

FILED

In the Matter of

JOHN D. LIZANA,

Licensee.

) Docket No. 11 – 0284

)

) **OFFICE OF THE INSURANCE**

) **COMMISSIONER'S**

) **HEARING BRIEF**

2011 05 23 P 1:50

Harrington, M.D., D.C.
Patricia D. Peterson
Chief Hearing Officer

INTRODUCTION

On May 18, 2011, Mr. Lizana applied online to the Washington Insurance Commissioner (“OIC”) for a non-resident Washington insurance producer license. When he did so, he chose to answer “no” to the question “Have you ever been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration?”

The answer should have been “yes.”

In 2001 and 2004, the Alabama Department of Insurance issued two orders against Mr. Lizana. Each was styled as a settlement agreement and order. Each required Mr. Lizana to pay what essentially appears to be a fine – \$300 and \$250, respectively. One fined Mr. Lizana for failing to act in response to, or even respond to, that department’s license renewal correspondence, and its notice of intent to suspend his license. This resulted in the actual suspension of Mr. Lizana’s license, apparently for more than a year. The other order fined Mr. Lizana for doing what he did here on May 18, 2011 – giving an incorrect, misleading, incomplete, and/or materially untrue answer that wasn’t candid about the prior action the Alabama department had taken against his license. Both orders expressly referenced that Mr. Lizana’s Alabama insurance license had been “suspended.” Mr. Lizana signed both orders.

It is an important regulatory concern to OIC for prospective licensees to be completely candid when asked to disclose information in a license application. Mr. Lizana was not. He knew about his obligation to disclose the prior actions against his license, and he admits he had made those disclosures before. In answering “no,” Mr. Lizana provided incorrect, misleading, incomplete, and/or materially untrue information, in violation of RCW 48.17.530(1)(a).

FACTS¹

In 1997, John D. Lizana held an Alabama license to solicit and transact life and disability insurance in Alabama.

On or about November 28, 1997, the Alabama Department of Insurance ("AL DOI") mailed a "License Renewal Notice" to Mr. Lizana. Exh. 1 at p. 1 ¶2. The notice advised Mr. Lizana that his licensing fee was due by December 28, 1997 without added fee, or, within 30 days after that date if it included a \$50 late fee. *Id.* at p. 1 ¶3.

After the December 28, 1997 deadline passed, AL DOI next mailed to Mr. Lizana (1) a "Notice of Intent to Suspend" Mr. Lizana's "licensing privileges for failure to renew" and (2) a second "License Renewal Notice." *Id.* at p. 1 ¶4. On February 23, 1998, Mr. Lizana's license was suspended. Exh. 3 at p. 2 ¶4.

On May 25, 2001,² AL DOI entered an order requiring Mr. Lizana to pay "administrative fees of \$300," finding that after Mr. Lizana failed to renew his license, "all licensing privileges were suspended as of the date of the Suspension Order." *Id.* at p. 1 ¶¶6-7. Mr. Lizana signed that document, indicating that he acknowledged, approved, and accepted it. *Id.* at p. 3.

In 2003, Mr. Lizana completed an AL DOI License Renewal Form. Exh. 2. On it, he answered "no" to the question "Have you ever had an insurance license denied, suspended or revoked by any insurance department or had a complaint issued against you by any insurance department." *Id.* On December 5, 2003, Mr. Lizana wrote to AL DOI, indicated that he is sorry for any inconvenience that he may have caused, and was "unaware that my insurance license being canceled (due to non-renewal) was considered 'suspended.'" *Id.* He claimed he would have answered the question with a "yes" answer instead of a "no" "had I known" of the

¹ Except as indicated, "Exh." and "Exhibit" refer to the exhibits attached and incorporated into the Declaration of Alan Michael Singer, filed herewith.

