BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION

IN THE MATTER OF	)	**PROPOSED ORDER GRANTING MOTION**
	)	**FOR RULING ON LEGAL ISSUES**
DAVE H. TRINH,	)	**(SUMMARY JUDGMENT)**
Respondent	)	
	)	Agency Case No. INS 05-05-005

HISTORY OF THE CASE

On May 20, 2005, the Director of the Department of Consumer and Business Services, Insurance Division (Director or Department) issued a Notice of Proposed Action, pursuant to ORS 744.074(1), proposing to revoke the Oregon nonresident individual insurance producer license issued to Dave H. Trinh (Respondent). On June 9, 2005, Respondent requested a hearing. On June 13, 2005, the Department referred the matter to the Office of Administrative Hearings (OAH). On June 22, 2005, the Department issued an Amended Notice of Proposed Action. A contested case hearing is set for August 12, 2005 before Administrative Law Judge Catherine P. Coburn of the OAH.

On June 23, 2005, the Department filed a Motion for Ruling on Legal Issues (Summary Judgment) pursuant to OAR 137-003-0580,[1] alleging that there is no genuine

[1] OAR 137-003-0580 provides:

(1) Not less than 28 calendar days before the date set for hearing, the agency or a party may file a motion requesting a ruling in favor of the agency or party on any or all legal issues (including claims and defenses) in the contested case. The motion, accompanied by any affidavits or other supporting documents, shall be served on the agency and parties in the manner required by OAR 137-003-0520.

(2) Within 14 calendar days after service of the motion, the agency or a party may file a response to the motion. The response may be accompanied by affidavits or other supporting documents and shall be served on the agency and parties in the manner required by OAR 137-003-0520.

(3) The administrative law judge may establish longer or shorter periods than those under section (1) and (2) of this rule for the filing of motions and responses.

(4) The agency by rule or in writing may elect not to make available this process for ruling on legal issues. The administrative law judge shall not consider a motion for ruling on a legal issue if the agency requests that the case proceed to a hearing on that issue.

(5) The party and the agency may stipulate to a record upon which the requested legal ruling shall be made.

issue of material fact and, as a matter of law, the Department is entitled to a ruling in its favor in this matter. Pursuant to OAR 137-003-0580(2), Respondent was allowed fourteen days to respond. On July 22, 2005, Respondent requested postponement of the upcoming hearing but did not challenge the basis of the Department's motion.

ISSUE

Whether there is any genuine issue as to any material fact that is relevant to the proposed revocation of Respondent's Oregon nonresident individual insurance producer license.

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(6) The administrative law judge shall grant the motion for a legal ruling if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

(9) A party or the agency may satisfy the burden of producing evidence through affidavits. Affidavits shall be made on personal knowledge, establish that the affiant is competent to testify to the matters stated therein and contain facts that would be admissible at the hearing.

(10) When a motion for ruling on a legal issue is made and supported as provided in this rule, a non-moving party or non-moving agency may not rest upon the mere allegations or denials contained in that party's or agency's pleading.

(11) The administrative law judge's ruling may be rendered on a single issue and need not resolve all issues in the contested case.

(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling or a final order in accordance with OAR 137-003-0665 if the administrative law judge has authority to issue a final order without first issuing a proposed order.

EVIDENTIARY RULINGS

Exhibits 1 through 6, offered by the Department in connection with its motion, are admitted into the record.

FINDINGS OF FACT

1. Respondent is an Oregon nonresident insurance agent, licensed by the Oregon Insurance Division on January 29, 2004, effective until January 31, 2006. (Ex. 1-3.)

2. On November 1, 2004, the Washington Office of Insurance Commissioner, Hearings Unit, entered an order upholding the Insurance Commissioner's order revoking Respondent's license. (Exs. 2-7 and 5.) The order required Respondent to surrender his insurance agent's license to the Commissioner on or before November 16, 2004. (Ex. 2-7.)

