STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION

In the Matter of: **MARYMARIE MASON**, Respondent.	Agency Case No. INS 16-0370 OAH Case No. 2017-ABC-00240 FINAL ORDER TO CEASE AND DESIST AND ORDER DENYING LICENSE **THIS IS A FINAL ORDER**

HISTORY OF THE CASE

On December 23, 2016, the Department of Consumer and Business Services (DCBS), Division of Financial Regulation (DFR or Division) issued an Order to Cease and Desist, Notice of Proposed Denial of License Application and Right to an Administrative Hearing (Notice of Proposed Denial) to Marymarie Mason (Respondent). On January 3, 2017, Respondent requested a hearing.

On January 5, 2017, the Division referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Dove L. Gutman to preside at hearing.

On February 24, 2017, ALJ Gutman convened a prehearing conference. Assistant Attorney General Tyler Anderson represented the Division. Respondent did not appear. During the prehearing conference, ALJ Gutman set dates for the Division to file a Motion for Summary Determination (May 5, 2017), and Respondent to file a Response (May 19, 2017). ALJ Gutman also scheduled the hearing for July 13, 2017.

On May 5, 2017, Mr. Anderson filed the Division's Motion for Summary Determination (MSD), and Exhibits A through E.[1] Respondent did not file a Response.

On May 22, 2017, ALJ Gutman closed the record and took the matter under advisement.

Now, therefore, having reviewed the entire record in the matter, the Director issues the following Findings of Fact, Conclusions of Law and Final Order, consistent with that proposed by ALJ Gutman, and Notice of Right to Judicial Review.

[1] Exhibit B contained personal information that had not been redacted. On May 15, 2017, Mr. Anderson, on the Division's behalf, resubmitted Exhibit B with redactions.

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The Director adopts ALJ Gutman's recommended decision and issues this Final Order, without modification of ALJ Gutman's Findings of Fact.

ISSUES

1. Whether there are any genuine issues as to any material facts and, if not, whether the Division is entitled to a favorable ruling as a matter of law. OAR 137-003-0580.

2. Whether Respondent provided incorrect, misleading, incomplete or materially untrue information in the license application. ORS 744.074(1)(a).

3. Whether Respondent attempted to obtain a license through misrepresentation or fraud. ORS 744.074(1)(c).

4. Whether Respondent shall be ordered to cease and desist from violating any provision of the Insurance Code or the administrative rules promulgated thereunder. ORS 731.252(1).

5. Whether Respondent's application for a resident insurance producer license may be denied. ORS 744.074(1)(a), (c).

DOCUMENTS CONSIDERED

The following documents were reviewed and considered in this matter: The Division's Motion for Summary Determination, Exhibits A through E, and the pleadings.

FINDINGS OF FACT

Application

1. On October 14, 2016, Respondent submitted an application for a resident insurance producer license with the Division. (Ex. A.) On the application, Respondent answered "No," to background question (1)(a), which asked, "Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor?" (*Id*. at 2.)

Criminal background

2. On February 3, 2003, Respondent was convicted of Battery Domestic Violence, (NRS 200.485), a misdemeanor, in Nye County, Nevada. (Ex. B at 5.)

3. On April 15, 2003, Respondent was convicted of Battery, (NRS 200.481), a misdemeanor, in Nye County, Nevada. (Ex. B at 5.)

4. On June 8, 2009, Respondent was convicted of Stalking, (Wyoming Statute 6-

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2-506), a misdemeanor, in Sweetwater County, Wyoming. (Ex. B at 10.)

5. On September 13, 2016, Respondent was convicted of Harassment, (NRS 200.571), a misdemeanor, in Lincoln County, Nevada. (Ex. C.)

Other information

6. On or about November 2 and November 14, 2016, Respondent provided statements to the Division, admitting that she was the subject of the misdemeanor convictions. (Ex. D.)

7. On December 23, 2016, the Division issued Respondent an Order to Cease and Desist, Notice of Proposed Denial of License Application and Right to an Administrative Hearing. (Ex. E.)

CONCLUSIONS OF LAW

1. There are no genuine issues as to any material facts and the Division is entitled to a favorable ruling as a matter of law.

