized evidence in the record. The Division finds the Exceptions are unpersuasive.

Having considered the record in this matter, the Proposed Order and the Exceptions, the Division adopts the Proposed Order as the Final Order in this case.

[1] The OAH received Mr. Lee's closing argument via email at 11:38 p.m. on February 3, 2023, and received the Division's closing argument via email at 12:55 a.m. on February 4, 2023.

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ISSUES

1. Whether Mr. Lee failed to promptly and truthfully respond to a proper inquiry by the Director of the Department of Consumer and Business Services (Director) in violation of ORS 731.296.

2. Whether Mr. Lee acted dishonestly and provided misleading information on his resident insurance producer license renewal and resident insurance consultant license applications. ORS 744.074(1) and ORS 744.644(1).

3. Whether Mr. Lee used fraudulent, coercive, or dishonest practices or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business. ORS 744.074(1)(h) and ORS 744.644(1)(a) and (f).

4. Whether Mr. Lee transacted business in Oregon as a state investment adviser without a state investment adviser license in violation of ORS 59.165(6).

5. Whether Mr. Lee failed to disclose material facts to the broker-dealer where he was licensed to work in violation of ORS 59.135(2).

6. Whether Mr. Lee engaged in an act, practice, or course of business that operated as a fraud or deceit upon a person in violation of ORS 59.135(3).

7. Whether Mr. Lee made or filed, or caused to be made or filed, with the Director a statement, report, or document known to be false in a material respect or matter in violation of ORS 59.135(4).

8. Whether, pursuant to ORS 59.245(4) and ORS 731.252(1), the Director may order Mr. Lee to cease and desist from violating provisions of the Oregon Securities Law and Insurance Code.

9. Whether Mr. Lee's resident insurance producer license should be revoked. ORS 744.074(1).

10. Whether Mr. Lee's resident insurance consultant license should be revoked. ORS 744.644(1) and (2).

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11. Whether, pursuant to ORS 59.045(2), the Director should deny Mr. Lee and any business entity he owns, operates, or controls the use of any exemptions that would otherwise be available under ORS 59.025 and ORS 59.035, concerning securities and transactions exempt from the registration requirements of the Oregon Securities Law.

12. Whether the Director should assess civil penalties against Mr. Lee for violations of the Oregon Securities Law and/or the Insurance Code. ORS 59.995(1) and ORS 731.988(1).

EVIDENTIARY RULINGS

Exhibits A1 through A34 and A34b through A49, offered by the Division, and Exhibits R1 through R21, offered by Mr. Lee, were admitted into the record without objection. Exhibit A34a, offered by the Division, was admitted into the record over Mr. Lee's objection.[2]

CREDIBILITY DETERMINATION

The testimony of Mr. Lee and Ms. Waggener conflicted regarding whether Mr. Lee managed investments for her and her parents, as well as the purpose of payments she and her parents made to Mr. Lee. Accordingly, the witnesses' credibility must be assessed. ORS 44.370 provides, in part:

> A witness is presumed to speak the truth. This presumption, however, may be overcome by the manner in which the witness testifies, by the character of the testimony of the witness, or by evidence affecting the character or motives of the witness, or by contradictory evidence.

The reliability of evidence, including witness credibility, can be based on a number of factors, other than the manner of testifying. These factors include the inherent probability of the evidence, whether the evidence is corroborated, whether the evidence is contradicted

[2] The exhibit is a partial recording of a telephone conversation between Ms. Waggener and Mr. Lee made by Ms. Waggener without Mr. Lee's knowledge. Mr. Lee contended that the contents of the recording are prejudicial because Ms. Waggener failed to record the first portion of the conversation.

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by other testimony or evidence, whether there are internal inconsistencies, and "whether human experience demonstrates that the evidence is logically incredible." *Tew v. DMV*, 179 Or App 443, 449 (2002), *citing Lewis and Clark College v. Bureau of Labor*, 43 Or App 245, 256 (1979) *rev den* 288 Or 667 (1980) (Richardson, J., concurring in part, dissenting in part).

The Division and Mr. Lee called Ms. Waggener to testify at the hearing. Ms. Waggener's testimony included background on the personal and business relationships between her, her parents, and Mr. Lee; the history of caregiving provided by Mr. Lee and his spouse to her mother, Virginia Helfer; and interactions she had with Mr. Lee during the course of a regulatory investigation. In his Closing Argument, Mr. Lee contends that Ms. Waggener's testimony was "largely based on speculation and rank hearsay" and that she lacked credibility, contending her testimony was impeached multiple times and she has "a history of stealing pain medication from her employers." Lee's Closing Argument at 15.

In terms of Mr. Lee's attempt to attack Ms. Waggener's credibility based on theft of pain medication, he provided evidence of the following incidents:

- On January 21, 2000, Ms. Waggener entered into a Consent Order with the State of Georgia Board of Nursing for diverting Demerol from her employer for self-use during the period February 1998 through March 1999. The Georgia Board of Nursing placed her registered professional nurse license on probation for four years. Exhibit R7.
- On or about April 18, 2002, the Texas Board of Nurse Examiners issued an Order revoking Ms. Waggener's Permanent Certificate to practice nursing as the result of the 2000 Georgia Board of Nursing's discipline and her failure to appear at the Texas Board of Nurse Examiners' disciplinary hearing. Exhibit R9 at 8.
- On October 21, 2005, Ms. Waggener reported to the Georgia Board of Nursing that she had relapsed and was entering treatment. On January 19, 2006, she entered a Consent Order in which the Georgia Board of Nursing suspended her license for one

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year. Exhibit R8.

- On July 15, 2015, the State of California Board of Registered Nursing, Department of Consumer Affairs issued a Default Decision and Order to Ms. Waggener, revoking her registered nurse license for disciplinary action by other state Boards of Nursing. Ms. Waggener's California registered nurse license had expired in April 1981 and had not been renewed. Exhibit R9.

At the hearing, Ms. Waggener did not attempt to deny or excuse the circumstances leading to the disciplinary actions regarding her registered nurse licenses. Given that Ms. Waggener's conduct related to diversion of drugs occurred approximately 18 to 25 years ago and Ms. Waggener continues to work as a registered nurse in Georgia, ALJ Jarry did not find that Ms. Waggener's licensure disciplinary history negatively affects her reliability and credibility in this matter. *See* testimony of Waggener; Exhibits R7-R9.

Additionally, Mr. Lee contends that Ms. Waggener's testimony is unreliable on the basis that she "testified that the only document showing that Mr. Lee had control of her mom's securities accounts was a Durable Power of Attorney," but the power of attorney did not grant Mr. Lee such authority over securities. Lee's Closing Argument at 3; *see* Exhibit A9 at 6. At the hearing, Ms. Waggener stated that she was unaware of the Durable Financial Power of Attorney until it was brought to her attention by the Division. She testified, "This is the only * * * written document that I know of related to my mom and/or my dad and their finances with Kevin." She also testified that she believed it was limited to banking and retirement accounts. On cross-examination, Ms. Waggener reiterated that the Durable Financial Power of Attorney gave Mr. Lee authority over her mother's banking and retirement accounts. She did not claim, as Mr. Lee contends, that the Durable Financial Power of Authority gave Mr. Lee authority over securities. *See* testimony of Waggener.

Mr. Lee also contends that, in a list of documents submitted to the Division, "Ms. Waggener provided false representations that her mother paid Mr. Lee $23,198.02 in 2018."

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Lee's Closing Argument at 5; *see* Exhibit A34c at 1. At the hearing, Ms. Waggener testified that it was a "typo." Above the list of total amounts paid, she had written: "Copies of all checks * * * written by Kevin from Mar 18, 2011 to Feb 21, 2017[.]" Exhibit A34c at 1. She also provided copies of the checks, which she had totaled by year, paid to Mr. Lee during the period 2011 to 2017. *See* Exhibit A34c at 16-34. Furthermore, her testimony made clear that she and her mother ceased using Mr. Lee's services after Martin Nelson of Martin Nelson & Co, Inc. contacted her in October 2017 to inquire about the services Mr. Lee had provided to her and her parents. ALJ Jarry properly found that Ms. Waggener's statement, written or otherwise, regarding payments made in 2018 was nothing more than an inadvertent error. The evidence of the payments (copies of checks) speak for themselves.

Ms. Waggener does not appear to have any motive to lie regarding the types of services Mr. Lee provided to her and her parents. On the contrary, she expressed her appreciation for the "fine job" he did for her parents even when informing him that she was transferring management of her mother's funds to a different investment broker. Exhibit A34c at 5. Additionally, she does not appear to harbor any animus toward Mr. Lee and repeatedly expressed her appreciation for the caretaking assistance he and his spouse provided to her mother. *See* testimony of Waggener; Exhibits A34c at 11-12, R2 at 2, R3 at 1. She readily and forthrightly answered questions during the hearing and acknowledged when she was unsure of, could not recall, or lacked knowledge of the answers. In sum, ALJ Jarry properly found Ms. Waggener to be credible.

In contrast, the same cannot be said of Mr. Lee's testimony. He was motivated to avoid the Division's proposed sanctions by hiding the true nature of his former professional relationship with Ms. Helfer and Ms. Waggener. He engaged in a pattern of evasive conduct that demonstrates the untrustworthiness of his statements:

- Mr. Lee failed to fully respond to inquiries made by the Financial Industry Regulatory

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Authority (FINRA)3 during its 2017/2018 investigation. See Exhibits A1-A6, A9-15, A18.

- Mr. Lee also engaged in similar evasive conduct during the course of the Division's investigation. See Exhibits A27, A29-A31.
- During his testimony, Mr. Lee was evasive when asked straightforward questions by the Division's counsel. He repeatedly contended that he could not recall receiving various letters sent to him via first class and certified mail by FINRA during its investigation. After a recess, he finally stipulated to the receipt of the remainder of similar documents.

