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

In the Matter of ERIC F. ZARATE, Respondent.	Case No. INS-20-0035 FINAL ORDER TO CEASE AND DESIST, AND ORDER ASSESSING CIVIL PENALTIES, ENTERED BY DEFAULT

On April 30, 2020, the Division of Financial Regulation ("Division") acting on behalf of the Director of the Department of Consumer and Business Services for the State of Oregon ("Director"), served Notice of Administrative Order INS-20-0035 ("Notice") on Eric F. Zarate ("Respondent"). The Notice provided notice that the Director issued an order to cease and desist and proposed an order assessing civil penalties against Respondent for violations of Oregon Revised Statutes ("ORS") chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 744, 746, 748 and 750 and the rules promulgated thereunder ("Insurance Code").

The Notice offered Respondent an opportunity for a hearing if requested within 20 days of the Notice. The Notice further informed Respondent that if a hearing were not conducted because Respondent did not timely request a hearing or otherwise defaulted, then the designated portion of the Division's file and all materials submitted by Respondent in this case would automatically become part of the contested case record for the purpose of proving a prima facie case.

The Director did not receive from Respondent a request for a hearing and did not conduct a hearing.

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The Director finds that the record of this proceeding proves a prima facie case. Now, therefore, after considering the relevant portions of the Division's file relating to this matter, the Director finds and orders as follows.

FINDINGS OF FACT

The Director FINDS that:

1. Respondent is a Texas resident with his last recorded business address at 16990 Dallas Parkway, Suite 150, Dallas, TX 75248. Respondent applied for an Oregon nonresident insurance producer license ("license") on March 26, 2019 using the National Insurance Producer Registry (NIPR) website.

2. Respondent tendered payment of the fee for his license using an online check and upon submittal of the check was issued his license. After the issuance of the license, Respondent's bank rejected Respondent's e-check for nonsufficient funds ("NSF").

3. On April 19, 2019 and June 11, 2019, NIPR contacted Respondent by email at the email address for Respondent on record with NIPR (eric.zarate75@gmail.com) to collect payment but received no response from Respondent.

4. On February 20, 2020, NIPR notified the Oregon Division of Financial Regulation ("Division") about the unpaid license fee. On February 23, 2020, the Division sent an email ("February 24th email") to Respondent stating that Respondent still owed the license fee, directing Respondent to make payment through NIPR, and warning that unless payment was received before March 9, 2020, the matter would be referred for enforcement action.

5. On April 1, 2020, the Division attempted to contact Respondent by telephone at the business phone number on record with the Division ((408) 561-5683). The call went to voicemail and the Division left a voicemail message ("April 1 voicemail") requesting Respondent call the Division back.

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6. On April 6, 2020, having not received any contact from Respondent, the Division again attempted to contact Respondent by telephone at the phone number on record with the Division. The employee again left a voicemail message ("the April 6 voicemail") and followed up with an email ("the April 6 email") to the business email address on record with the Division advising Respondent that the Division was trying to make contact to secure payment of the license fee and that if Respondent did not make contact with the Division before April 8, 2020, the Division would begin administrative proceedings to revoke Respondent's license and impose civil penalties.

7. Respondent never responded to the February 24 email, the April 1 voicemail, the April 6 voicemail, or the April 6 email.

8. On May 28, 2020, Respondent paid his nonresident producer license fee. This payment was made approximately one month after issuance of the Notice Order, and approximately 14 months after the license fee was originally due.

CONCLUSIONS OF LAW

The Director CONCLUDES that:

9. Under ORS 731.252(1), whenever the Director has reason to believe that any person has been engaged, is engaging, or is about to engage in any violation of the Insurance Code, the Director may issue an order to discontinue or desist from such violation or threatened violation.

10. ORS 744.059(1)(d) requires insurance producer licensees to pay "all applicable fees" for their license.

11. Respondent violated ORS 744.059(1)(d) by tendering payment with an online check that was returned for NSF and by failing to subsequently pay the license fee.

12. ORS 731.988(1) authorizes the Director to impose civil penalties against an individual insurance producer an the amount up to $1,000 per violation for any violation of the Insurance Code, including violations of ORS 744.059(1).

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ORDERS

The Director ISSUES the following ORDERS:

13. Pursuant to ORS 731.252(1) the Director hereby ORDERS Respondent, and all entities owned or controlled by Respondent, his successors and assignees, to CEASE AND DESIST from violating any provision of the Insurance Code, or any administrative rule adopted by the Director under those statutes.

14. The Director, pursuant to ORS 731.988(1), hereby assesses CIVIL PENALTIES against Respondent in the amount of $300 for violating ORS 744.059(1)(d) by failing to pay the licensing fee for his license.

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

NOTICE OF RIGHT TO JUDICIAL APPEAL

Judicial review of final orders in contested cases is governed by ORS 183.482. Respondent 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.

IT IS SO ORDERED.

Dated this 23rd day of November, 2020.

Andrew R. Stolfi, Director
Department of Consumer and Business Services

/s/ Dorothy Bean
Dorothy Bean, Chief of Enforcement
Division of Financial Regulation

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