2. Respondent provided incorrect, misleading, incomplete or materially untrue information in the license application.

3. Respondent attempted to obtain a license through misrepresentation or fraud.

4. Respondent shall be ordered to cease and desist from violating any provision of the Insurance Code or the administrative rules promulgated thereunder.

5. Respondent's application for a resident insurance producer license may be denied.

OPINION OF ALJ GUTMAN

1. Standard of Review for Motion for Summary Determination

OAR 137-003-0580 addresses motions for summary determination. It 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

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> 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 * * *.

After reviewing the evidence in the light most favorable to the nonmoving party, I find that there are no genuine issues as to any material facts and the Division is entitled to a favorable ruling as a matter of law.

2. Denial of application

ORS 744.074 is titled "Authority of director to place licensee on probation or to suspend, revoke or refuse to issue or renew license" and provides, in part:

> (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.
>
> *****
>
> (c) Obtaining or attempting to obtain a license through misrepresentation or fraud.

As indicated above, the Director of DCBS may refuse to issue an insurance producer license to an applicant for providing incorrect, misleading, incomplete or materially untrue information in the license application, and/or obtaining or attempting to obtain a license through misrepresentation or fraud.

"Misrepresentation" is defined as "an untrue, incorrect, or misleading

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representation." *Webster's Third New Int'l Dictionary* 1445 (unabridged ed 2002).

On October 14, 2016, Respondent submitted an application for a resident insurance producer license with the Division. On the application, Respondent answered "No," to background question (1)(a), which asked, "Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor?"

However, at the time of the application, Respondent had four misdemeanor convictions (Battery Domestic Violence, Battery, Stalking, and Harassment) on her record, the most recent conviction taking place approximately 30 days before Respondent submitted her application to the Division. In addition, in response to an inquiry from the Division, Respondent admitted that she was the subject of the misdemeanor convictions, demonstrating awareness of her criminal convictions.

I find, by a preponderance of the evidence that Respondent provided incorrect, misleading, incomplete or materially untrue information in the license application, in violation of ORS 744.074(1)(a). I further find that Respondent attempted to obtain a license through misrepresentation of her criminal past, in violation of ORS 744.074(1)(c).

Therefore, the Director of DCBS may deny Respondent's application for a resident insurance provider license. ORS 744.074(1).

3. Order to Cease and Desist

ORS 731.004 provides:

> ORS chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 743B, 744, 746, 748 and 750 may be cited as the Insurance Code.

ORS 731.252 is titled "Cease and desist orders" and provides, in part:

> (1) Whenever the Director of the Department of Consumer and Business Services has reason to believe that any person has been engaged or is engaging or is about to engage in any violation of the Insurance Code, the director may issue an order, directed to such person, to discontinue or desist from such violation or threatened violation. ***.

Pursuant to the authority cited above, whenever the Director of DCBS has reason to believe that any person has engaged or is engaging or is about to engage in any violation of the Insurance Code, the director may issue an order, directed to such person, to discontinue or desist from such violation or threatened violation.

As previously determined, Respondent violated ORS 744.074(1)(a) and (c), a statute that is part of the insurance code. As such, the Director may order that Respondent cease and desist in violating the insurance code.

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ORDER

The foregoing is incorporated. The Director issues the following Orders:

1. As authorized by ORS 731.252(1), the Director ORDERS Licensee to CEASE AND DESIST from violating any provision of the Insurance Code or the administrative rules promulgated thereunder.

2. In accordance with ORS 744.074(1)(a) and (c), the Director DENIES Respondent's resident insurance producer license for providing incorrect, misleading, incomplete and materially untrue information in the license application and for attempting to obtain a license through misrepresentation or fraud.

This Order is a FINAL ORDER under ORS 183.310(6)(b). Subject to that provision, the entry of this Final Order does not limit other remedies that are available to the Director under Oregon law.

SO ORDERED this 29th day of June, 2017 in Salem, Oregon.

PATRICK M. ALLEN, Director
Department of Consumer and Business Services

/s/ David Tatman
David C. Tatman, Chief of Enforcement
Division of Financial Regulation

NOTICE OF RIGHT TO JUDICIAL APPEAL

You are entitled to judicial review of this order in accordance with ORS 183.482. You may request judicial review by filing a petition with the Court of Appeals in Salem, Oregon, within 60 days from the date this order is served.

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