

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.

* * * * *

(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.

(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 summary determination 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 notice or answer, if any. When a motion for summary determination is made and supported as provided in this rule, the administrative law judge or the agency must explain the requirements for filing a response to any unrepresented party or parties.

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

OAR 137-003-0580. In keeping with the rule above, I view the evidence in a light most favorable to Applicant, the non-moving party.

ISSUES

1. Whether there are material facts remaining to be determined concerning the Division's decision to deny Applicant's application for a resident insurance producer license.
2. Whether, if there are no material facts left to be decided, the Division is entitled to a ruling in its favor as a matter of law.

DOCUMENTS REVIEWED

I have reviewed the following documents before ruling on the motion: the Division's motion and Exhibits A through N; Applicant's Response with Exhibits A through L; and the Division's Reply with additional exhibits O and P. To keep the exhibits separate, I will refer to the Division's exhibits with a D prefix (Ex. D-A, D-B, etc.), and applicant's with a C prefix.

FINDINGS OF FACT

1. On February 13, 2015, Applicant submitted an application for an Oregon resident insurance producer license with the Division. As part of the application process, Applicant was required to truthfully answer several questions. The Division required her to list "all states (other than Oregon) where you hold or have held an insurance license of any kind." Applicant listed licenses in Pennsylvania, Ohio, Missouri and Texas. (Ex. D-A at 2). Applicant was also licensed in Virginia, West Virginia, Wisconsin, and "possibly others," but did not include this information in the application. (Applicant Response at 2).

2. The application also included the following questions, which Applicant answered by checking the "No" box on the form:

9. Have you ever been convicted of, or are you currently charged with, committing a misdemeanor or felony?

10. Have you or any business in which you are or were an owner, partner, officer, or director ever been involved in an administrative proceeding regarding any professional or occupational license?

"Involved" includes having a license censured, suspended, revoked, canceled, or terminated being assessed a fine, placed on probation, or surrendering a license to resolve an administrative action; being named as a party to an administrative or arbitration proceeding related to a professional or occupational license; and having a license application denied or in the act of withdrawing an application to avoid a denial. You may exclude terminations due solely to noncompliance with

continuing education requirements or failure to pay a renewal fee.

(Ex. D-A at 2; font size change in original). Applicant certified that her answers were “true and complete to the best of my knowledge and belief.” (*Id.* at 3).

3. Applicant was convicted of Identity Theft in Pennsylvania in 2008. Contemporaneous police reports indicate that Applicant’s landlord accused Applicant of forging his signature on a letter by which Applicant was seeking benevolence donations from a local church to pay her rent. (Ex. D-O at 6). Applicant pled guilty to the charge. As a result of a plea bargain on the Identity Theft issue, the State withdrew another Identity Theft charge, a Forgery charge, and a Theft by Deception charge. Applicant was placed on three years’ probation. (Ex. D-D at 2).

4. In February 2013, Butler County (Pennsylvania) issued a bench warrant against Applicant in the identity theft case, based upon her failure to appear at a hearing on February 8, 2013. The warrant was still outstanding at the time the Division performed the background check. ((Ex. D-E at 2 and 6).

5. Applicant was convicted of Assault in 2012. Her plea bargain led to dismissal of Tampering, Reckless Endangerment, and Filing a False Report charges. (Ex. D-C at 5).

6. On July 10, 2014, the Commonwealth of Virginia revoked Applicant’s license to act as an insurance agent in Virginia because of her failure to apprise the Commonwealth of her business address and because of her failure to report an administrative action against her insurance license by the State of California. (Ex. D-F).

7. Applicant applied for an insurance producer license in the State of California, but the license was denied because of her criminal history and for making misstatements on her application. (Ex. D-J).

8. On March 17, 2014, the Insurance Commissioner of the State of West Virginia revoked Applicant’s producer license in that state, concluding in part:

It is consequently ORDERED that Sandra Diesel be, and she is hereby, found guilty of violations of §§33-12-24(b)(1), (3), and (10) of the West Virginia Code and that her West Virginia non-resident producer license be, and the same is hereby, revoked. It is further ORDERED that said Respondent pay a civil penalty to the State of West Virginia in the amount of \$100.00 and that she pay the taxable costs of this proceeding.

(Ex. D-M at 1).

9. On October 9, 2015, Applicant wrote a response to the motion which stated in part:

The Director moves that my license should be denied pursuant to ORS 744.074 for providing incorrect, misleading, incomplete, or materially untrue info on my

license application as follows: (Please see Exhibit A-my license application).

1. Licensing: Mr. Amesbury states I was licensed in Pennsylvania as a resident license from January 7, 2007 to January 15, 2015. This allegation is incorrect. I am currently licensed in Pennsylvania until November 30, 2015. See attached Exhibit B

Therefore I answered this question honestly, and did NOT provide incorrect, misleading, incomplete, or materially untrue info on my license application.

2. Line item 8 asked “where you hold or have held an insurance license of any kind”. I replied “PA, OH MI, TX”. I did not mislead that I was previously licensed in other states. I simply misread the question and answered the question as whether or not I currently hold an insurance license in other states.

