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STATE OF ALASKA
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
BEFORE THE DIVISION OF INSURANCE

In the Matter of)
)
Tyler Cook)
Aurora Oldsmobile,)
Respondent.)
_____)

Case No. D96-16

Findings of Fact, Conclusions of Law and Proposed Decision

An Administrative Hearing was held in the above matter on December 19, 1996. Mr. Cook appeared by telephone from Fairbanks, Alaska. The Division of Insurance was represented by Signe Andersen. Barbara Karl was also present. Based on the evidence and testimony presented, the Administrative Hearing Officer makes the following Findings of Fact, Conclusions of Law and Proposed Decision.

Findings of Fact

1. The State contends that Mr. Cook knowingly transacted insurance business after he was notified of the lapse of his license and before his license was reinstated. The Division assessed a civil penalty in the amount of \$1,528.22 which equaled the amount of commissions earned during the unlicensed period; \$750 was suspended. The unsuspended portion of the penalty was payable within one year from the date they entered into a formal agreement. Ex. 16

2. The evidence shows that in 1996 Mr. Cook had an individual in a firm license through

STATE OF ALASKA
Department of Commerce and Economic Development
Administrative Hearing Officers
3601 C Street, Suite 724
Anchorage, AK 99503
Phone: (907) 269-8170 Fax: (907) 269-8146

1 Aurora Oldsmobile. The Division of Insurance keeps a copy of all renewal notices that are
2 sent and regularly mails the renewal notice to the licensee's last known address. The notice
3 is color coded by a yellow form to indicate it is an individual in a firm license.

4 3. The Division's records show that there was no problem in mailing out the renewal
5 notice to Mr. Cook. Nor are there any telephone calls from him. The expiration date on his
6 license for an individual in a firm was April 16, 1996. Aurora Oldsmobile's firm license was
7 renewed in a timely fashion on February 7, 1996.

8 4. After April 16, 1996, Cook's license expired, which generated a lapse notice from the
9 Division.

10 5. After receiving an April 22, 1996 letter from the Division, Cook requested and was
11 faxed a renewal notice. He completed and returned the renewal form dated May 1, 1996.

12 6. The State also required that he include a notarized statement reflecting the business
13 that was transacted during the period in which he did not hold a valid Alaska Insurance
14 license, which Mr. Cook did. This was the basis on which the Division then issued a fine.

15 7. Mr. Cook argued that he had, in fact, talked with the Division by telephone prior to the
16 time his license lapsed April 10, 1996. Cook stated that he had a conversation with Mr. Greg
17 Brock in which Brock said he would mail out the renewal form. Mr. Cook was waiting for it
18 to come, but it did not. Cook stated that the April 1996 telephone records from Aurora
19 Oldsmobile would show that there was a call from that number to the Juneau Division of
20 Insurance office--465-2515—which would confirm his statements. The record was left open
21 through January 6, 1996 to accommodate Mr. Cook. The Administrative Hearing Officer did
22 not receive any records from Mr. Cook or Aurora Oldsmobile which confirmed this statement.

23 8. Mr. Cook argued that there should have been a certified notice from the Division and
24 since there was not, it was unfair to impose any fine or penalty.

25 9. The Division argued that Mr. Cook was well aware of the general procedure for
26 renewing licenses and that Aurora Oldsmobile satisfactorily completed the process without
27 any problem. Mr. Cook himself had also completed the process in previous years. The
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1 Division argued that Mr. Cook had transacted unlicensed activity knowingly and it was within
2 the purview of the Division to issue a modest fine. The Division did agree that Mr. Cook had
3 been very compliant and responsive in response to requests for documents.

4 Conclusions of Law

5 Based on the foregoing Findings of Fact the Administrative Hearing Officer makes the
6 following Conclusions of Law.

7 1. AS 21.27.010(a) states that "a person may not act as a representative to be an
8 insurance producer... in this state or relative to a subject resident, located, or to be performed
9 in this state unless licensed under this chapter." Further, AS 21.27.440(a) provides for a civil
10 penalty of not more than \$10,000 for each violation or denial, non-renewal, suspension or
11 revocation of a license.

12 2. The reinstatement of Mr. Cook's lapsed insurance license was appropriate. However,
13 the fact that business was transacted during the time that his license was lapsed is a clear
14 violation of statute. The amount of fine is discretionary with the Division, but should bear
15 some relation to the total amount of business transacted. The premiums collected during
16 that period of time total \$1,528.22. The Division has proposed a fine of that amount with
17 \$750.00 suspended; the remainder to be paid within one year from the date a formal
18 agreement is entered into or pending a resolution of the matter.


19 3. The Administrative Hearing Officer has reviewed the documents admitted by both
20 parties and finds that there is no reason to believe that Mr. Cook did not timely receive a
21 notice that his license needed to be renewed. Since he had been in insurance before and
22 was aware that licenses need to be renewed periodically, this should not have been a
23 surprise. It is more likely that the paperwork was forgotten in the shuffle of business, or
24 alternatively, that someone confused the renewal of the firm license with renewal of Mr.
25 Cook's individual in a firm license and failed to call it to his attention. Mr. Cook did timely
26 reply to the lapse notice received from the Division and has cooperated thoroughly with the
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1 Division's request.

