

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

<b>In the Matter of</b>	)	<b>Case No: INS 11-07-012</b>
	)	
<b>FRANCISCO JAVIER-AROCHE</b>	)	<b>RULING ON SUMMARY</b>
<b>and</b>	)	<b>DETERMINATION AND</b>
<b>JAVIER INSURANCE AGENCY, INC.</b>	)	<b>PROPOSED ORDER</b>

**HISTORY OF CASE**

On July 20, 2011, the Administrator of the Department of Consumer and Business Services Insurance Division issued a Notice of Proposed Action (Notice) proposing to revoke the Oregon resident individual insurance producer license issued to Francisco Javier-Aroche (Aroche) pursuant to ORS 744.074(1) and the Oregon resident business entity insurance license issued to Javier Insurance Agency, Inc. (Javier Agency) pursuant to ORS 744.074(3). Aroche individually and on behalf of Javier Agency timely requested a hearing challenging the proposed action. On August 10, 2011, the Division referred this matter to the Office of Administrative Hearings (OAH) for hearing.

The matter was assigned to Senior Administrative Law Judge Alison Greene Webster. ALJ Webster held a prehearing telephone conference in this matter on September 20, 2011. Senior Assistant Attorney General Judith K. Anderson represented the Division. Aroche participated without counsel. The hearing was scheduled for December 8, 2011.

On October 3, 2011, representation of the Division was reassigned to Senior Assistant Attorney General Kelly M. Gabliks. On October 31, 2011, Gabliks, on behalf of the Division, filed a Motion for Summary Determination Revoking Licenses along with supporting documents pursuant to OAR 137-003-0580. Aroche submitted a response to the motion on November 15, 2011. The motion and response were taken under advisement on November 15, 2011.

**ISSUES**

1. Whether Aroche provided incorrect, misleading, incomplete or materially untrue information in an application for licensure, in violation of ORS 744.074(1)(a).
2. Whether Aroche was convicted of a felony or misdemeanor involving dishonesty or breach of trust in violation of ORS 744.074(1)(f).

3. Whether Aroche failed to notify the Insurance Division Director of Aroche's criminal prosecution and failed to submit relevant documentation regarding the prosecution to the Division in violation of ORS 744.089(2) and ORS 744.074(1)(b).

4. If Aroche violated provisions of ORS 744.074(1), whether the Division may revoke his insurance producer license.

5. Whether the Division may also revoke the license of the Javier Agency pursuant to ORS 744.074(3) based on Aroche's violations and his failure to report them to the Division.

### **DOCUMENTS REVIEWED**

In support of its Motion, the Division submitted Exhibits 1 through 8, including an Affidavit of Rebecca J. Flores (Ex.1) and an Affidavit of Leeann March (Ex. 3.). The exhibits and affidavit were made part of the record. Aroche's November 14, 2011 letter in response to the Division's motion was also made a part of the record.

### **FINDINGS OF FACT**

1. Licensee Javier Francisco-Aroche has been licensed in Oregon to sell life, health, property and casualty insurance since March 27, 2006. Javier Insurance Agency, Inc., was licensed as a resident business entity insurance producer from October 13, 2008 to October 31, 2010, and has been so licensed again since May 2, 2011. At all times Javier Agency has been licensed as a resident business entity insurance producer, Aroche has been the President, Secretary and Registered Agent of the corporation. (Ex. 1; Flores Aff.)

2. On December 16, 2005, the Division received an individual insurance license application from Aroche, which he had signed and dated on October 21, 2005. On the first page of the application, the applicant is required to provide, among other information, his or her social security number. Aroche listed his social security number as 603-xx-xxxx. On the third page of the application, the applicant is required to sign three times: once to certify that the applicant is "the person named in and who completed the foregoing application" and the statements and answers are true and complete to the best of the applicant's knowledge and belief; once to give consent to the Division to obtain any criminal offender information on the applicant; and once to authorize the Division to share the applicant's social security number with other state insurance licensing authorities. (Ex. 2 at 3.) In connection with this third authorization, the application provides as follows:

To be licensed by the Oregon Insurance Division with the Department of Consumer and Business Services, it is mandatory that you provide your social security number under the authority of ORS 25.785 and 305.385 and 42 USC 405(c)(2)(C)(i) and 42 USC 666(1)(13). Your social security number will be used for identification, and tax- and child-support-enforcement purposes are required by law.