Additionally, Mr. Lee provided testimony that lacks credibility due to contrary evidence in the record. He testified that the payments made to him by the Helfers[4] during the period 2011 through 2017 were for care that he and his spouse provided to them. Testimony of Lee. The Helfers paid the following total amounts to Mr. Lee via check: $3,016.88 in 2011; $4,960.14 in 2012; $8,360.25 in 2013; $8,719.87 in 2014; $15,108.94 in 2015; $20,447.62 in 2016; and $23,198.02 in 2017.[5] Exhibits A34c at 1, 16-34; A37 at 2-4. The contrary evidence in the record regarding the purpose of the payments includes:

- Ms. Clausing-Lee stated that, prior to the hearing, she had never seen the above-mentioned checks paid to Mr. Lee and that she did not know the purpose of the payments. Furthermore, she testified that the only compensation she received for the assistance she provided to Ms. Helfer was the $400 per month payments made to her by Ms. Waggener's brother, Robert Helfer, in 2017. Testimony of Clausing-Lee.

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[3] FINRA is "the self-regulatory organization registered as a national securities association under section 15A of the Securities Exchange Act of 1934, 15 U.S.C. §73o-3, to register and regulate broker-dealers and salespersons and approved by the SEC as a successor to the National Association of Securities Dealers, Inc." OAR 441-175-0010(6)(a).

[4] Don Helfer was the spouse of Ms. Helfer, and he passed away in 2012. Testimony of Waggener.

[5] The amounts listed are totals for each year.

- Ms. Waggener has consistently maintained that the payments made by the Helfers to Mr. Lee during the period 2011 to 2017 were for financial planning/investment management services. Testimony of Waggener; Exhibits A38 at 1, A39 at 1.
- Joan Remington, the Helfer's tax preparer, also informed the Division that the Helfers paid fees to Mr. Lee for acting as their financial adviser and that those fees had increased substantially once Ms. Helfer moved into the assisted living facility. Exhibit 41 at 1.
- After Mr. Lee received FINRA's letter, dated November 20, 2017, informing him of its investigation into his relationship with Ms. Helfer and payments she made to him, he sought to refund some payments to Ms. Helfer and Ms. Waggener and have them reissued as "gifts." Exhibit A34a; testimony of Waggener; see also Exhibit A1. He subsequently sent a document to Ms. Waggener for Ms. Helfer to sign, which characterized the 2017 payments as a "series of short term loans" that he had repaid. Exhibit A34 c at 4.

ALJ Jarry properly found it to be logically incredible that the Helfers paid their friends and neighbors, Mr. Lee and Ms. Clausing-Lee, such substantial sums to provide them with assistance beginning in 2011. There is no evidence that Mr. Helfer and Ms. Helfer required substantial caregiving as early as 2011. Additionally, as her health deteriorated, Ms. Helfer paid a different neighbor, Caroline, $300 per month to assist her until she moved into an assisted living facility in 2016. Testimony of Waggener. While Mr. Lee and Ms. Clausing-Lee likely performed some tasks for the Helfers from time to time, as is typical for friends and neighbors, the evidence in the record establishes that Mr. Lee and Ms. Clausing-Lee began providing regular assistance to Ms. Helfer in 2016, after Caroline moved out of the area. Testimony of Waggener and Clausing-Lee. Even at that time, the assistance Mr. Lee and Ms. Clausing-Lee provided to Ms. Helfer did not consist of hands-on assistance with major life functions, such as feeding, clothing, and bathing. Instead, it consisted of

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performing various tasks and errands, such as taking Ms. Helfer to medical appointments, calling to arrange for her medical care, taking her to the emergency room when needed, ensuring she had sufficient food, taking walks with her, picking up prescriptions, ensuring she took her medications, taking her on errands, and taking her dog to the groomer. As Ms. Clausing-Lee testified, they assisted Ms. Helfer because it was the right, neighborly thing to do for a kind woman who was like a grandmother to their daughter. Testimony of Clausing-Lee. ALJ Jarry did not find Mr. Lee's contention credible that Ms. Helfer intended to pay him and Ms. Clausing-Lee over $23,000 during the first 10 months of 2017, in addition to the $400 per month Ms. Clausing-Lee received from Robert Helfer, for their assistance. Additionally, it is logically incredible that Ms. Clausing-Lee would have been unaware of the payments Ms. Helfer made directly to Mr. Lee if Ms. Helfer had intended the payments to compensate Ms. Clausing-Lee as the primary caregiver.

Furthermore, Mr. Lee's denial that he provided stock recommendations to the Helfers was not credible. He submitted evidence of unsolicited orders[6] to sell stock in securities accounts held at KMS Financial Services, Inc. on December 30, 2015, which, he argues, shows that Ms. Helfer made independent decisions regarding securities and that the trades were not recommended by him. *See* Lee's Closing Argument at 3-4; testimony of Lee; Exhibit R21 at 119-132. Those unsolicited orders were made during a period when Mr. Lee was not registered with a broker-dealer, and there is no evidence in the record that Ms. Helfer made unsolicited orders when Mr. Lee was registered with a broker-dealer. The mere fact that the orders were listed as "unsolicited" does not establish that he was not making decisions on Ms. Helfer's behalf. *See* Exhibit A26. Contrary to Mr. Lee's assertion, Ms. Waggener testified that her mother would not have been very involved in investment decisions, that her parents trusted Mr. Lee's judgment regarding what investments to make,

[6] Unsolicited orders made through a broker-dealer indicate transactions that a client requests without a broker's recommendation. Testimony of Lee.

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and that he made investments on their behalf (as he did for her). Accordingly, ALJ Jarry properly found Mr. Lee's denial to lack credibility.

ALJ Jarry properly found that Mr. Lee's evasiveness and logically implausible statements support the conclusion that his evidence is unpersuasive and unreliable. Because Mr. Lee was false in much of his testimony, ALJ Jarry properly found that all of his testimony and written statements untrustworthy. *See* ORS 10.095(3) ("That a witness false in one part of the testimony of the witness may be distrusted in others."). Therefore, in weighing the evidence, ALJ Jarry properly concluded that, with respect to the material events and details, the prior statements and hearing testimony of Mr. Lee are not reliable, persuasive, or credible. Thus, where his testimony and prior statements conflict with other evidence, ALJ Jarry properly accorded greater weight to the other evidence.

STIPULATION OF FACT

Solely for the purposes of the exclusion from the definition of "state investment adviser" set forth in OAR 441-175-0030(1), Ms. Waggener was at all material times an "accredited investor" as that term is defined in OAR 441-035-0010.[7]

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[7] OAR 441-175-0030 provides, in part:

> ORS 59.015 excludes from the definition of "state investment adviser" the following persons, provided the person is not otherwise licensed as a broker-dealer, state investment adviser, mortgage broker, salesperson, or investment adviser representative:
> (1) Any person who conducts no public advertising or general solicitation in this state and whose only clients in this state are "accredited investors" as that term is defined in OAR 441-035-0010.

OAR 441-035-0010 provides, in part:

> For purposes of ORS 59.035(5) accredited investor includes:
> * * * * *
> (7) Any trust, with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in 17 CFR 230.506(b)(2)(ii).

FINDINGS OF FACT

The Director FINDS that:

Licensing Background

1. Beginning in 1994, the Division licensed Mr. Lee as a securities salesperson.[8] (Test. of Lee; Ex. A26.) While licensed as a securities salesperson, Mr. Lee was associated with various broker-dealers,[9] including KMS Financial Services, Inc. from December 2003 to August 2014 and Martin Nelson & Co., Inc. (Martin Nelson & Co.) from June 11, 2015 to April 7, 2017. After he left KMS Financial Services, Inc., he was not associated with another broker-dealer until March 2015. (Ex. A26.) As a securities salesperson, Mr. Lee earned commissions through broker-dealers on sales of mutual funds, stocks, and bonds. In that role, Mr. Lee performed various tasks, such as making investments for clients and assisting them with stock and bond selection. (Test. of Lee.)

2. Mr. Lee has never been licensed as an investment adviser or investment adviser representative. (Test. of Lee.)

3. Mr. Lee has held a resident insurance producer license since April 10, 1995. His current license became effective on June 1, 2022, and will expire on May 31, 2024. (Ex. A25 at 1.)

4. Mr. Lee has held a resident insurance consultant license since March 27, 2018. His current license became effective on June 1, 2022, and will expire on May 31, 2024. (Ex. A25 at 3.)

Involvement with Don and Virginia Helfer and Patricia Waggener

5. Mr. Lee and Ms. Clausing-Lee have lived in Corvallis, Oregon since the 1970s.

[8] ORS 59.015(18)(a) defines "salesperson" as "a person, other than a broker-dealer, who represents or purports to represent a broker-dealer, issuer or owner of securities in effecting or attempting to effect in any manner transactions in securities."

[9] ORS 59.015(1) defines "broker-dealer" as "a person who engages, all or part of the time, in effecting transactions in securities for the account of others or for the person's own account."

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(Test. of Lee and Clausing-Lee.) Don and Virginia Helfer (the Helfers) became their neighbors in the early 1990s. (Test. of Waggener.)

6. The Helfers' daughter, Ms. Waggener, has resided in the State of Georgia since 1981 and is employed as a registered nurse. (Test. of Waggener.)

7. The Helfers were securities customers of the broker-dealers, KMS Financial Services, Inc. and Martin Nelson & Co., Inc., through which Mr. Lee acted as their account representative. (Test. of Lee.)

8. By 2011, Mr. Lee also provided financial planning and investment management services to the Helfers, which was unassociated with the broker-dealers where he worked. He and the Helfers had an informal arrangement in which Mr. Lee charged them fees, which they paid him directly, and he made investments on their behalf and managed their retirement accounts. After Mr. Helfer passed away in May 2012, Mr. Lee continued to perform the work for Ms. Helfer, and she continued to pay him for the work. (Test. of Waggener.)

9. In 2011 or 2012, Ms. Waggener also sought assistance from Mr. Lee with financial planning and investment management. She gave him access to her accounts, and he managed her retirement accounts and made investments on her behalf, as he did for her parents. (Exs. A7 at 1, A9 at 2, A34c at 9-10, 12; test. of Waggener.)

10. Mr. Lee received the following payments directly from the Helfers for his financial planning/investment management services:[10]

- $1,937.17 via check dated March 18, 2011, signed by Mr. Helfer;
- $1,079.71 via check dated December 27, 2011, signed by Mr. Helfer;
- $4,865.14 via check dated October 15, 2012, signed by Ms. Helfer;
- $95 via check dated November 30, 2012, signed by Ms. Helfer;
- $4,126.73 via check dated February 25, 2013, signed by Ms. Helfer;

[10] The payments listed are the checks found by Ms. Waggener during the Division's investigation. (Ex. A34c at 1.)

