

**STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

In the Matter of **AQA Insurance Inc.**) **FINAL ORDER**
) Case No. INS 13-02-001

History of the Proceeding

The Director of the Oregon Department of Consumer and Business Services (director), by and through the Insurance Division, commenced this administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 731.256, to take enforcement action against AQA Insurance Inc. (AQA).

On 4/8/13, the party requested a hearing.

On 6/6/13, the director issued a notice of proposed action dated 6/6/13 pursuant to ORS 183.415. The notice informed the party that the director proposed to assess the party a civil penalty of \$30,000 pursuant to ORS 731.988(1).¹ The notice also informed the party that the party was entitled to a hearing, but because the party had previously requested a hearing, the party did not need to request a hearing again. The director also issued a notice of the rights of parties and procedures in this proceeding pursuant to ORS 183.413(2).

Also on 6/6/13, the director referred this case to the Office of Administrative Hearings (OAH) to schedule and if necessary conduct a hearing.

On 7/26/13, OAH issued a notice of hearing dated 7/26/13 scheduling a hearing to be conducted on 11/7/13.

On 9/10/13, OAH received from the director a motion for summary determination dated 9/6/13. The party was entitled to file with OAH a written response to the motion by 9/20/12. As described below, the party responded late on 9/30/13.

¹ ORS 731.988(1) permits the director to assess a person that is a business entity, like the party in this case, a civil penalty of up to \$10,000 per offense. An offense is each act that violates a law. In this case, the party violated four laws in at least 24 instances as described in the notice of proposed action.

On 9/17/13, the party sent an e-mail to the director saying that the copy of the director's motion did not include page 4.

On an unknown date, but presumably on or about 9/18/13, OAH received from the director a letter dated 9/17/13 saying in part "[i]t has come to our attention that the [motion] filed by this office on [9/6/13], may have been missing page 4 of the Motion.² Enclosed please find a copy of pages 1-5 of the Motion."³

On 9/24/13, the party's attorney sent an e-mail to the director's attorney asking if the director's attorney would object to the party's counsel filing with OAH a request for more time to file a response to the director's motion. The director's attorney responded that she would not object but would let OAH decide whether to grant a request. The party's attorney stated that he would request more time. As described below, the party did not request more time, but instead, responded late on 9/30/13.

On 9/26/13, OAH granted the motion and issued a proposed order. The proposed order found that the party committed all of the violations alleged, and recommended that the notice of proposed action be affirmed and that the director take the action proposed in the notice. The party was entitled to file with the director written exceptions to the proposed order by 10/28/13. As described below, the party timely filed exceptions on 10/17/13.

On 9/30/13, OAH received from the party a letter dated 9/25/13, postmarked 9/26/13, saying in part:

Enclosed is [the party's response to the director's motion]. I do acknowledge that this is later than our originally agreed filing dated of September 20th and apologize for any inconvenience. Please recall that my copy of the agency's original Motion was missing Page 4, and unfortunately I did not notice this until a few days prior to that deadline. Due to other pressing client matters, it was difficult to find alternative times to draft these pleadings.

² The complete motion consisted of five numbered pages, a certificate of service, and the supporting evidence. The law and facts in the motion were the same as in the notice of proposed action dated 6/6/13 which the party received on 6/7/13 at 9:45 AM and the party's attorney received at least by 6/9/13 at 7:09 PM. All of the supporting evidence was provided by, or based on evidence provided by, the party to the director during the director's investigation of the party.

³ Although the letter said that it enclosed pages 1-5 of the motion, it actually enclosed only pages 1-4. However, upon receipt of a copy of the missing page 4, the party's copy of the motion was complete.

On 10/1/13, OAH sent a letter dated 10/1/13 to the party informing the party that OAH could not consider the party's response because the party did not timely request more time to respond to the director's motion, OAH received the response late, had ruled on the motion, and had issued the proposed order.

On 10/17/13, the director timely received from the party written exceptions to the proposed order.

The director has reviewed and considered the exceptions and is not persuaded that the director must or should take any action different than that proposed in the notice and recommended in the proposed order.

The director now makes the following final decision in this proceeding.

Findings of Fact, Conclusions of Law and Opinion

The director adopts, and incorporates herein by this reference, the findings of fact, conclusions of law, and reasoning of proposed order as the findings of fact, conclusions of law, and reasoning of this final order.

Additionally, the director finds that the party's failure to timely respond to the motion was not for good cause.

Order

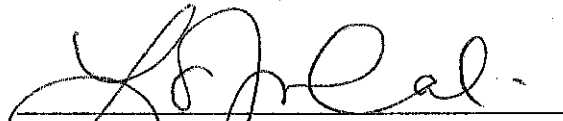
Pursuant to ORS 731.988(1), AQA is assessed a civil penalty of \$30,000. The payment shall be made in the form of a check payable to the "Department of Consumer and Business Services" for the full amount due. The payment shall be delivered or mailed to the Insurance Division at the Labor and Industries Building, 350 Winter Street NE Room 300, Salem, OR 97301-3880; or mailed to the Insurance Division at PO Box 14480, Salem, OR 97309-0405. Pursuant to ORS 183.090(2), the payment is due on, and shall be received by the Insurance Division by, the 71st calendar day after the date of this order, unless the party timely requests judicial review of the order.

Notice of Right to Judicial Review

A party has the right to judicial review of this order pursuant to ORS 183.480 and ORS 183.482. A party may request judicial review by sending a petition for judicial review to the Oregon Court of Appeals. The court must receive the petition

within 60 days from the date this order was served on the party. If the order was personally delivered to a party, then the date of service is the date the party received the order. If the order was mailed to a party, then the date of service is the date the order was mailed to the party, not the date the party received the order. If a party files a petition, the party is requested to also send a copy of the petition to the Insurance Division by delivering or mailing it to the Insurance Division at Labor and Industries Building, 350 Winter Street NE Room 300, Salem, OR 97301-3880; or mailing it to PO Box 14480, Salem, OR 97309-0405; or faxing it to 503-378-4351; or e-mailing it to mitchel.d.curzon@state.or.us.

Dated DEC 03 2013



Laura N. Cali, FCAS, MAAA
Insurance Commissioner and Chief Actuary

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STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION

In the Matter of **AQA Insurance Inc.**

) CERTIFICATE of
) SERVICE of
) FINAL ORDER
) Case No. INS 13-02-001

I certify that I sent the final order to the following person(s) on the date and by the means indicated below:

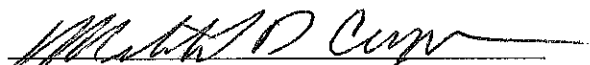
Nhat Alexander Nguyen
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Dated DEC 03 2013


Mitchel D. Curzon
Chief Enforcement Officer

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