STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION

In the Matter of **Michael M. Morrow** and **Morrow and Associates Insurance**.	)	**FINAL ORDER**
	)	Case No. INS 00-09-017

The Director of the Oregon Department of Consumer and Business Services (Director) commenced the above entitled administrative proceeding pursuant to Oregon Revised Statutes (ORS) 731.256 to take disciplinary action against Michael M. Morrow (Morrow), individually, and Morrow doing business as Morrow and Associates Insurance (Morrow and Associates)(collectively referred to hereinafter as the parties).

On December 7, 2000, the Director issued a Notice of Proposed Action and Hearing (Notice) pursuant to ORS 183.415. The Notice informed Morrow that the Director proposed to revoke Morrow's Oregon insurance agent license pursuant to ORS 744.013(1)(a), and to assess Morrow a civil penalty of $4,000 pursuant to ORS 731.988(1) for allegedly violating ORS 744.013(2)(g) in four instances, 746.120 in one instance, 731.260 in three instances, and 744.028 in one instance, as specifically described in the Notice. The Notice also informed Morrow and Associates that the Director also proposed to revoke the Oregon insurance agent license issued to Morrow and Associates pursuant to ORS 744.013(3). The Notice further informed the parties that a hearing was scheduled to be held on February 22, 2001 and they had a right to be represented by an attorney at the hearing. The Notice was mailed to the parties on December 7, 2000, and was received by the parties on December 11, 2000.

On January 24, 2001, the Director issued an Amended Notice of Proposed Action and Hearing (Amended Notice). The primary difference between the Notice and the Amended Notice was that the Amended Notice changed the citation of one of the

allegations from ORS 731.260 to 731.296. The Amended Notice was mailed to the parties on January 24, 2001, and was received by the parties on January 25, 2001.

On February 20, 2001, the hearing was rescheduled to March 6, 2001.

The hearing was initially held on March 6, 2001 and continued on March 20, 2001. The hearing was conducted by Catherine P. Coburn, a hearing officer with the Hearing Officer Panel.[1] The Director, by and through the Insurance Division of the Department of Consumer and Business Services, was represented by Kathleen Dahlin, an Assistant Attorney General. The parties were present, and represented by Mark B. Comstock.

During the hearing, the Insurance Division withdrew the allegation that Morrow violated ORS 744.028. Relative to the remaining allegations, the Insurance Division offered as evidence exhibits marked 1 to 40. All of the Insurance Divisions' exhibits were admitted although the parties objected to Exhibits 1 and 40. The Insurance Division called as witnesses Jan W. Vanderspek (Vanderspek); Lee Reickert; Kevin T. Merz (Merz), the owner of Merz Insurance Agency, Inc.; and Richard Zafuto, an Insurance Division Investigator. The parties offered as evidence exhibits marked A to W, Z, AA to DD, and FF to MM. The parties exhibits were admitted although the Insurance Division objected to Exhibits Z, AA to DD, and FF to JJ. The parties called as witnesses Morrow, Linda Kenny (Kenny), and Jerry Stevens (Stevens).

On April 13, 2001, the hearing officer issued a Proposed Order pursuant to ORS 183.460. The Proposed Order found that Morrow violated ORS 744.013(2)(g) in four instances, violated ORS 746.120 in one instance, and violated ORS 731.296 in two instances; and that Morrow and Associates was also subject to disciplinary action. The Proposed Order informed the parties that they could file with the Director written exceptions to the Proposed Order pursuant to ORS 183.460. The Proposed

[1] The hearing was conducted by a hearing officer of the Hearing Officer Panel of the Employment Department as required by Section 9(1) and (3)(h), Chapter 849, Oregon Law 1999 and in accordance with the Oregon Administrative Rules (OAR) 137-003-0501 to 137-003-0700.

Order was mailed to the parties on April 13, 2001 and subsequently received by the parties.

On May 14, 2001, the parties filed with the Director written exceptions to the Proposed Order.

On May 25, 2001, the Insurance Division filed with the Director a response to the parties' exceptions.

As explained below, the Director is not persuaded by the parties' exceptions to make any decision different than the decision proposed in the Notice and the Proposed Order.