(*Id.*) Aroche signed and dated the certification, the consent to obtain criminal offender information and the social security number disclosure. (*Id.*)

3. The Division reviewed Aroche's license application and, based on the information provided therein, granted him a resident insurance producer license effective March 27, 2006. (Ex. 1; Flores Aff.) In reviewing insurance producer license applications, the Division processes fingerprints and conducts criminal background checks on the applicant, but it does not verify the accuracy of the social security number provided by the applicant. (Ex. 3; March Aff.)

4. As the Division subsequently learned, Aroche has been assigned social security number 541-xx-xxxx according to the Social Security Administration. (Ex. 1; Flores Aff., Attachment A.)

5. In January 2011, Aroche was arrested by the Oregon State Police and charged in Washington County, Oregon with three counts of Forgery I and three counts of Identity Theft. The arrest and criminal prosecution arose out of an incident in which Aroche faxed forged documents to the Oregon DMV on State of Oregon, Department of Transportation letterhead, indicating that Aroche had made payments to the Oregon Department of Transportation to satisfy amounts owed to get his driver license suspension cleared and his driving privileges reinstated.<sup>1</sup> (Ex. 6.)

6. On April 4, 2011, Aroche plead guilty and was convicted on one count of Identity Theft, a Class C Felony, and one count of Forgery, also a Class C Felony. The remaining four charges were dismissed. In a Judgment entered April 5, 2011 in *State of Oregon v. Francisco Aroche*, Case No. C110214CR, Aroche was sentenced to 18 months bench probation and ordered to pay a fine and court costs. (Exs. 4 and 5.)

7. Aroche did not notify the Division of the criminal prosecution against him, or of his April 2011 felony convictions for Identity Theft and Forgery. (Ex. 1; Flores Aff.)

8. At some point in 2011, the Division opened an investigation into possible insurance law violations by Aroche. During that investigation, the Division investigator discovered a discrepancy between the social security number included on Aroche's 2005 license application (603-xx-xxxx) and a social security number he had provided to a previous employer (541-xx-xxxx). The investigator contacted the Social Security Administration to determine whether Aroche had provided his correct social security number on the insurance license application. The investigator learned that Aroche did not provide the correct social security number on his insurance producer license application. (Ex. 1; Flores Aff.)

## CONCLUSIONS OF LAW

1. Aroche provided incorrect, misleading, incomplete or materially untrue information in an application for licensure, in violation of ORS 744.074(1)(a).

---

<sup>1</sup> In an interview with Oregon State Police Trooper Schinnerer on January 6, 2011, Aroche initially denied sending the faxes to DMV on State of Oregon letterhead stating that he had cleared his balance with the Department of Transportation. But, when confronted with the fact that the faxes had been sent from the fax number of his then-employer (Liberty Mutual Insurance), Aroche admitted sending them. He explained that he did so in an effort to get his license reinstated without paying the fee. Aroche also confirmed that he forged the documents by cutting and pasting from correspondence he previously received from the Department of Transportation, signed by a Department representative. (Ex. 6.)

2. Aroche was convicted of a felony or misdemeanor involving dishonesty or breach of trust in violation of ORS 744.074(1)(f).

3. Aroche failed to notify the Insurance Division Director of his criminal prosecution and failed to submit relevant documentation regarding the prosecution to the Division in violation of ORS 744.089(2) and ORS 744.074(1)(b).

4. The Division may revoke Aroche's insurance producer license.

5. The Division may also revoke the license of the Javier Agency pursuant to ORS 744.074(3).

## OPINION

### A. Summary Determination

OAR 137-003-0580 is titled "Motion for Summary Determination" and provides, in relevant part:

(6) The administrative law judge shall grant the motion for a summary determination 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[.]

\* \* \* \* \*

(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 137-003-0665 if the administrative law judge has authority to issue a final order without first issuing a proposed order.

In this matter, the evidence in the record consists of the exhibits and affidavits submitted by the Division and Aroche's November 14, 2011 letter in response to the Division's motion. Summary determination in favor of the Division is appropriate if the record, viewed in a light most favorable to Aroche, shows there is no genuine issue of material fact relevant to the resolution of this case. Aroche does not dispute that his insurance application contained the a false social security number, that he was convicted of forgery and identity theft, or that he failed to report the criminal prosecution against him to the Division. Accordingly, for the reasons discussed below, the Division is entitled to summary determination in its favor.