2 **Proposed Decision**

3 Based on the foregoing Findings of Fact and Conclusions of Law the Administrative
4 Hearing Officer finds that there is no adequate legal or factual excuse for Mr. Cook's failure
5 to timely renew his license, but that a fine in the amount of \$778.22 is excessive given the
6 amount of business conducted, the time frame in which the license was lapsed, and Mr.
7 Cook's cooperativeness. Therefore, the Administrative Hearing Officer proposes that a total
8 fine in the amount of \$750.00 be levied with \$250.00 suspended, for a fine of \$500.00 to be
9 paid within one year of the date Mr. Cook is notified of this Decision.

10 Dated at Anchorage, Alaska this 8 day of January, 1997.

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14 Elizabeth I. Johnson
Administrative Hearing Officer
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DIRECTOR'S DECISION AND ORDER

The Director having reviewed the Proposed Decision of the Hearing Officer In the Matter of, **Tyler Cook Aurora Oldsmobile**, Respondent, **Case No. D96-16**, hereby

Option 1: adopts the Proposed Decision in its entirety and Orders that the Recommendation therein be implemented.

Date: _____

By: _____
Marianne K. Burke, Director

Option 2 modifies the Findings of Fact, Conclusions of Law, and Proposed Decision as follows:

SEE "ATTACHMENT A".

and adopts the balance of the Findings of Fact, Conclusions of Law, and Proposed Decision as the Final Decision and Order in this matter.

Date: January 17, 1997

By: 
Marianne K. Burke, Director

ATTACHMENT A

Conclusion of Law No. 1 is amended to state further that AS 21.27440(a) also provides for a civil penalty equal to the compensation earned by a producer in violation of the insurance code.

Conclusion of Law No. 2 is amended on line 15 to change the reference from "premiums collected" to "commissions earned."

The Proposed Decision is amended to delete reference to the fine in the amount of \$778.22 as being excessive, and to state instead that a civil penalty equal to the amount of commission earned after Mr. Cook's license had lapsed is appropriate and permitted under AS 21.27.440(a). AS 21.27.440(a) recognizes that a producer should not be allowed to profit from a violation of statute. Accordingly, a fine of \$1,528.22 is imposed with \$750.00 suspended for a civil penalty of \$778.22 to be paid within one year of the date the director signs the order.

Date

January 17, 1997

By:

Marianne K. Burke
Marianne K. Burke, Director

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STATE OF ALASKA
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
BEFORE THE DIVISION OF INSURANCE

In the Matter of)
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Respondent.)
_____)

Case No. D96-16

ERRATUM

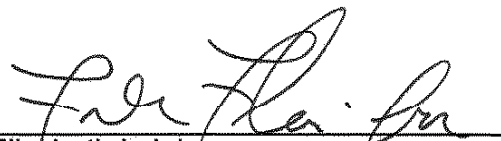
TO: ALL PARTIES

PLEASE TAKE NOTICE that the following clerical changes were made to the original Proposed Decision, signed on January 8, 1997.

On page 3, the first line of the first paragraph is a repeat of the last line of page 2.

A corrected page 3, eliminating the repeated sentence is enclosed, and should be inserted in the original Proposed Decision.

Dated at Anchorage, Alaska this 13th day of January, 1997.



Elizabeth I. Johnson
Administrative Hearing Officer

CERTIFICATE OF SERVICE: The Undersigned hereby certifies that on the 13th day of January, 1997, a true and correct copy of this **Erratum** was mailed to the following: Marianne Burke, Signe Andersen, Barbara Karl, Tyler Cook, Office of the Lt. Governor.

By: Tori D. Yager

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STATE OF ALASKA
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
BEFORE THE DIVISION OF INSURANCE

In the Matter of)
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Tyler Cook)
Aurora Oldsmobile,)
Respondent.)
_____)

Case No. D96-16

ERRATUM No. 2


TO: ALL PARTIES

PLEASE TAKE NOTICE that the following clerical changes were made to the original Proposed Decision, signed on January 8, 1997.

On page 5, part of line 8, and all of line 9 and 10 should be eliminated.

A corrected page 5, eliminating these lines is enclosed, and should be inserted in the original Proposed Decision.

Dated at Anchorage, Alaska this 15th day of January, 1997.


Elizabeth I. Johnson
Administrative Hearing Officer

CERTIFICATE OF SERVICE: The Undersigned hereby certifies that on the 15th day of January, 1997, a true and correct copy of this **Erratum No. 2** was mailed to the following: Marianne Burke, Signe Andersen, Barbara Karl, Tyler Cook, Office of the Lt. Governor.

By: Teri D. Yeager