Parties' Exceptions

The parties object to certain Findings of Fact of the Proposed Order on grounds that they are incomplete. The parties propose the following additional findings of fact.

1. The parties propose a finding of fact that U.S. Financial Life Insurance Company (USFL) "generates policies and policy schedules at its head office. Agents do not have access to computer programs to generate the policy documents and schedules, nor the paper stock, which is multicolored for policy documents." However, the evidence in the record shows that there was colored printing on the original first policy page in Exhibit LL, and not as the parties assert, that the policy was printed on multicolored paper stock. *See* Statement of Mark B. Comstock, Tape 1 Side B, at 448, 458; and stipulation of counsel, Tape 7, Side B, at 448. The parties did not stipulate as to the colors of the printing or as to the type of the paper. Tape 7, Side B, at 456. Thus, the Director declines to adopt this as a finding of fact.

2. The parties propose as a finding of fact that "[t]he policy documents delivered to Vanderspek in Exhibit LL and MM, each were printed on colored paper stock consistent with those issued by USFL. The schedules in two authentic USFL policies in possession of Vanderspek had internally consistent typing on the various schedules." However, there is no evidence in the record regarding the color of the printing on Exhibit MM. The hearing officer asked the parties and the Insurance Division if they could stipulate to the color of the printing but the Insurance

Division declined because it had not seen the original of the document. Tape 7, Side B, at 474. Also, there is no evidence in record that the typing on the schedule page of Exhibit LL was internally consistent. The schedule page is typed in a font that is different from that of the rest of the policy. Also, there are typographical errors on the schedule page that do not exist in the rest of the policy. Thus, the Director declines to adopt this as a finding of fact.

3. The parties propose as findings of fact that "Morrow did not have copies of the policies that Vanderspek had in his possession at the time of the hearing" and that "Morrow did not have a copy of the policy schedules from the USFL Policy No. 51840 in his possession or in any of his files." The parties claim that there is evidence that Morrow did not have copies of Exhibits LL and MM and that Morrow did not have a copy of the policy schedules in his files. However, the parties do not cite any exhibit or testimony in the record in support this proposed finding of fact. Furthermore, the hearing officer found that Morrow was not credible as a witness. *See* Proposed Order, p. 11, lines 11-12 and lines 20-21. Thus, the Director declines to adopt these as a findings of fact.

4. The parties propose a finding of fact that "Lafayette Life [Insurance Company] contracted with Indianapolis Life Insurance Company to administer policies, and that as of March 19, 1998, until Vanderspek withdrew his application, an application for insurance was pending through Lafayette Life Insurance Company." However, the parties do not cite any exhibit or testimony in the record to support this proposed finding of fact. Furthermore, the parties do not indicate how such a finding would be relevant to any legal conclusion. Thus, the Director declines to adopt this as a finding of fact.

The parties object to several conclusions of law on grounds that they are not supported by substantial evidence.

1. The parties assert that there is no evidence in the record that USFL did not create the fictitious policy schedule in Exhibit LL. However, Exhibit 15 is a letter from USFL that states:

> Mr. Vanderspek subsequently faxed to us several documents. The first is a document which purports to be a schedule page from a policy issued by USFL. This document was not generated by USFL. Exhibit 15 p. 2.

The parties also assert that the policy in Exhibit LL is consistent with issuance by USFL. However, the evidence in the record supports the opposite conclusion. Exhibit LL contains a schedule page prepared with an unusual font and containing a number of typographical errors. In contrast, Exhibit MM, which is the policy provided directly by USFL to Vanderspek as part of the settlement agreement, contains a schedule page with consistent font type and no typographical errors.

2. The hearing officer also concluded that Morrow stood to gain commissions if he sold certain other policies to Vanderspek or the business employing Vanderspek. (Exhibit 2-35). Again, the evidence in the record supports this conclusion. The bankruptcy documents do not controvert the authority of Vanderspek. Instead, there was testimony that it was contemplated that both Vanderspek and Stevens would eventually take over the ownership of the carpet company and be responsible for employee-related insurance plans.