### **B. Violations of ORS 744.074 and 744.089**

The Division proposes to revoke Aroche's insurance producer license pursuant to ORS 744.074(1) and to revoke the business entity license of Javier Insurance pursuant to ORS 744.074(3) based on Aroche's violations of the insurance laws. The Division has the burden of proving the allegations in its Notice of Proposed Action by a preponderance of the evidence. *See* ORS 183.450(2) and (5); *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.); *Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). In this case, the Division has met its burden.

ORS 744.074(1) authorizes the Director of DCBS to revoke an insurance producer license for any one or more specifically enumerated reasons. As pertinent to this case, the statute provides as follows:

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.

\* \* \* \* \*

- (f) Having been convicted of a felony, of a misdemeanor involving dishonesty or breach of trust, or of an offense punishable by death or imprisonment under the laws of the United States. The record of the conviction shall be conclusive evidence of the conviction.

ORS 744.074(3) authorizes the Director of DCBS to revoke the insurance producer license of a business entity under the following circumstance:

[i]f the director determines that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the partnership or corporation but the violation was not reported to the director and corrective action was not taken.

And, ORS 744.089 requires a licensed insurance producer to report to DCBS any administrative action taken against the licensee or any criminal prosecution against the licensee. It provides, in pertinent part, as follows:

(2) Not later than the 30th day after the initial pretrial hearing date, an insurance producer shall report to the director any criminal prosecution of the insurance producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

In this case, the Division asserts as follows: (1) Aroche provided an incorrect social security number on his license application, a violation of ORS 477.074(1)(a); (2) Aroche was convicted of a felony involving dishonesty, a violation of ORS 477.074(1)(f); and (3) Aroche did not report the criminal prosecution against him in violation of ORS 477.089(2) and 477.074(1)(b). Based on this alleged misconduct, the Division seeks to revoke both Aroche's individual insurance producer license and the business license of the Javier Agency.

### *1. Incorrect Information on License Application*

An insurance producer license applicant is required to provide his or her social security number on the license application. As found above, in 2005, Aroche signed and submitted a license application containing an incorrect social security number. Aroche's social security number begins with the digits 541, yet his application listed a social security number with 603 as the first three digits. Thus, the Division has established that Aroche provided incorrect and materially untrue information in his insurance application in violation of ORS 744.074(1).

In responding to the Division's motion, Aroche admitted that his license application contained a social security number of someone other than him, but he denied responsibility for the error. Aroche asserted that his then-employer completed the license application on his behalf, and he just signed the application without reviewing it for accuracy. Regardless of who completed the application form, however, Aroche signed it and certified that he was the person who completed it. Aroche also certified the accuracy of the information contained in the application, including his social security number, a required element of the application. Consequently, he bears responsibility for the incorrect and materially untrue information set out in the application.

### *2. Felony Convictions*

As noted above, pursuant to ORS 744.074(1)(f), the Director of DCBS is authorized to revoke an insurance producer license or impose other discipline where the licensee has been convicted of a felony, or of a misdemeanor involving dishonesty or breach of trust. Additionally, under ORS 731.428(4), the Director is *required* to revoke, suspend or refuse to renew the license of

a licensee convicted of such crimes.<sup>2</sup> The record conclusively establishes that Aroche was convicted of two felonies, Forgery and Identity Theft, in Oregon in April 2011. Both of these felony offenses involve dishonesty. OAR 836-071-0321(1).<sup>3</sup> Thus, based on these felony convictions, the Division is entitled to take action against Aroche's insurance license under ORS 744.074(1)(f).

In responding to the Division's motion, Aroche acknowledges the convictions, but asserts that he pled guilty to avoid the cost of going to trial and because "the person who actually committed the crime left the country afraid of prosecution." Not only is this latter assertion lacking in credibility (considering Aroche's previous confession to the crime), it is also irrelevant. The conviction is conclusive evidence. Aroche is subject to sanction under ORS 744.074(1)(f) and ORS 731.428(4) because he has been convicted of felonies involving dishonesty.