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- $4,233.52 via check dated May 16, 2013, signed by Ms. Helfer;
- $4,717.36 via check dated June 7, 2014, signed by Ms. Helfer;
- $4,002.51 via check dated December 5, 2014, signed by Ms. Helfer;
- $3,935.18 via check dated February 13, 2015, signed by Ms. Helfer;
- $4,094.52 via check dated April 17, 2015, signed by Ms. Helfer;
- $3,944.78 via check dated July 11, 2015, signed by Ms. Helfer;
- $3,134.46 via check dated October 20, 2015, signed by Ms. Helfer;
- $2,000 via check dated February 8, 2016, signed by Ms. Helfer;
- $2,110.19 via check dated February 10, 2016, signed by Ms. Helfer;
- $3,894.10 via check dated April 18, 2016, signed by Ms. Helfer;
- $800 via check dated April 20, 2016, signed by Ms. Helfer;
- $5,837.16 via check dated July 18, 2016, signed by Ms. Helfer;
- $5,806.17 via check dated October 10, 2016, signed by Ms. Helfer (and otherwise filled out by Mr. Lee);
- $6,277.25 via check dated February 21, 2017, signed by Ms. Helfer (and otherwise filled out by Mr. Lee);
- $5,171.42 via check dated May 4, 2017, signed by Ms. Helfer (and otherwise filled out by Mr. Lee);
- $4,999.35 via check dated July 24, 2017, signed by Ms. Helfer, noted as for accounting (and otherwise filled out by Mr. Lee); and
- $6,750 via check dated October 6, 2017, signed by Ms. Helfer.

(Exs. A34c at 16-34, A37 at 2-4; test. of Waggener.)

11. In a check dated September 1, 2017, Ms. Waggener paid Mr. Lee $995 for his financial planning services.[11] (Exs. A2 at 9, A40 at 1.)

[11] Ms. Waggener testified that she had made previous payments to Mr. Lee but had not looked for copies of those checks.

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12. Ms. Helfer's health declined after her husband's death. For a period, a neighbor, Caroline, assisted her with various tasks, for which Caroline received compensation of $300 per month. Toward the end of 2016, Caroline moved out of the area, and Ms. Helfer entered a senior living facility due to her continued deteriorating health, which included the development of dementia. Around that time, Ms. Clausing-Lee, and to some extent Mr. Lee, began providing more frequent assistance to Ms. Helfer. They provided Ms. Helfer with companionship and performed various tasks for her, such as taking her to medical appointments, calling to arrange for her medical care, taking her to the emergency room when needed, ensuring she had sufficient food, taking walks with her, picking up prescriptions, ensuring she took her medications, taking her on errands, and taking her dog to the groomer. (Test. of Clausing-Lee and Lee.)

13. During the period January through October 2017, Ms. Waggener and her brother, Robert Helfer, paid Ms. Clausing-Lee $400 per month to reimburse her for driving and other expenses she incurred while helping their mother.[12] In the fall of 2017, Ms. Helfer moved to Georgia to be near Ms. Waggener. (Ex. A34c at 15; test. of Waggener.)

14. On October 5, 2017, Ms. Helfer signed a Durable Financial Power of Attorney, designating Mr. Lee as the attorney-in-fact for the Virginia M. Helfer Trust with respect to banking and retirement planning. The Durable Financial Power of Attorney did not grant Mr. Lee authority over personal property, including shares of stocks, bonds, and securities. (Ex. A9 at 4-15.)

15. On October 5, 2017, Ms. Helfer[13] sent a letter to Martin Nelson & Co., requesting a transfer of $8,000 from her trust account to her existing bank account and the deposit of any interest or dividends to her bank account. Additionally, she requested that Martin Nelson

[12] Robert Helfer made the payments via check directly to Ms. Clausing-Lee. (Ex. A34c at 15.)

[13] The letter is signed by Ms. Helfer. (Ex. A32 at 1.) It is unknown whether she authored the letter.

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send a duplicate interested party statement of her account to Ms. Clausing-Lee. (Ex. A32 at 1.)

16. In October 2017, Martin Nelson of Martin Nelson & Co. contacted Ms. Waggener to inquire whether Mr. Lee had been charging her and Ms. Helfer for his services since April 2017.[14] Mr. Nelson informed Ms. Waggener that Mr. Lee was no longer licensed to perform securities work and that he planned to report Mr. Lee to FINRA. (Test. of Waggener; Ex. A34 at 1.)

17. Ms. Helfer passed away in April 2019. (Test. of Waggener.)

FINRA 2017-2018 Investigation

18. In a letter dated November 20, 2017, FINRA informed Mr. Lee that it was conducting an inquiry regarding funds he received from Ms. Helfer, a former customer of his at Martin Nelson & Co, Inc., "to determine whether violations of the federal securities laws or FINRA, NASD, NYSE, or MSRB rules have occurred." (Ex. A1 at 1.) Pursuant to FINRA Rule 8210, FINRA requested that Mr. Lee provide certain documents and information, including information regarding his relationship with Ms. Helfer and payments he received from her, by December 2, 2017. (*Id*. at 1-5.) FINRA informed Mr. Lee, "[b]ecause this is a preliminary inquiry, it does not require reporting under Form U4, Question 14G, regarding notice of investigations."[15] (*Id*. at 5.) Mr. Lee failed to respond. (Ex. A2 at 1.)

19. On November 26, 2017, Mr. Lee called Ms. Waggener:

Lee: So in view of what we've done for the year * * * what I'm going to have

[14] There was some discrepancy in the record regarding the month and year provided to her by Mr. Nelson. The finding is based on the month and year provided in Ms. Waggener's letter to Mr. Lee written in January 2018, which corresponds to the time Mr. Lee left Martin Nelson & Co. (*See* Exs. A34a at 5, A26.)

[15] OAR 444-175-0010(10) defines "Form U-4" as "the Uniform Application for Securities Industry Registration or Transfer, published by FINRA and available at http://www.finra.org/industry/compliance/registration/crd/filingguidance/p005235." A Form U4 is required to be licensed as a securities salesperson in Oregon. *See* OAR 441-175-0130 and OAR 441-175-0120.

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to do, uh, going forward is to, uh, change the financial arrangements a bit, in that, um, they're going to be notified, notified like they're gifts on the checks as opposed to checks made out to me. So, um, I'm going to be, you know, with your permission and depending on what you say, doing that.

* * * * *

Lee: So I'm going to be returning some proceeds to the account.

Waggener: Okay.

Lee: and * * * you make out the check and I'll, uh, I'll give you a call as to what it should be. One to Marianne and one to me and mark clearly on it that it's a gift as opposed to uh, uh anything else right on the check. So is that okay with you?

Waggener: So what are you looking at in terms of amounts?

Lee: Um, uh, I think it would be probably 10,000, over 10,000.

Waggener: For each?

Lee: No, no. No, no, less than that and as a percentage of the estate it's very, very small.

Waggener: So I guess I don't exactly understand what this covers when mom's been paying you, and I know what we've been paying Marianne is kind of a pittance.

Lee: Right.

Waggener: In terms of what we would have to pay, uh…

Lee: Right. What I'm going to do is return what she's paid me. And then we're going to write it out with clearly notated checks.

Waggener: Oh, okay * * *.

Lee: So there's going to be nothing new out of pocket.

Waggener: Okay, okay, I understand.

Lee: Because if I continue to help, I'm gonna need, you know, unless we do it this way, I'm gonna need another license and to form a corporation and so on and so forth * * *.

Waggener: Okay.

Lee: And then, um, because I don't want any questions, I'm going to send down overnight * * * a statement that I'd like her to review and sign, outlining

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> what I've done and what we've done and the fact that, uh, she's choosing to do this this way.
>
> Waggener: So we would write a check out of her account to you and to Marianne and you, in turn, would take some of the money that mom has paid you, is that correct?
>
> Lee: Yes, all of it.
>
> Waggener: And you would return that to whatever, to Hilltop?
>
> Lee: No, no. No, no, that's going into OSU credit union. * * * Just the additional licensing and the way I would have to do it and so on and so forth, I don't want there to be any questions.
>
> * * * * *
>
> Lee: Just in terms of what I've been able to do, * * * from the beginning until now, I have made about $600,000 for your parents. * * * So what I've done in terms of what I've requested is really, really pretty small[.]

(Ex. A34a; test. of Waggener.)

20. Following the phone conversation on November 26, 2017, Mr. Lee sent Ms. Waggener a packet of documents, which she received on or about December 6, 2017. (Testimony of Waggener; Ex. A34c.) The packet included the following:

- A letter in which Mr. Lee provided various instructions to Ms. Waggener and requested that she have some enclosed forms signed, notarized, and sent back to him. (Ex. A34c at 2.)
- A $995 check he wrote to Ms. Waggener, noted as "reimbursement," instructing her to deposit it and "make out a new one to [him] with gift in the notation to clear up any ambiguity." (*Id*. at 2, 14.)
- $4,999.35, $5,171.42, and $6,750 checks he wrote to Ms. Helfer, which Ms. Waggener deposited into Ms. Waggener's account on December 8, 2017. (*Id*. at 1, 13.)
- A letter to Martin Nelson from Ms. Waggener to transfer $13,500 from the trust account to her existing bank account and to deposit any interest or dividends to

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her bank account. (*Id*. at 3.)

- A form to be signed by Ms. Helfer with the following statement:

> I, Virginia Helfer, made a series of short term loans to Kevin Lee this year. He said he would repay me within the year and has done so.
>
> I do not want any invasions of my privacy. I will take any actions necessary [t]o protect and defend my privacy. Thank you for your understanding.

(*Id*. at 4.) Ms. Helfer had not made any short-term loans to Mr. Lee in 2017. (Test. of Waggener.)

21. In a letter dated December 4, 2017, FINRA informed Mr. Lee that he was in violation of FINRA Rule 8210 due to his failure to provide the information requested in the November 20, 2017, letter. FINRA requested that Mr. Lee deliver the information by December 11, 2017. (Ex. A2 at 1.)