The fact is, I have an insurance license in several states, including WI, WV, VA and possibly others. I hold several nonresident licenses in other states, on a need be basis to better serve my clients. When I relocated to CA due to Domestic Violence, I simply non-renewed many of those licenses as I no longer sold or solicited business in those states.

I was also advised by the Domestic Violence Coalition to non-renew any licenses I previously carried, as this could potentially put me in [harm’s] way should my ex-husband be able to locate me through those insurance licenses.

In 2013- I rescinded my application to California, as I was under a [doctor’s] care for PTSD as a result of the Domestic Violence. At that time, my ex-husband again located me via an insurance website, and was again making threats.

This question was not answered to provide incorrect or misleading information, but rather how I interpreted the question. * * *

* * * * *

3. Line item 9 asked “have you ever been convicted of, or are you currently charged with, committing a misdemeanor or felony”? I answered “No.”

At the time I applied for my resident insurance license, I consented to a criminal background check and fingerprints. Through the Director’s investigation, a 2009 Identity Theft & 2012 Simple Assault was found.

Although these are both misdemeanors, I answered “No” because I was advised that both of these convictions were expunged after one year, therefore the correct answer was “No.”

I had no knowledge that there was a misdemeanor or felony due to my new

identity, until the Director released this information. Therefore I answered the question honestly, and did NOT provide incorrect, misleading, incomplete, or materially untrue info on my license application.

I also answered “No”, because I was advised by my attorney, therapist, Domestic Violence Coalition, and Community Outreach that once I entered [the] Domestic Violence Program, that all previous charges and convictions would be expunged and would not exist on my record due to my new social security and identity.

(Applicant Response at 1-3; emphasis in original).

CONCLUSIONS OF LAW

1. There are no material facts remaining to be determined concerning the Division’s decision to deny Applicant’s application for a resident insurance producer license.
2. The Division is entitled to a ruling in its favor as a matter of law.

OPINION

The Division contends that it appropriately denied Applicant’s application for a resident insurance producer license because Applicant: 1) provided incorrect, misleading, incomplete or materially untrue information in her application, and 2) was convicted of a crime involving dishonesty. The Division has the burden of proof, and has established both violations.

The Legal Standard

By statute, the Director of the Department of Consumer and Business Services (DCBS), the Division’s parent agency, has the authority to discipline licensees and to deny applications for producer licenses. ORS 744.074(1) states in part:

Authority of director to place licensee on probation or to suspend, revoke or refuse to issue or renew license. (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:

- (a) Providing incorrect, misleading, incomplete or materially untrue information in the license application.

* * * * *

- (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.

(Emphasis added). In this case, as noted, the Division has denied the application because of Applicant's failure to answer the application questions truthfully, and because of her criminal conviction for identity theft.

Determining Which Facts are Material

A Motion for Summary Determination may only be granted when there are no material facts left to be decided. In Applicant's Response, she raises many questions and disputes many of the allegations made by the Division. For instance:

- She claims the Division was incorrect concerning the time period of her licensure in Pennsylvania;
- She claimed to have misread the question about which states she was licensed in;
- She admits that she was licensed in several other states that she did not include in her application;
- She claims to have simply "non-renewed" her licenses in West Virginia and Virginia when she moved to California to avoid domestic violence;
- She claims to have withdrawn ("rescinded") her application in California because of PTSD due to domestic violence, and claims no knowledge of the administrative actions in the other states;
- She claimed that she said "no" to a previous criminal history because she was told the crimes would be expunged after one year, and would not show up with her "new social security and identity." She claims her identity was changed when she moved across country.
- She claims that the identity theft was a false allegation by her ex-husband and abuser, and that "a plea agreement is in no way an admission of guilt."

(Applicant Response). Applicant has also presented letters from her supporters in the insurance industry, who are impressed with her success in escaping from domestic violence.

However, recognizing Applicant's unfortunate history as a victim of domestic violence, the facts and arguments she alleges are not material because they do not address the facts of the Division's charges against her.

First, the evidence is uncontroverted that the information Applicant provided on her application was incorrect, misleading, incomplete and materially untrue. Applicant was told to list *all* of the states where she had been licensed to sell insurance, and she failed to tell the Division about her licenses in West Virginia, Virginia, and Wisconsin, not to mention her attempt to obtain a license in California. Applicant contended that she "simply misread" the question, but the question was quite clear. Her application was incomplete.

Applicant's application was also misleading and untrue. Applicant denied any criminal convictions. She failed to disclose to the Division her convictions for Identity Theft and Assault. Applicant denied any administrative actions against her insurance licenses, and she claimed

surprise at the revocations of her insurance licenses in West Virginia, Virginia and California. However, these alleged surprises¹ are precisely the reason it was important for her to tell the Division about all of the states where she had been licensed.

Applicant's argument that she was told her crimes would be expunged after one year (an allegation she claims came from her attorney, her therapist and several domestic violence groups) is disputed by the record showing that she was on probation for at least three years—and the fact that, even as of February 2013, the court was still exercising jurisdiction over the case.