3. The parties assert that Morrow did not create a fictitious policy schedule "as to any USFL policy as Exhibits LL and MM established." It is unclear why the parties refer to Exhibit MM in this context since Exhibit MM does not contain any fictitious policy schedule. The parties further contend that "only USFL has access to the printing stock" for generating pages. However, there is no evidence that the policy pages were printed on any particular stock, only that the cover page contained colored ink. Moreover, even if the cover page was from USFL, there are logical ways by which Morrow could have obtained that page (*e.g.* from David Shear's policy).

4. The parties contend that the hearing officer erred in noting that even if Morrow requested information from Merz by referring to the wrong policy number as an "honest mistake," he demonstrated incompetence and untrustworthiness. Pursuant to ORS 744.013(2)(g), mistaken or negligent actions may constitute the basis for violations without transforming the statute into a strict liability law.

5. The parties claim that the evidence does not support the finding that Morrow solicited monies from Vanderspek. However, the evidence shows that Morrow advised Vanderspek, "[w]e need to send a check for the quarterly premium to U.S. Life [sic] for $861.50 to keep them on the hook for their policy." Exhibit 21.

6. The parties claim that there is no evidence that Morrow knew that policy number 68733 was not taken out and that Morrow never received any notification from USFL about the policy. However, USFL sent a letter, Exhibit 19, to Vanderspek and copied it to Morrow that reads:

> Please be advised we have recorded the above policy as a not taken. The policy, therefore, is not in force and no protection is being provided.

Also, Vanderspek testified he contacted Morrow after receiving the letter and questioned him about it. *See* Testimony of Vanderspek, Tape 1, Side A at 480 *et seq.*

7. The parties object to the conclusion that Morrow collected monies for a policy that he knew was not in effect and would not be provided in due course. The evidence establishes that in October 1997, USFL notified Morrow that policy number 68733 was "not taken". Several months later, in February 1998, Morrow collected $861.50 as premium from Vanderspek "to keep them on the hook for their policy." However, the policy number 68733 was "not taken." The only other policy was number 51840, which was fictitious. Accordingly, the evidence establishes that Morrow collected monies for a policy he knew was not in effect and would not be provided in due course.

8. The parties assert that the hearing officer erred in concluding that policy number 68733 was unacceptable to Vanderspek. However, Vanderspek testified that he met with Morrow and stated that the premium was too high.

The parties also assert that the hearing officer erred in determining that Morrow knew that USFL Policy 51840 schedules had been delivered to Vanderspek when, in fact, the policy belonged to David Shears. However, this does not accurately reflect the hearing officer's finding. The hearing officer found that "Morrow knew that USFL policy number 51840 was issued to David Shears and not to Vanderspek." The evidence supports this finding.

9. The parties again take exception to the finding by the hearing officer that Morrow created the fictitious policy and provided it to Vanderspek. As discussed above, the record contains sufficient evidence to support this finding.

Findings of Fact, Conclusions of Law and Opinion

The Director adopts, and incorporates herein by this reference, the facts, conclusions and reasoning of the Proposed Order dated April 13, 2001 issued in this matter as the facts, conclusions and reasoning of this order.

Order

The Oregon insurance agent licenses issued to Morrow, and Morrow and Associates, shall be revoked on the date of this order pursuant to ORS 744.013(1)(a) and (3) respectively. Morrow, and Morrow and Associates, shall not transact insurance in Oregon, including servicing clients, on and after that date.

Morrow shall pay a civil penalty of $4,000 pursuant to ORS 731.988. Payment shall be made in the form of a check payable to the "Department of Consumer and Business Services" for the full amount due. Payment shall be delivered or mailed to the Insurance Division at 350 Winter Street NE, Room 440, Salem, OR 97301-3883. Payment shall be received by the Insurance Division by 5:00 PM (PT) on the 71st calendar day after the date of this order pursuant to ORS 183.090(2).

Notice of Judicial Review

Pursuant to ORS 183.480 and 183.482, Morrow may request the Oregon Court of Appeals to review this order by filing a written petition for judicial review with the Court within 60 calendar days following the date this order is personally delivered or mailed to Morrow, whichever occurs first.

Dated September 7, 2001

/s/ Mary C. Neidig
Mary C. Neidig
Director
Department of Consumer and Business Services