22. On December 14 and 15, 2017, FINRA staff attempted unsuccessfully to contact Mr. Lee by telephone. (Ex. A5 at 1.)

23. In a letter dated December 18, 2017, FINRA requested that Mr. Lee appear on January 16, 2018, to provide testimony related to its investigation. (Ex. A3.) On January 4, 2018, FINRA emailed Mr. Lee to inquire whether he planned to attend the on-the-record testimony meeting. Mr. Lee did not reply to the email. (Ex. A5 at 1.)

24. In a letter dated January 7, 2018, Ms. Waggener informed Mr. Lee:

> Since our discussion in November and the subsequent receipt of your packet through the mail, I have been in contact with several qualified and respected investment specialists. Without exception, they are telling me that what you are asking me is not only illegal, but unethical as well. When we got off the phone from that call I was, quite frankly, bewildered as to why you were making the requests that you made – but after speaking with these investment professionals, I totally understand why you made the requests. I am very disappointed, however, that you didn't just tell me that real reason for making the requests—i.e. that your license had been inactive since April 2017, and you therefore could not legally charge for the services you were providing for mom and myself. By me reimbursing you with checks that indicated "Gift" on the checks, it appears as though mom did not pay you for services rendered,

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> which is not true. I have not cashed the check you sent for reimbursement for the services you provided to me. I really am at a loss as to what to do with that check. Additionally, I did not even *tell* mom about the statement you sent related to her making a series of "short term loans" to you last year, as that, too, is untrue. She will neither be signing, nor having that statement notarized, as you had requested.

(Ex. A34c at 5; emphasis in original.)

25. On January 9, 2018, FINRA received a letter from Mr. Lee in which he acknowledged receipt of FINRA's December 4, 2017, letter and requested additional time to respond in order to retain counsel. (*See* Ex. A4.)

26. On January 9, 2018, FINRA overnighted a letter to Mr. Lee, informing him that he had violated FINRA Rule 8210 by failing to respond to its requests for information. FINRA notified Mr. Lee that an industry bar was the standard sanction for failure to respond to requests made pursuant to FINRA Rule 8210. (Ex. A5 at 1, 6.)

27. In a letter dated January 10, 2018, Mr. Lee informed Ms. Waggener that he was subject to an investigation regarding his work and stated, "I have been advised to get a letter from you stating that I have always been honest, ethical, and fair in helping you and your parents with your investments." (Ex. A34c at 9.) Mr. Lee included a "sample letter" for Ms. Waggener to sign and return to him. (*Id*.) The "sample letter" included the following statement:

> I want to inform you that Kevin Lee has been a long time family friend and financial adviser to my parents and myself over many years. He has always been ethical, honest, and fair to us. He has always been helpful to our family in many ways. We have been very satisfied with his work.

(*Id*. at 10.)

28. On January 12, 2018, Mr. Lee retained attorney Al Van Kampen to represent him in the FINRA investigation. (Ex. A6 at 2.)

29. On or about January 23, 2018, Ms. Waggener received a letter from Mr. Lee in which he responded to the letter she had sent to him earlier that month. (Ex. A34c at 7-8.) Mr. Lee wrote, in part:

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> Your Mom, being a fair person was very concerned that Marianne receive meaningful compensation for giving up her retirement and working with her. As you know she does not want to be a burden to anyone. In that vein she asked me if that was happening and I said no she wasn't. She agreed that she would pay me that and I would see that Marianne was compensated was the best solution. She fully subscribed to fairness and not being a burden.

(*Id*. at 7.) He further claimed that his spouse visited Ms. Helfer three times on most days and performed various tasks for her, including coordinating medical appointments, ordering medications, scheduling veterinary appointments, purchasing items when Ms. Helfer forgot her purse or did not have enough money, performing various personal tasks, and bringing her on a trip to Lake Chelan. (*Id*. at 7-8.) He also stated:

> Most of the money was for Marianne's work. I guess her [work] was worth nothing.
>
> We both know that SHE WOULD NOT EVEN BE ALIVE to be with you in Georgia if we had not done all we did.

(*Id*. at 8; emphasis in original.)

30. On January 30, 2018, Mr. Lee submitted a partial response to FINRA's request. (*See* Ex. A9.)

31. In a letter dated February 1, 2018, FINRA made a follow-up Rule 8210 request for information and documents from Mr. Lee, including information and documents omitted from his previous response and seeking additional information. (*See* Ex. A10.)

32. In a letter dated February 5, 2018, Ms. Waggener acknowledged assistance Ms. Clausing-Lee had provided to Ms. Helfer. Ms. Waggener wrote:

> Just so you know, mom was aware that Bob and I were paying Marianne $400, then $500 the last few months for helping with her, and I will be the first to agree that it was a small sum for all that Marianne did. Mom would ask us *frequently* if we were paying Marianne * * * because she could never *remember* whether or not we were, and each time I answered that yes, we were paying Marianne. She was very pleased to hear that and was aware of the amount, and she never once said a word about paying any additional amount; in fact, seemed a bit shocked at what we were paying. (Granted, she has no clue what services like this cost if one has to hire someone to do them.)
>
> If there were issues with the amount of compensation Marianne was

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> receiving, it should have been discussed with Bob or myself AT THAT TIME, not now, after the fact; when you have decided that we now owe additional money since you had to refund what you had illegally charged mom and myself for your services last year.
>
> * * * * *
>
> [Although] we still feel you should get something for your financial services to mom and myself for last year, I don't know how we can legally pay you for your financial planning for mom, or me, since you [cannot] legally charge for your services from April last year into the current year, and we are not going to write a check for those services that denote "Gift" on it as you have requested us to do, because the payment would be payment for services, not a gift. Certainly what we paid Marianne was not what we should have had to pay an agency to do all that she did for mom, but once again, any additional payment we would send to her would note "For assistance with mom," not "Gift."

(Ex. A34c at 11-12; emphasis in original.)

33. On February 22, 2018, Mr. Lee submitted a partial response to FINRA and stated that he would not provide his tax returns as requested. (*See* Exs. A11, A12.)

34. In a letter dated February 26, 2018, FINRA explained Mr. Lee's obligation to respond to FINRA Rule 8210 requests. FINRA notified Mr. Lee that he had provided incomplete responses to some of its requests and had refused to respond to others. (*See* Ex. A13.) FINRA made a final request for information from Mr. Lee, due by March 6, 2018, and informed him that "[F]ailure to fully, completely, and timely respond to this third Rule 8210 letter will be viewed as a violation of FINRA's Rules 8210 and 2010 and will be referred to FINRA's Enforcement Department." (*Id*. at 4.)

35. In a letter dated March 6, 2018, Mr. Lee claimed that he had responded fully to FINRA's inquiries. (Ex. A14 at 3-4.)

36. On March 14, 2018, Mr. Van Kampen informed FINRA that Mr. Lee would not provide any additional information or documents in response to FINRA's requests. (Ex. A15 at 4.)

37. On March 15, 2018, FINRA sent Mr. Van Kampen a letter via email with "a

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proposed unexecuted Letter of Acceptance, Waiver and Consent ("AWC"), for the resolution of the charges * * * under consideration by FINRA's Department of Enforcement against [his] client Kevin Lee." (Ex. A15 at 1.) In the AWC, FINRA concluded that Mr. Lee violated FINRA Rules 8210 and 2010 by refusing to produce information and documents as requested. For the violations, FINRA proposed to bar him from "association with any FINRA member in any capacity" effective upon approval or acceptance of the AWC. (*Id*. at 4.) In the letter, FINRA reminded Mr. Lee "of his obligation to update his Form U4 * * * to disclose that he has been advised by the staff that formal action is being recommended if your client is currently registered or seeks to become registered while this matter is pending." (*Id*. at 2.)

38. On March 15, 2018, Mr. Van Kampen acknowledged receipt of the proposed AWC and indicated that Mr. Lee was considering it. (Ex. A16 at 1.)

39. On March 16, 2018, FINRA sent a revised AWC to Mr. Van Kampen. FINRA informed him that Mr. Lee must sign and submit the AWC that week or FINRA would reschedule his on-the-record testimony. On or about March 19, 2018, Mr. Lee notified FINRA that he would accept and sign the revised AWC. (Ex. A17 at 1.)

40. At some point during the discussions regarding the AWC, Mr. Van Kampen asked FINRA's Department of Enforcement if it could delay the submission of the AWC for six months. The Department of Enforcement indicated that it could delay submission for only one week. (Test. of Smith; *see* Ex. A19 at 1.)

41. On March 22, 2018, Mr. Lee signed the AWC. (Ex. A18.) In the AWC, FINRA found that Mr. Lee violated FINRA Rules 8210 and 2010 by failing to fully respond to FINRA Rule 8210 requests for information and documents. As a result, FINRA barred Mr. Lee "from association with any FINRA member in any capacity" effective upon acceptance of the AWC. (*Id*. at 6.)

42. On March 27, 2018, FINRA's Department of Enforcement informed Mr. Van Kampen that it had received the signed AWC and would submit it to the Office of

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Disciplinary Affairs on April 2, 2018. (Ex. A19 at 1.) On April 11, 2018, FINRA accepted the AWC. (Ex. A20.)

2018 Oregon Insurance License Applications

43. In a letter dated March 6, 2018, the Division notified Mr. Lee that his insurance producer license would expire on May 31, 2018. The Division also advised, "Administrative actions * * * not previously reported must be disclosed[.]" (Ex. A33 at 1.)

44. On March 15, 2018, Mr. Lee filed a renewal application for his resident insurance producer license through the National Insurance Producer Registry (NIPR) for health, life, and variable lines. As an applicant for variable lines, Mr. Lee was required to submit his FINRA CRD number.[16] (Ex. A21.) On the application, he answered, "No," to question 2:

> Have you been named or involved as a party in an administrative proceeding, including a FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration, which has not been previously reported to this insurance department? "Involved" means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, placed on probation, sanctioned or surrendering a license to resolve an administrative action. "Involved" also means being named as a party to an administrative or arbitration proceeding, which is related to a professional or occupational license, or registration. "Involved" also means having a license, or registration, application denied or the act of withdrawing an application to avoid denial. * * *.

(*Id*. at 1.)