3. Washington's Insurance Commissioner ordered revocation of Respondent's producer's license because Respondent had sold securities and, in so doing, committed a number of fraudulent activities that resulted in a customer, Thomas Grove, losing approximately $270,000. (Ex. 5-1.) The Washington Department of Financial Institutions, Securities Division, had previously ordered that Respondent cease and desist from violating the anti-fraud provisions of the Washington Securities Act and from violating Washington law by acting as a securities dealer or securities salesperson without being so registered. (Ex. 6-7.)

4. Additionally, Washington's Insurance Commissioner ordered revocation of Respondent's insurance producer's license because he had sold a customer, Randy Pruden, a term life policy that Pruden understood would obtain an unemployment rider but that contained no such rider. The policy application indicated that Prudent had signed an amendment acknowledging that no unemployment rider was attached to the policy and had signed a delivery receipt for the policy, when in fact Pruden had not signed either the amendment or the delivery receipt. (Ex. 5-2.)

5. Respondent requested a hearing, staying the effect of the Washington Commissioner's Order pending the hearing. (Exs. 4.) A hearing was scheduled upon Respondent's request and held, following a continuance, on July 12, 2004. (Ex. 2.) Respondent failed to appear. (Ex. 2-3.) Washington Insurance Commissioner revoked Respondent's insurance producer's license. (Ex. 2-7.)

CONCLUSION OF LAW

The Director is entitled to revoke Respondent's insurance producer license pursuant to ORS 744.074(1)(i) based on revocation of Respondent's Washington insurance agent's license.

OPINION

The Director of the Department of Consumer and Business Services may revoke an insurance producer license based on the revocation by any state of a license to act as an insurance producer. ORS 744.074(1)(i).[2] Furthermore, under OAR 137-003-0580(6), an ALJ is authorized to grant a motion for legal ruling if: (a) the pleadings, affidavits, supporting documents and the record in the contested case show that there is no genuine issue of material fact that is relevant to resolution of the legal issue; and (b) the agency or party filing the motion is entitled to a favorable ruling as a matter of law.

In this case, the Department has produced evidence that Respondent is a licensed insurance producer in Oregon and that Respondent's Washington insurance agent's license was revoked as a result of his fraudulent activities. Moreover, Respondent has failed to respond to the department's motion. Consequently, I conclude that the record shows that there is no genuine issue as to any material fact that is relevant to the proposed license revocation. Therefore, the Department is entitled to a favorable ruling as a matter of law.

ORDER

The Department's Motion for Ruling on Legal Issues (Summary Judgment) is GRANTED.

I recommend that the Department issue a final order revoking Dave H. Trinh's insurance producer license pursuant to ORS 744.074(1)(i).

IT IS SO ORDERED. Dated: July 27, 2005

/s/ Catherine P. Coburn
Catherine P. Coburn, Administrative Law Judge
Office of Administrative Hearings

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[2] ORS 744.074(1)(i) provides:

(1) The Director of the Department of Consumer and Business Services may place a licensee on probation or suspend, revoke or refuse to issue or renew an insurance producer license and may take other actions authorized by the Insurance Code in lieu thereof or in addition thereto, for any one or more of the following causes:

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(i) Cancellation, revocation, suspension or refusal to renew by any state of a license or other evidence of authority to act as an adjuster or an insurance producer or consultant. The record of the cancellation, revocation, suspension or refusal to renew shall be conclusive evidence of the action taken.

NOTICE OF OPPORTUNITY FOR ADMINISTRATIVE REVIEW

NOTICE: Pursuant to ORS 183.460, the parties are entitled to file written exceptions to this Proposed Order and to present written argument concerning these exceptions to the Director. Written exceptions must be received by the Department of Consumer and Business Services within 30 days following the date of service of this Proposed Order. Mail Exceptions to:

Mitchel D. Curzon
Chief Enforcement Officer
Oregon Insurance Division
PO Box 14480
Salem, OR 97309-0405