² While the order indicates the date is May 25, 2000, it appears that must be a scrivener's error. The order was not executed by AL DOI counsel or Mr. Lizana until May 24, 2001 and May 22, 2001, respectively. *See* Exh. 1 at p. 3.

suspension. *Id.*

On March 16, 2004,³ AL DOI entered an order requiring Mr. Lizana to pay AL DOI's "cost, expenses and attorney fees" in the amount of \$250. Exh. 3. The order was premised upon Mr. Lizana's failure to fully and truthfully answer the question that had asked whether Mr. Lizana had "EVER had an insurance license denied, suspended or revoked by any insurance department or had a complaint issued against you by any insurance department." (Emphasis is as it appeared in the original AL DOI order.) *Id.* at p. 1 ¶2. Mr. Lizana signed that document, indicating that he acknowledged, approved, and accepted it. *Id.* at p. 3.

On May 18, 2011, Mr. Lizana submitted an online non-resident Washington insurance producer license application to OIC. Exh. 4A. He answered "no" to the question "[h]ave you ever been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration?" *Id.*⁴ The next day, OIC learned of AL DOI's March 16, 2004 order for making a misstatement on his Alabama license application. Exh. 5.

On June 10, 2011, Mr. Lizana wrote to OIC, in pertinent part, as follows:

In 2004, I didn't renew my license in Alabama. I went to Alabama a year later and tried to renew my license and answered the question about having a suspended license "no." The Alabama Insurance Commissioner said I should have answered "yes" to that question and he told me that I should have notified them that I was not renewing my license. I did not know that they suspended my license because of non-renewal, therefore, I answered that question "no." The State of Alabama fined me \$250 and, everytime I have had to contract with another state, I have had to send the documentation of what happened and I never had any trouble since then.

A year ago, I contacted the Insurance Commissioner of Alabama to see if I needed to continue to answer that particular question "yes" and he told me that I did not have to, since the last part of that question does not pertain to the renewal of your license. So, for the past year, I have been answering that question "no", with no trouble. I applied to Washington State and Idaho and answered "no" to that question, as I was told by the Alabama Insurance Commissioner that I could. Idaho accepted my application with no trouble at all.

³ While the order indicates the date is March 16, 2003, it appears that must be a scrivener's error. The order was not executed by AL DOI counsel or Mr. Lizana until March 15, 2004 and March 5, 2004, respectively. See Exh. 3 at p. 3.

⁴ The complete text of the question, as it appeared on Mr. Lizana's application, is attached as Exhibits 4B and 4C.

Exh. 6. On January 26, 2012, after OIC proposed that Mr. Lizana pay a \$250 fine, Mr. Lizana demanded a hearing. Exh. 7.

ARGUMENT AND AUTHORITY

Mr. Lizana's "no" answer on his May 2011 license application to OIC was incorrect and inaccurate. RCW 48.17.530(1)(a) prohibits Mr. Lizana from providing "incorrect, misleading, incomplete, or materially untrue information in the license application." By answering "no" when Mr. Lizana knew or should have known of two prior orders against him in 2001 and 2004, each of which required him to pay \$300 and \$250, respectively, Mr. Lizana violated RCW 48.17.530(1)(a).

OIC may take a wide array of actions for a violation of RCW 48.17.530(1)(a), ranging from the levying of a fine up through and including license revocation. *See* RCW 48.17.530, 48.17.560. Further, in prior cases involving this sort of violation, OIC has taken a wide range of regulatory actions, including revocation. Exh. 8. Here, the OIC deliberated Mr. Lizana's violation and the circumstances surrounding it, and its request to impose a \$250 fine is both well within OIC's authority and not inconsistent with other actions for this sort of violation. *See id.*

CONCLUSION

The evidence establishes that Mr. Lizana violated RCW 48.17.530(1)(a), and that a fine of \$250 is within OIC's authority and appropriate. At the conclusion of this hearing, OIC respectfully requests that this Hearing Officer enter an order concluding that the Commissioner will impose a fine of \$250 against Mr. Lizana for his violation of RCW 48.17.530(1)(a).

Respectfully submitted this 22 day of March, 2012.



Alan Michael Singer
OIC Staff Attorney