45. On March 21, 2018, the Division approved Mr. Lee's resident insurance producer renewal application for health and life insurance and notified him of the approval by email. The Division denied the application with respect to variable lines because he was not registered with an Oregon securities dealer. (Ex. A21 at 2.)

46. On March 23, 2018, Mr. Lee filed a resident insurance consultant license application through NIPR. (Ex. A22.) He applied for the license in order to increase the

[16] OAR 441-175-0010(2) provides, in part:

> "CRD" means the Central Registration Depository of the Financial Industry Regulatory Authority, a database maintained by the Financial Industry Regulatory Authority to register broker-dealers and salespersons.

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scope of his practice with the expectation that he would be barred from the securities industry once FINRA accepted the AWC. (Test. of Lee.) On the application, he answered, "No," to question 2:

> Have you ever been named or involved as a party in an administrative proceeding, including FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration? "Involved" means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, a cease and desist order, a prohibition order, a compliance order, placed on probation, sanctioned or surrendering a license to resolve an administrative action. "Involved" also means being named as a party to an administrative or arbitration proceeding, which is related to a professional or occupational license, or registration. "Involved" also means having a license, or registration, application denied or the act of withdrawing an application to avoid denial. * * *.

(Ex. A22 at 1.)

47. On March 27, 2018, the Division approved Mr. Lee's insurance consultant application and notified him of the approval. (Ex. A22 at 2-3.)

48. On both applications, he certified that the information he provided was "true and complete." (Exs. A21 at 1, A22 at 2.)

Disclosures to Broker-Dealer

49. On March 17, 2015, Mr. Lee filed with the Division a Form U4 securities salesperson license application to work for a broker-dealer, Capital Financial Services, Inc. (*See* Ex. A23.) Applicants must list their employment history on the application, and Question 13 requires applicants to disclose "[o]ther [b]usiness":

> Are you <u>currently</u> engaged in any other business either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise? (Please exclude non *investment-related* activity that is exclusively charitable, civic, religious or fraternal and is recognized as tax exempt.) If YES, please provide the following details: the name of the other business, whether the business is *investment-related*, the address of the other business, the nature of the other business, your position, title, or other relationship with the other business, the start date of your relationship, the approximate number of hours/month you devote to the other business, the number of hours you devote to the other business during securities trading hours, and briefly describe your duties relating to the other business.

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(*Id*. at 6-7; emphasis in original.) Mr. Lee answered, "[y]es," to Question 13 and provided the following details:

> SELF EMPLOYED CORVALLIS OR USA INSURANCE AGENT. OREGON STATE UNIVERSITY – NON-INVESTMENT RELATED – OREGON STATE UNIVERSITY/CORVALLIS, OR 97331-4501 – EDUCATION – INSTRUCTOR – 1998 – LESS THAN 1 HR/MO – NONE DURING TRADING – FINANCE CLASS TEACHING. FIXED INSURANCE THROUGH VARIOUS INSURANCE COMPANIES.

(*Id*. at 7; emphasis in original.)

50. On June 11, 2015, Mr. Lee filed a Form U4 securities salesperson license application with the Division to work for Martin Nelson & Co. (Ex. A24.) Mr. Lee provided the same answer to Question 13 as he had provided in his March 2015 Form U4. (*Id*. at 7.)

51. On August 16, 2016, Mr. Lee signed an Annual Compliance Questionnaire & Certification 2016 (Compliance Questionnaire) for Martin Nelson & Co. (Ex A42.) On the Compliance Questionnaire, Mr. Lee represented that he was "not a director, officer, owner, partner or employee of any other business entity outside of [his] association with Martin Nelson & Co." other than the following activities: "I have an insurance license and sell insurance products. I sometimes make speeches on economic issues. I sometimes * * * teach a class at Oregon State." (*Id*. at 1.) Mr. Lee acknowledged that he must "provide notice to * * * and to obtain authorization from Martin Nelson & Co., prior to participating in a securities transaction that is not conducted at Martin Nelson & Co." (*Id*.; emphasis in original) Additionally, he attested that since his association with Martin Nelson & Co., he had not "[s]hared in gains or losses in a client's account," "[b]orrowed or loaned money to any customer," or "received anything of material value other than from Martin Nelson & Co., Inc. in relation to securities activities of Martin Nelson & Co." (*Id*. at 2.)

52. The Compliance Questionnaire included the following statement:

> As a FINRA Registered Representative, I understand that I have a legal obligation to keep information on the Form U-4 accurate and current at all

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> times and to amend the Form U-4 when any of the information changes by notifying Martin Nelson & Co.'s Compliance Officer of any change ***within 10 days of the information on file becoming inaccurate***. Key information on Form U-4 includes my legal name, current residential address, all of my employment and other business activity and responses to various "disclosure questions".

(Ex. A42 at 1; emphasis in original.)

Division Investigation

53. On August 14, 2019, the Division sent Mr. Lee a letter informing him that it had received information regarding his business activities with respect to his receipt of funds from Ms. Helfer and the 2018 FINRA sanction taken against him. (Ex. A27.) The Division informed Mr. Lee that it had opened an inquiry to determine whether he had violated provisions of the Insurance Code, including whether he used "fraudulent, coercive, or dishonest practices" or demonstrated "incompetence, untrustworthiness or financial irresponsibility in the conduct of business." (*Id*. at 2.) The Division requested that he submit information, including copies of his personal and business tax returns for tax years 2016 to current, by August 30, 2019. (*Id*. at 2-4.)

54. On August 30, 2019, Mr. Lee requested, and the Division granted, an extension of the deadline to respond to the request for information. The Division's revised deadline was September 20, 2019. (Ex. A28 at 1-2.)

55. On February 12, 2020, Mr. Lee's attorney sent a letter to the Division with a partial response to the Division's inquiry. Mr. Lee refused to provide copies of his personal tax returns. (Ex. A29 at 4-6.)

56. On May 6, 2020, the Division sent a letter to Mr. Lee informing him that it had expanded its inquiry to determine whether violations of the Insurance Code and the Oregon Securities Law had occurred and again requested information, including copies of his personal and business tax returns for tax years 2016 to current, by May 18, 2020. (Ex. A30 at 1-2.)

57. On May 18, 2020, Mr. Lee, through his attorney, informed the Division that he

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would not produce his personal tax returns due to privacy concerns. (Ex. A31 at 3-4.)

58. On May 19, 2020, the Division informed Mr. Lee that it had requested copies of his business and personal tax returns because it was investigating the nature of payments made to him by clients that did not appear to be gifts. The Division extended the deadline to produce the information it had requested in the May 6, 2020, letter to May 26, 2020. (Ex. A31 at 2-3.)

59. On May 24, 2020, Mr. Lee, through his attorney, again refused to provide the Division with copies of his personal tax returns. (Ex. A31 at 1-2.)

Final Orders Issued by the Division in Other Cases

60. In a Final Order to Cease and Desist and Final Order Denying License, Entered by Default, issued on February 7, 2015, the Division denied the respondent's application for renewal of her Oregon nonresident insurance producer license and revoked her Oregon nonresident insurance producer license pursuant to ORS 744.074(1)(h). Additionally, the Division revoked the respondent's Oregon broker dealer securities salesperson license pursuant to ORS 59.205(12)(b) and denied her the use of any exemptions, which would otherwise be available under ORS 59.025 and 59.035, pursuant to ORS 59.045. (Ex. R15.)

61. In a Final Order to Cease and Desist, Final Order Assessing Civil Penalty and Consent to Entry of Order, issued August 15, 2016, the Division found that the "[r]espondent failed to timely file an amendment to his Oregon salesperson and investment adviser representative license application within 30 days of the occurrence of a material change, in violation of ORS 59.175(6) and OAR 441-175-0105(2)." (Ex. R17 at 1-3.) For the violation, the Division ordered the respondent to pay a civil penalty of $5,000, of which the Division suspended the collection of $4,000 so long as the respondent complied with all terms and conditions of the order and all requirements of Oregon Securities Law. (*Id*. at 4.)

62. In a Final Order to Cease and Desist, Final Order Assessing Civil Penalty, and Consent to Entry of Order, issued October 7, 2016, the Division found that the "[r]espondent

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failed to timely file an amendment to his Oregon salesperson license application within 30 days of the occurrence of a material change, in violation of ORS 59.175(6) and OAR 441-175-0105(2)." (Ex. R16 at 1-3.) For the violation, the Division ordered the respondent to pay a civil penalty of $5,000, of which the Division suspended the collection of $4,000 so long as the respondent complied with all terms and conditions of the order and all requirements of Oregon Securities Law. (*Id*. at 3-4.)

63. In a Final Order to Cease and Desist, Final Order Assessing Civil Penalty, and Consent to Entry of Order, issued October 18, 2016, the Division found that the "[r]espondent failed to timely file an amendment to his Oregon salesperson license application within 30 days of the occurrence of a material change, in violation of ORS 59.175(6) and OAR 441-175-0105(2)." (Ex. R18 at 1-3.) For the violation, the Division ordered the respondent to pay a civil penalty of $5,000, of which the Division suspended the collection of $4,500 so long as the respondent complied with all terms and conditions of the order and all requirements of Oregon Securities Law. (*Id*. at 3-4.)

CONCLUSIONS OF LAW

The Director CONCLUDES that:

1. Mr. Lee failed to promptly and truthfully respond to a proper inquiry by the Director in violation of ORS 731.296.

2. Mr. Lee acted dishonestly and provided misleading information on his resident insurance producer renewal and resident insurance consultant license applications filed in March 2018.

3. Mr. Lee used dishonest practices and demonstrated untrustworthiness in the conduct of business.

4. Mr. Lee transacted business in Oregon as a state investment adviser without a state investment adviser license in violation of ORS 59.165(6).

5. Mr. Lee failed to disclose material facts to the broker-dealer where he was licensed

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to work in violation of ORS 59.135(2).

6. Mr. Lee engaged in an act, practice, or course of business that operated as a deceit upon a person in violation of ORS 59.135(3).

7. Mr. Lee made or filed, or caused to be made or filed, with the Director a statement, report, or document known to be false in a material respect or matter in violation of ORS 59.135(4).

8. Pursuant to ORS 59.245(4) and ORS 731.252(1), the Director may order Mr. Lee to cease and desist from violating ORS 59.135(2) through (4), ORS 59.165(6), ORS 731.296, ORS 744.074, and ORS 744.644.