Finally, again without doubting her domestic violence history, her claims of a change of identity—and her belief that her criminal charges would not follow her—appear baseless. Both before and after her “identity change,” her name was Sandra Diesel. That was the name used in 2008, 2012, and currently. Again, there is no statement by any individual supporting her notion that she was no longer responsible for her crimes because she changed her social security number. Applicant had an obligation to present accurate information to the Division, and she did not do so.

The identity theft conviction was important to the Division, and is a second ground for its denial of her license. As the Division argues:

By its nature, the crime of identity theft involves dishonesty and/or breach of trust. Under ORS 165.800(1), “[a] person commits the crime of identity theft if the person, with the intent to deceive or defraud, obtains, possesses, transfers, creates, utters or converts to the person's own use the personal identification of another person.”

(Motion at 7). Although the conviction occurred in Pennsylvania, this definition of identity theft is a common one. The police reports indicate that Applicant signed a letter on behalf of her landlord, a letter that her landlord had not authorized, in order to obtain money from a church. This was a deceptive, dishonest act.²

Applicant argues that a plea agreement is not an indication of guilt. However, a plea agreement does involve a *conviction*, and the Division's application asked about convictions, not guilt. The evidence is beyond dispute that Applicant was convicted of a crime involving dishonesty.

Analysis and Ruling

Examining the facts in a light most favorable to Applicant, I must agree with the Division that there are no material facts left to be decided. Furthermore, given the clear authority granted to the director to deny applications for a number of reasons—including a criminal history and a failure to answer application questions truthfully—the record establishes that the Division is

¹ It is noteworthy that the states with actions against her licenses are the very states that Applicant failed to divulge on the application.

² In her argument, Applicant contends that it was a dispute with her ex-husband about ownership of property. The police reports show otherwise.

entitled to a ruling in its favor as a matter of law.

Consequently, the motion for summary determination is granted and this ruling is issued as a Proposed Order. The November 18, 2015 hearing is cancelled.

ORDER

I propose the Department of Consumer and Business Services, Insurance Division issue the following order:

That the Division's April 23, 2015 Notice of Proposed Action (denying Applicant's application for a resident Oregon insurance producer license) be AFFIRMED.

Rick Barber

Administrative Law Judge
Office of Administrative Hearings

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 those 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. You may send exceptions via email to mitchel.d.curzon@state.or.us, or via mail to:

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

CERTIFICATE OF SERVICE

On the 29th day of October 2015, I mailed the foregoing Ruling on Motion for Summary Determination and Proposed Order in Reference No. **1503003**.

BY FIRST CLASS MAIL:

Sandra L Diesel
PO Box 1353
Jacksonville OR 97530

David J Amesbury
Insurance Division
350 Winter St NE
Salem OR 97301-3883

Tyler Anderson
Assistant Attorney General
Dept. of Justice
1162 Court Street NE
Salem, OR 97301-4096

Lucy M Garcia
Hearing Coordinator
Office of Administrative Hearings

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

**In the Matter of the Application of
SANDRA L. DIESEL for a Resident
Oregon Insurance Producer's
License**

FINAL ORDER

Case No. INS 15-03-003

The Director of the Oregon Department of Consumer and Business Services ("Director"), by and through the Insurance Division, hereby adopts and incorporates by this reference, with the modification set out below, the attached Ruling on Motion for Summary Determination and Proposed Order ("Proposed Order"), proposing that the application of Sandra L. Diesel ("Diesel") for a resident Oregon insurance producer's license be denied.

ADDITIONAL CONCLUSION OF LAW

The Director adopts the Conclusions of Law set out in the attached Proposed Order and adopts the following additional conclusion of law:

Either of the described bases for denial set out in the Proposed Order, namely 1) Diesel's provision of incorrect, misleading, incomplete or materially untrue information in her application, under ORS 744.074(1)(a); and 2) Diesel's conviction for a crime of dishonesty, under ORS 744.074(1)(f), is sufficient, standing alone, to justify the Director's denial of Diesel's application for an insurance producer license. This conclusion is based upon the cited statutes, upon the extent and significance of the misstatements in Diesel's application, and upon the nature of Diesel's conviction, all as found by the Administrative Law Judge in the attached Proposed Order.

EXCEPTION BY DIESEL

Diesel was given notice of the opportunity to submit to the Director written exceptions to the Proposed Order, and written notice of that opportunity was

included in the Proposed Order. The Director received and reviewed the materials submitted by Diesel, dated November 5, 2015, consisting of a copy of the Proposed Order, a copy of Diesel's Exhibit C that was previously filed with the Office of Administrative Hearings, and a letter stating the following exception: "There are material facts remaining, and I respectfully request a hearing." The Director declines to modify the Proposed Order based upon Diesel's exception.

Based upon the foregoing, IT IS HEREBY ORDERED THAT Diesel's application for an Oregon resident insurance producer license is DENIED.

Dated this 15 day of December, 2015.

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

NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review is pursuant to the provision of ORS 183.482 to the Oregon Court of Appeals.