### *3. Failure to Report Criminal Prosecution*

Under ORS 744.089(2), licensed insurance producers are required to report any criminal prosecution against the licensee within 30 days after the initial pretrial hearing date, and submit a copy of the complaint and any other relevant legal documents including the order resulting from

---

<sup>2</sup> ORS 731.428 provides as follows:

- (1) A person who is prohibited by 18 U.S.C. 1033 from engaging or participating in the business of insurance because of a conviction of a felony involving dishonesty or a breach of trust or conviction of a crime under 18 U.S.C. 1033 may apply to the Director of the Department of Consumer and Business Services for a written consent to engage or participate in the business of insurance.
- (2) The director shall establish by rule a procedure and standards by which the director may issue a written consent to engage or participate in the business of insurance to a person convicted of a crime described in subsection (1) of this section.
- (3) The director shall not issue a license under the Insurance Code to an applicant who has been convicted of a crime referred to in subsection (1) of this section unless the director also issues a written consent.
- (4) If a person issued a license under the Insurance Code has been convicted of a crime referred to in subsection (1) of this section or is subsequently the subject of such a conviction, the director shall revoke, suspend or refuse to renew the license. The person may apply to the director for a written consent as provided in subsection (1) of this section.

<sup>3</sup> OAR 336-071-0321(1) provides:

A felony offense involving dishonesty includes but is not limited to any offense constituting or involving theft, burglary, perjury, bribery, forgery, counterfeiting, a false or misleading oral or written statement, deception, fraud, a scheme or artifice to deceive or defraud, a material misrepresentation or the failure to disclose material facts, or any felony the commission of which is determined by the Director to have involved some element of deceit, misrepresentation, untruthfulness or falsification.

the hearing. Aroche did not report his January 2011 arrest, the subsequent prosecution for multiple counts of Forgery and Identity Theft or his April 2011 convictions to the Division as required by this statute. Aroche's failure to report the criminal prosecution as required by ORS 744.089(2) provides further grounds for the revocation of his license under ORS 744.074(1)(b), as the Division is authorized to take disciplinary action against any licensee for violating any insurance laws.

### **C. Sanctions**

#### *1. Sanction as to Aroche*

The Division has established that Aroche provided incorrect and materially untrue information in a license application in violation of ORS 744.074(1)(a); that he has been convicted of two felonies involving dishonesty in violation of ORS 744.074(1)(f); and that he failed to report his arrest, prosecution and convictions in violation of ORS 744.089(2) and 744.074(1)(b). These violations, both individually and collectively, entitle the Division to revoke Aroche's resident insurance producer license.

Indeed, even if one were to accept that the false social security number on the application arose out of inattentiveness rather than intentional deception, the other two violations raise serious concerns about Aroche's trustworthiness and candor, qualities essential to an insurance producer. He was convicted of two felonies involving dishonesty while licensed as an insurance producer, and did not notify the Division of the criminal prosecution or the judgment against him. Consequently, revocation of his license is warranted.

#### *2. Sanction as to Javier Agency*

The Insurance Division also proposes to revoke the license of the Javier Agency under ORS 744.074(3) based on Aroche's violations of the insurance laws, and the business entity's failure to report the violations to the Division. As set out above, pursuant to ORS 744.074(3) the Director may suspend, revoke or refuse to issue a license to a business entity where an individual licensee's violation was known but not reported. In this case, the evidence establishes that Aroche served as Javier Agency's President, Secretary and Registered Agent. As such, he was obligated to report any violations of which he knew, or should have known. Even if he was not aware of the false social security number on his 2005 license application, he was certainly aware of his 2011 crimes and convictions. Because Aroche, as an officer of Javier Agency, did not report his own violations to the Division or take any corrective action as required by ORS 744.074(3), the Division is authorized as a matter of law to revoke the business entity license of Javier Agency as well.

### **RULING ON THE MOTION**

The Division's Motion for Summary Determination Revoking Licenses is GRANTED.





**CERTIFICATE OF SERVICE**

On 22nd day of November 2011, I mailed the foregoing Proposed Order in Reference No. **1107012.**

**BY FIRST CLASS MAIL:**

Francisco Javier-Aroche 12890 SE 26th Ave Milwaukie, OR 97222-8730	Kelly Gabliks AAG General Counsel Division 1162 Court Street NE Salem OR 97301-4096
--	--

**VIA ELECTRONIC MAIL:**

Mitchel Curzon  
Chief Enforcement Officer  
Insurance Division  
Department of Consumer and Business Services

\_\_\_\_\_/s/ Charles J Ramsey

Charles J Ramsey  
Hearing Coordinator