9. Mr. Lee's resident insurance producer license should be revoked.

10. Mr. Lee's resident insurance consultant license should be revoked.

11. Pursuant to ORS 59.045(2), the Director should deny Mr. Lee and any business entity he owns, operates, or controls the use of any exemptions that would otherwise be available under ORS 59.025 and ORS 59.035, concerning securities and transactions exempt from the registration requirements of the Oregon Securities Law.

12. The Director should assess civil penalties totaling $61,000 against Mr. Lee for violations of the Oregon Securities Law and the Insurance Code.

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OPINION

The Division has the burden of establishing by a preponderance of the evidence that the alleged violations occurred and that the proposed sanctions are appropriate. *See* 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"); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position); *Dixon v. Board of Nursing,* 291 Or App 207, 213 (2018) (the standard of proof that generally applies in agency proceedings is the preponderance standard). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts

asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp*., 303 Or 390, 402 (1987).

Response to Director's Inquiry

The Division contends that Mr. Lee violated ORS 731.296 by refusing to provide copies of his personal tax returns as requested during its investigation. Division's Closing Argument at 19; Pleading P6 at 12. The Insurance code is intended to protect "the insurance-buying public" and grants the Director the authority to enforce "the provisions of the Insurance Code for the public good[.]" ORS 731.008 and ORS 731.236(1). Additionally, ORS 731.236(3) provides, in part:

> The director may conduct such examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as the director considers proper to determine whether any person has violated any provision of the Insurance Code or to secure information useful in the lawful administration of any such provision[.]

ORS 731.308(2) requires "[e]very person being * * * investigated" to "produce all books, records, accounts, papers, documents and computer and other recordings in its possession or control relating to the matter under * * * investigation[.]"

ORS 731.296 is titled, "Director's inquires," and provides:

> The Director * * * 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. The reply shall be verified by an officer of such person, if the director so requires. A reply is subject to the provisions of ORS 731.260.[17]

Mr. Lee contends that he did not violate ORS 731.296 because the Division failed to

[17] ORS 731.260 provides:

> No person shall file or cause to be filed with the Director of the Department of Consumer and Business Services any article, certificate, report, statement, application or any other information required or permitted to be so filed under the Insurance Code and known to such person to be false or misleading in any material respect.

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show that his personal tax returns were connected to his insurance transactions. He further argues that because the Helfers were not insurance customers, there is no connection between his personal tax returns and his insurance business. Additionally, he asserts that the privacy of his personal tax returns is protected by 26 USC § 6103(i)(4)(D). *See* Lee's Closing Argument at 14-15.

The Division established that it engaged in a proper inquiry involving Mr. Lee pursuant to the provisions of the Insurance Code. As the result of receiving information regarding Mr. Lee's FINRA sanction and the payments he had received from Ms. Helfer, the Division launched an investigation to determine whether he had violated provisions of the Insurance Code, including whether he had engaged in "fraudulent, coercive or dishonest practices" or demonstrated "incompetence, untrustworthiness or financial irresponsibility in the conduct of business." Exhibit A27 at 2; *see* ORS 744.074(1)(h). As part of the investigation, the Division requested copies of Mr. Lee's business and personal tax returns to determine the nature of payments made to him by clients because the payments from the Helfers did not appear to be gifts. Accordingly, the Division established that its inquiry into the tax returns was relevant to Mr. Lee's conduct of business and therefore proper.

Mr. Lee did not establish that 26 USC § 6103(i)(4)(D) provides him with justification to refuse to provide his personal tax returns to the Division. 26 USC § 6103 addresses the confidentiality of tax returns and return information and limits the disclosure of returns and return information by officers or employees of the United States, officers or employees of any states, various local agencies, or other persons who have access to returns under certain circumstances. *See* 26 USC § 6103(a). 26 USC (i)(4)(D) provides:

> In ruling upon the admissibility of returns or return information, and in the issuance of an order under subparagraph (A)(ii), the court shall give due consideration to congressional policy favoring the confidentiality of returns and return information as set forth in this title.

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Nothing in 26 USC § 6103 prohibits a state regulatory agency, such as the Division, from requiring licensees to submit copies of their personal tax returns when investigating whether the licensee is in compliance with licensing regulations.[18]

In August 2019 and May 2020, the Division requested that Mr. Lee provide copies of his personal tax returns. He refused to provide them. Accordingly, the Division established that Mr. Lee failed to promptly and truthfully reply to its proper inquiry in violation of ORS 731.296.

2018 Insurance License Applications

The Division contends that Mr. Lee acted dishonestly and provided misleading information in his March 2018 resident insurance producer and resident insurance consultant license applications by failing to disclose the FINRA sanctions that he knew were imminent. *See* Division's Closing Argument at 2-7.

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:
>
> (a) Providing incorrect, misleading, incomplete or materially untrue information in the license application.
>
> * * * * *
>
> (c) Obtaining or attempting to obtain a license through misrepresentation or fraud.

ORS 744.644(1) provides, in part:

> A licensee or an applicant for a license to engage in business as an insurance consultant may not:
>
> * * * * *

[18] At the hearing, Mr. Lee also contended that his personal tax returns should remain private because they include his spouse's tax information, and she is not a licensee subject to the provisions of the Insurance Code. Mr. Lee and his spouse chose, however, to file their taxes jointly.

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> (b) Falsify or act dishonestly with respect to an application for a license or an amendment to the license or with respect to an examination related to obtaining, renewing or reinstating a license.

On both March 2018 license applications, Mr. Lee answered, "no," to question 2 that require him to state whether he had been named or involved as a part in an administrative proceeding regarding any professional or occupational license. Exhibits A21 at 1, A22 at 1. In his Closing Argument, Mr. Lee contends that he provided accurate information on his March 2018 applications because he was not "named or involved as a party" in any FINRA or other regulatory proceeding when he filed the applications. *See* Lee's Closing Argument at 8-9. He further contends he was not "named or involved as a party" in a FINRA sanction proceeding until April 11, 2018, when FINRA accepted the AWC. *See id*. at 9.

The evidence establishes that Mr. Lee was aware he would be sanctioned by FINRA when he filed the renewal application for his resident insurance producer license on March 15, 2018, more than two months before his license expired. On the application, he had to provide his FINRA CRD number because he applied for variable lines and to disclose whether he was involved or named in an administrative proceeding involving a professional or occupational license. He sought to conceal from the Division his involvement with FINRA and impending industry bar. On March 14, 2018, he informed FINRA that he would not provide any additional information in response to its Rule 8210 requests, and he was aware, as early as January 2018, that an industry bar was the standard sanction for such a refusal. Exhibits A5 at 1, 6, A15 at 4. On March 15, 2018, the date he filed the application, he received the initial proposed AWC from FINRA for consideration, and FINRA informed him that he must update his Form U4 to disclose that FINRA had informed him that it had recommended formal action against him. Exhibit A15 at 2. On March 19, 2018, Mr. Lee informed FINRA that he would sign the revised AWC; however, he did not sign it until March 22, 2018, the day *after* the Division granted, in part, his renewal application. The preponderance of the evidence establishes that Mr. Lee sought to renew his resident

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insurance producer license prior to updating his Form U-4 to disclose FINRA's recommendation of formal action against him and to the time when he believed he would have to disclose on the application the FINRA action against him (once FINRA accept the AWC). His answer to question 2 on the application was misleading because the preponderance of the evidence establishes he was aware that he would receive an industry bar as the result of refusing to respond to the FINRA Rule 8210 request and signing the AWC. Furthermore, he indicated to FINRA that he intended to sign the AWC before the Division finished processing his application, but he waited until after he received the Division's application approval to sign it. Accordingly, the Division established by a preponderance of the evidence that Mr. Lee provided misleading information in his application to renew his resident insurance producer license.

On March 22, 2018, Mr. Lee signed the AWC, which his attorney then submitted to FINRA. On March 23, 2018, he submitted his renewal application for a resident insurance consultant license. Once he signed the AWC and submitted it to FINRA, Mr. Lee was named in a FINRA sanction proceeding and formally agreed to an industry bar to resolve the anticipated administrative action against him. Mr. Lee's contention that he was not named or involved in an administrative proceeding until FINRA accepted the AWC is not persuasive. Therefore, the Division also established that Mr. Lee acted dishonestly and provided misleading information in the application for a resident insurance consultant license.

Dishonest Practices and Untrustworthiness in the Conduct of Business

The Division contends that Mr. Lee used fraudulent, coercive or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business with Ms. Waggener and Ms. Helfer. Pleading 6 at 13-14.

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

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> 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.

ORS 744.644(1) provides, in part:

> A licensee * * * may not:
>
> (a) Act in an incompetent or untrustworthy manner.
>
> * * * * *
>
> (f) Engage in a fraudulent or dishonest practice in the course of transacting insurance or cause injury or loss to the public because the applicant or licensee is incompetent or untrustworthy.

The Division's contention is based on the following allegations: (1) Mr. Lee directed Ms. Waggener to have Ms. Helfer sign a letter containing untrue statements during FINRA's investigation; and (2) Mr. Lee sent Ms. Waggener a reimbursement check for $995 and directed her to write him a new check with "gift" on the memo line to conceal the compensation he received directly from her for providing financial planning services. *See* Pleading P6 at 13-14.

In a letter dated November 20, 2017, FINRA notified Mr. Lee of its investigation regarding his dealings with Ms. Helfer. On December 6, 2017, Ms. Waggener received from Mr. Lee a packet of documents, including a statement he had a prepared for Ms. Helfer to sign, claiming that Ms. Helfer had made a series of short-term loans to him in 2017 and that he had repaid the loans. The payments Ms. Helfer made to Mr. Lee were for his financial planning/investment management services, not short-term loans. The preponderance of the evidence establishes that the written statement prepared by Mr. Lee contained untrue information. Additionally, Mr. Lee sent a reimbursement of the $995 payment Ms. Waggener made to him in 2017 for financial planning and requested that she send him a new check

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noted as "gift." Given that Mr. Lee made these requests shortly after he became aware of FINRA's investigation, the preponderance of the evidence establishes that he was attempting to conceal from FINRA the true purpose of the 2017 payments and the nature of his professional relationship with Ms. Helfer and Ms. Waggener. Mr. Lee did not, however, inform Ms. Waggener or Ms. Helfer of the reasons for his requests. By attempting to conceal the nature of his business practices and to involve his clients in the concealment, Mr. Lee acted in an untrustworthy manner in violation of ORS 744.644(1)(a) and was dishonest and demonstrated untrustworthiness in his conduct of business in violation of ORS 744.074(1)(h).

In sum, the Division established by a preponderance of the evidence that Mr. Lee used fraudulent and dishonest practices and demonstrated untrustworthiness in the conduct of business in violation of ORS 744.074(1)(h) and ORS 744.644(1)(a).

The Division also alleged that Mr. Lee violated ORS 744.644(1)(f). However, because the dishonest practices did not occur in the course of transacting insurance or cause injury or loss to the public, the Division failed to establish that violation.

Transacted Business as a State Investment Adviser Without a License

The Division contends that Mr. Lee willfully transacted business as a state investment adviser without a license in violation of ORS 59.165(6). *See* Pleading P6 at 14.

ORS 59.015 includes definitions for Oregon Securities Law and provides, in part:

> As used in the Oregon Securities Law, unless the context otherwise requires:
>
> * * * * *
>
> (20)(a) "State investment adviser" means a person who, for compensation:
>
> (A) Engages all or part of the time of the person, in this state, in the business of advising others, either directly or by mail or through publication or writing, as to the value of securities or as to the advisability of investing in, purchasing or selling securities;

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> (B) Engages all or part of the time of the person, in this state, in the business of managing an investment or trading account in securities for other persons; or
>
> (C) Issues or promulgates, as part of a regular business in this state, analyses or reports concerning securities.
>
> * * * * *
>
> (b) "State investment adviser" does not include:
>
> * * * * *
>
> (D) A salesperson licensed to a broker-dealer whose performance of investment advisory services is solely incidental to that person's activities as a salesperson and who receives no special compensation for such services[.]

ORS 59.165(6) provides:

> It is unlawful for any person to transact business in this state as a state investment adviser unless the person:
>
> (a) Is licensed as such under the Oregon Securities Law; or
>
> (b) Is licensed as a broker-dealer without the imposition of a condition under ORS 59.215 (4).

Mr. Lee was licensed as a securities salesperson and was associated with various broker-dealers from approximately 1994 to 2017. He earned commission through those positions. He contends that his professional relationship with the Helfers and Ms. Waggener was only as a securities salesperson/registered representative through those broker-dealers. He further argues that "[t]o the extent he provided 'investment advice' it was incidental to his role as their stockbroker, which is completely authorized under ORS [59.015(20)(b)(D).]" Lee's Closing Argument at 10.

However, in or about 2011, Mr. Lee began providing financial planning/investment management services to the Helfers. He made investments on their behalf and managed their retirement accounts. The services were not associated with the broker-dealers where he worked, and he received compensation directly from the Helfers for those services. Any

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compensation for his services as a securities salesperson would have been paid through the broker-dealers where he was licensed. Accordingly, Mr. Lee's argument that his professional relationship with the Helfers was only as a securities salesperson is unpersuasive. Furthermore, his argument that any investment advice that he may have provided to the Helfers was incidental to his work as a stockbroker and was therefore authorized under ORS 59.015(2)(b)(D) is also unpersuasive because he received special compensation for the advice, as evidenced by his continued receipt of the payments from Ms. Helfer even after his separation from the broker-dealers. The Division established that he transacted business as a state investment adviser in Oregon without being licensed as a state investment adviser.

Violations of ORS 59.135

The Division contends that Mr. Lee violated ORS 59.135(2), (3), and (4). *See* Pleading P6 at 15-17.

ORS 59.135 provides, in part:

> It is unlawful for any person, directly or indirectly, in connection with the purchase or sale of any security or the conduct of a securities business or for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:
>
> * * * * *
>
> (2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;
>
> (3) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or
>
> (4) To make or file, or cause to be made or filed, to or with the Director of the Department of Consumer and Business Services any statement, report or document which is known to be false in any material respect or matter.

Mr. Lee contends that the Division must prove that he acted with scienter for

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violations of ORS 59.135(2) and (3). *See* Lee's Closing Argument at 12-13. In *State v. Marsh & McLennan Cos.*, 269 Or App 31, 46-47 (2015), the Oregon Court of Appeals found that violations of ORS 59.135(1) through (3) require proof of scienter (the court used the standard that applies to violations of section 10(b) of the Securities Exchange Act and Securities and Exchange Commission Rule 10b-5). The Ninth Circuit Court of Appeals stated, "[s]cienter may be established * * * by showing that the defendants knew their statements were false, or by showing that defendants were reckless as to the truth or falsity of their statements." *Gebhart v. SEC*, 595 F.3d 1034, 1041 (2010).

Violation of ORS 59.135(2)

The Division contends that Mr. Lee failed to disclose material facts to the broker-dealer where he was licensed in violation of ORS 59.135(2). More specifically, the Division alleges that Mr. Lee did not disclose his outside business activity and the compensation he received directly from Ms. Waggener and Ms. Helfer for providing investment advisory services. *See* Division's Closing Argument at 22. As previously discussed, the Division established that Mr. Lee provided investment advisory services to Ms. Helfer and Ms. Waggener, for which they paid him directly. However, the Division did not provide evidence of payments made by Ms. Waggener during the relevant period; therefore, only the compensation he received directly from Ms. Helfer is discussed below.

During the period that Mr. Lee was associated with the broker-dealer, Martin Nelson & Co., he completed a Form U-4 in June 2015 and a Compliance Questionnaire in August 2016. Mr. Lee asserts that his statements on both forms were accurate. *See* Lee's Closing Argument at 15. Contrary to his assertion, he failed to disclose his "other business" involving Ms. Helfer on the Form U-4, which required him to answer the question of whether he was "engaged in *any other business* either as a proprietor, partner, officer, director, employee, trustee, agent *or otherwise*[.]" Exhibit A23 at 6 (emphasis added). On the Compliance Questionnaire, Mr. Lee acknowledged that he must "provide notice to * * * and to obtain

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authorization from Martin Nelson & Co., prior to participating in a securities transaction that is not conducted at Martin Nelson & Co." and attested that since his association with Martin Nelson & Co., he had not "[s]hared in gains or losses in a client's account," "[b]orrowed or loaned money to any customer," or "received anything of material value other than from Martin Nelson & Co., Inc. in relation to securities activities of Martin Nelson & Co." Exhibit A42 at 1-2. While associated with Martin Nelson & Co., Mr. Lee continued receiving multiple payments each year directly from Ms. Helfer. Mr. Lee did not disclose the payments from Ms. Helfer or that outside business activity to the broker-dealer.

Mr. Lee's outside business activity involving Ms. Helfer and the compensation he received directly from her were material facts to the broker-dealer where he worked. In *Everts v. Holtmann*, 64 Or App 145, 152-153 (1983) the Oregon Court of Appeals found that information is material if "reasonable persons could not differ as to the importance of the omissions or misrepresentations." Pursuant to FINRA Rule 3110, the broker-dealer for which Mr. Lee worked had the duty to supervise his activities to ensure compliance with applicable securities laws and regulations and FINRA rules. Additionally, FINRA Rule 3270 prohibits registered persons from being compensated "from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member[.]" Therefore, his outside business activity and the compensation he received directly from Ms. Helfer were important omissions on the Form U-4 and the Compliance Questionnaire and, as such, were material facts that he was required to disclose to the broker-dealer.

Mr. Lee argues that there is no evidence he acted with bad intent when completing his Form U4 because he relied on his firm's compliance staff to ensure the form was accurate. *See* Lee's Closing Argument at 13. The disclosure of his own outside business activity was his responsibility to make, not the firm's, and the firm could not be aware of the activity without his disclosure of it. Martin Nelson & Co. did not become aware of his outside

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business activity until approximately October 2017, when Mr. Nelson contacted Ms. Waggener to ask about payments made to Mr. Lee. Given the unambiguous nature of the question on Form U-4, the directions on the Compliance Questionnaire, and Mr. Lee's subsequent efforts to hide the nature of his professional relationship with Ms. Helfer and Ms. Waggener, ALJ Jarry was persuaded that Mr. Lee knew that he needed to disclose the business activity.

In sum, the Division established that Mr. Lee omitted to state a material fact in violation of ORS 59.135(2) by failing to disclose his outside business activity and the compensation he received directly from Ms. Helfer to the broker-dealer where he was licensed to work.

Violation of ORS 59.135(3)

The Division further contends that by failing disclose his outside business activity and that he received compensation directly from Ms. Helfer for providing investment advisory services, Mr. Lee engaged in an act that operated as deceit upon the broker-dealer in violation of ORS 59.135(3). *See* Division's Closing Argument at 22. Additionally, the Division contends that Mr. Lee engaged in an act that operated as deceit upon a person in violation of ORS 59.135(3) for conduct involving Ms. Waggener and Ms. Helfer. *See id*. at 22-23.

As discussed above, Mr. Lee failed to disclose his business activity as an investment adviser to Ms. Helfer on his Form U-4 and the Compliance Questionnaire for Martin Nelson & Co. Such a disclosure was required on both documents. Accordingly, he engaged in an act that operated as a deceit upon the broker-dealer in violation of ORS 59.135(3).

With respect to acts that operated as a deceit upon Ms. Waggener and Ms. Helfer, the Division makes the following allegations: (1) that Mr. Lee accepted fees from Ms. Waggener without disclosing to her that he was not licensed as a state investment adviser and was no longer licensed to work as a salesperson for a broker-dealer; (2) Mr. Lee directed Ms.

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Waggener to have Ms. Helfer sign a letter containing untrue statements; and (3) Mr. Lee attempted to reimburse Ms. Waggener's payment of $995 in 2017 and have her reissue the payment as a gift to hide that he received compensation for providing financial planning services to her. First, the Division established that Mr. Lee accepted a fee of $995 from Ms. Waggener in September 2017 for providing financial planning services to her. She did not learn of Mr. Lee's lack of license until Mr. Nelson contacted her in October 2017, so Mr. Lee did not disclose his lack of licensure to her. This act by Mr. Lee operated as a deceit upon Ms. Waggener. Second, Mr. Lee attempted to have Ms. Helfer sign a letter that he had written, which stated that she had made a series of short-term loans to her in 2017 and that he had repaid the loans. Ms. Helfer had not made any loans to Mr. Lee—he sought to mischaracterize the payments she had made to him for his financial planning services in order to hide the purpose of the payments during FINRA's investigation. This act by Mr. Lee operated as a deceit upon Ms. Helfer. Third, after FINRA notified Mr. Lee of its investigation, he sent Ms. Waggener a reimbursement for the September 2017 payment and requested that she write him a new check with "gift" noted on it, without disclosing the true reason for his request. This act by Mr. Lee operated as a deceit upon Ms. Waggener.

In sum, the Division established that Mr. Lee engaged in acts that operated as deceit upon the broker-dealer where he worked and upon Ms. Waggener and Ms. Helfer in violation of ORS 59.135(3).

Violation of ORS 59.135(4)

The Division further contends that by failing disclose his outside business activity on his Form U-4, Mr. Lee made or filed, or caused to made or filed, to or with the Director a statement, report or document that he knew to be false in a material respect in violation of ORS 59.135(3). *See* Division's Closing Argument at 21-22.

Mr. Lee knowingly failed to disclose his outside business activity as an investment adviser for Ms. Helfer on his Form U-4 filed with the Division on or about March 17, 2015.

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Accordingly, the Division established that Mr. Lee made or filed to or with the Director a statement or document that he knew to be false in a material respect in violation of ORS 59.135(4).[19]

Cease and Desist Order

Pursuant to ORS 59.245(4) if the Director "has reason to believe that any person has engaged, is engaging or is about to engage in any violation of the Oregon Securities Law, [the Director] may issue an order, subject to ORS 59.295, directed to the person to cease and desist from the violation or threatened violation." Similarly, pursuant to ORS 731.252(1), if the Director "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."

In this case, the evidence demonstrates that the Director has reason to believe that Mr. Lee violated ORS 59.135(2) through (4), ORS 59.165(6), ORS 731.296, ORS 744.074, and ORS 744.644. Accordingly, the Director is authorized to order Mr. Lee to cease and desist from violating ORS 59.135(2) through (4), ORS 59.165(6), ORS 731.296, ORS 744.074, and ORS 744.644.

License Revocations

The Division proposed to revoke Mr. Lee's resident insurance producer license pursuant to ORS 744.074(1)(a), (b), (c), and (h) and his resident insurance consultant license pursuant to ORS 744.644(2)(a)(B). *See* Pleading P6 at 17-18.

[19] Citing to ORS 59.335(3), Mr. Lee contends that the violations of ORS 59.135(2) through (4) and ORS 59.165 require the Division to prove "an act instrumental in effecting prohibited conduct is done in this state[.]" Lee's Closing Argument at 13. ORS 59.335(3) applies to "federal covered investment advisers or state invest advisers," which does not include Mr. Lee. Even assuming the provision applied in this matter, the Division established that Mr. Lee was located in Oregon while transacting securities business, much of which involved another Oregon resident, Ms. Helfer. Furthermore, the fact Ms. Waggener was a resident of Georgia would not be relevant to a determination of whether an act instrumental in effecting the prohibited conduct was done in Oregon. *See* ORS 59.335(3) (the provision applies "whether or not either party is then present in this state.").

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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:
>
> (a) Providing incorrect, misleading, incomplete or materially untrue information in the license application.
>
> (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.
>
> (c) Obtaining or attempting to obtain a license through misrepresentation or fraud.
>
> * * * * *
>
> (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 744.644(2)(a) provides, in part:

> If a licensee or an applicant for a license to engage in business as an insurance consultant engages in an action or practice prohibited under subsection (1) of this section, the director by order or otherwise may:
>
> * * * * *
>
> (B) Suspend, revoke or refuse to renew a licensee's license[.]

As discussed above, the Division established that Mr. Lee provided misleading information on his resident insurance producer license renewal application, obtained a license through misrepresentation, violated insurance laws, and used dishonest practices and demonstrated untrustworthiness in the conduct of business. Furthermore, the Division established that Mr. Lee engaged in practices prohibited under ORS 744.644(1) by acting in an untrustworthy manner and acting dishonestly with respect to his application for a resident

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insurance consultant license.

The revocation of Mr. Lee's licenses is appropriate given the nature of the violations he committed. While the violations regarding his conduct of business were not specific to the practice of insurance, the violations related to his honesty and trustworthiness. His inappropriate conduct occurred for multiple years, and he made efforts to hide the conduct from the broker-dealers where he worked, FINRA, and the Division. Additionally, he acted dishonestly toward his clients. If Mr. Lee is unable to behave in a trustworthy and honest manner while conducting securities business, the Division has reason to believe that he may engage in other violations of the Insurance Code. Thus, the Division demonstrated that revocation of Mr. Lee's resident insurance producer and resident insurance consultant licenses is appropriate.

Denial of Use of Exemptions

ORS 59.045(2) provides:

> The director may by order withdraw, condition or deny the use of any exemption by a person if the director has reason to believe that the person has engaged in or is about to engage in an act or practice constituting a violation of the Oregon Securities Law or that the use of any exemption by that person would work a fraud or imposition on purchasers.

ORS 59.025 exempts certain securities, such as a security guaranteed by the United States, from registration. ORS 59.035 exempts certain transactions, such as an isolated nonissuer transaction in this state, from registration. Because Mr. Lee violated multiple provisions of the Oregon Securities Law, the Director is authorized to deny his use of any exemptions contained within ORS 59.025 and ORS 59.035.

Civil Penalties

The Division seeks to assess civil penalties, totaling $61,000, against Mr. Lee for violations for the Oregon Securities Law and Insurance Code. *See* Pleading P6 at 18. As

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pertinent here, ORS 59.995(1)(a) provides, "in addition to all other penalties and enforcement provisions provided by law, any person who violates * * * ORS 59.005 to 59.505, 59.710 to 59.830, 59.991 and 59.995 or any rule or order of the Director * * * shall be subject to a penalty of not more than $20,000 for every violation[.]" Additionally, ORS 731.988(1) provides, in part:

> A person that violates any provision of the Insurance Code, any lawful rule or final order of the Director * * * shall forfeit and pay * * * 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.

The Division proposes to assess the following civil penalties against Mr. Lee for violations of Oregon Securities Law: $20,000 for violating ORS 59.135(2); $20,000 for violation ORS 59.135(3); $10,000 for violating ORS 59.135(4); and $10,000 for violating ORS 59.165(6). *See* Pleading P6 at 18.

Mr. Lee argues that the proposed civil penalties for the securities violations are "unduly harsh when compared to similar cases." Lee's Closing Argument at 13. In support of his argument, he submitted some final orders issued by the Division on default or by consent. One final order involved different violations and the others involved failure to *timely* disclose information on the Form U-4. *See* Exhibits R15-R18. Mr. Lee did not cite to any prior final orders involving the same types of violations that the Division established in this matter or to any final orders issued after a contested case proceeding. As such, the record does not include any truly comparable final orders in terms of the sanction. *See Dorn v. Teacher Standards and Practices Commission*, 316 Or App 241, 249-250 (2021) (an agency's stipulated orders and default orders are generally issued without insight provided by evidence and testimony; therefore, such orders are distinguishable from final orders that result from full contested case proceedings).

The Division's proposed civil penalties for each violation of Oregon Securities Law

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are within the maximum amount allowable under ORS 59.995(1)(a). For the violation of ORS 59.135(2), the Division seeks the maximum civil penalty, which is appropriate considering that Mr. Lee never disclosed to the broker-dealer his ongoing, outside business activities and the compensation he received directly from his clients. For the violation of ORS 59.135(3), the Division also seeks the maximum civil penalty, which is appropriate considering that Mr. Lee engaged in multiple acts that operated as deceit upon the broker-dealer where he was licensed and upon Ms. Helfer and Ms. Waggener. For the violation of ORS 59.135(4), the Division seeks a civil penalty of $10,000, which is appropriate considering that Mr. Lee made or filed Form U-4s with the Director that included statements that Mr. Lee knew were false in a material respect. Finally, for the violation of ORS 59.165(6), the Division seeks a civil penalty of $10,000. The amount of the penalty is appropriate based on his willful transaction of business as an unlicensed state investment adviser.

Finally, the Division proposes to assess a civil penalty of $1,000 for Mr. Lee's violation of ORS 731.296. *See* Pleading P6 at 18. His refusal to respond promptly and truthfully to the Division's inquiry impeded the Division's duty to ensure that it protects the insurance-buying public. For that reason, the Division's proposed penalty is appropriate.

ORDER

Now, therefore, the Director issues the following ORDERS:

1. As authorized by ORS 59.245(4), the Director hereby ORDERS Kevin J. Lee to cease and desist from violating ORS 59.135(2) through (4), ORS 59.165(6), ORS 731.296, ORS 744.074, and ORS 744.644.

2. As authorized by ORS 744.074(1), the Director hereby REVOKES Kevin J. Lee's resident insurance producer license.

3. As authorized by ORS 744.644(1) and (2), the Director hereby REVOKES Kevin J. Lee's resident insurance consultant license.

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4. As authorized by ORS 59.045(2), the Director DENIES Kevin J. Lee and any business entity he owns, operates, or controls the use of any exemptions that would otherwise be available under ORS 59.025 and ORS 59.035, concerning securities and transactions exempt from the registration requirements of the Oregon Securities Law.

5. As authorized by ORS 59.995(1)(a) and ORS 731.988(1), the Director ORDERS that Kevin J. Lee must pay CIVIL PENALTIES totaling $61,000 including: $20,000 for violating ORS 59.135(2); $20,000 for violating ORS 59.135(3); $10,000 for violating ORS 59.135(4); $10,000 for violating ORS 59.165(6); and $1,000 for violating ORS 731.296.

6. The civil penalties assessed herein are due and payable to the Department of Consumer and Business Services ten days after the final order imposing the civil penalties becomes final by operation of law or on appeal.

7. 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.

SO ORDERED this 29th day of June 2023.

ANDREW R. STOLFI, Director
Department of Consumer and Business Services

/s/ Dorothy Bean
Dorothy Bean, Chief of Enforcement
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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.