

Table of Contents

PRIVATE EMPLOYMENT AGENCY (PEA)

- 1.0 ADVERTISEMENTS
 - 1.1 --- False and Misleading
- 2.0 ADVISORY BOARD
- 3.0 AUTHORITY OF THE COMMISSIONER
- 4.0 BOND
- 5.0 CHARGES
 - 5.1 --- Employment Required Before Charges Due
 - 5.2 --- Excessive, Prohibited
 - 5.3 --- Filing Schedule of Charges with Commissioner
 - 5.4 --- Posting and Furnishing
 - 5.5 --- Refund
- 6.0 CIVIL PENALTY
- 7.0 COMMISSION PAYMENT
- 8.0 CONTRACTS, CONTENT
 - 8.1 --- Fee Paid Positions
 - 8.2 --- In Violation of Law
 - 8.3 --- Oral Agreements/Additions Prohibited
 - 8.4 --- Record of
 - 8.5 --- Terms for Payment
- 9.0 DEFINITIONS
- 10.0 DISPUTES BETWEEN AGENCIES
- 11.0 EXEMPTIONS
- 12.0 FALSE INFORMATION/ REPRESENTATIONS
- 13.0 INTEREST CREDIT ALLOWED
- 14.0 INVESTIGATION OF LICENSE APPLICANT AND PLACE OF BUSINESS
- 15.0 JOB ORDER
- 16.0 JOB REFERRAL DOCUMENT
- 17.0 LICENSE
 - 17.1 --- Amending
 - 17.2 --- Application
 - 17.3 --- Denial, Suspension, Revocation, Refusal to Renew
 - 17.4 --- Eligibility
 - 17.5 --- Examination
 - 17.6 --- Expiration
 - 17.7 --- Fees
 - 17.8 --- Not to be Granted for Certain Places/People
 - 17.9 --- Partnerships

- 17.10 --- Posting
- 17.11 --- Renewal
- 18.0 OPERATION OF EMPLOYMENT AGENCY WITHOUT LICENSE
- 19.0 POLICY
- 20.0 POSTING OF STATUTES AND RULES
- 21.0 PROHIBITED EMPLOYMENT AGENCY ACTIVITIES
- 22.0 RECORDS
- 23.0 RESPONDENTS
- 24.0 SALE AND TRANSFER OF INTEREST IN PEA

- 1.0 ADVERTISEMENTS**
 - 1.1 --- False and Misleading**
- 2.0 ADVISORY BOARD**
- 3.0 AUTHORITY OF THE COMMISSIONER**
- 4.0 BOND**
- 4.0 CHARGES**
 - 5.1 --- Employment Required Before Charges Due**
 - 5.2 --- Excessive, Prohibited**

□ Respondent and complainant entered into a fee-paid contract that provided that “In the event I am willing to accept a referral on a position where I may pay the fee, I understand a new contract must be negotiated and this contract cancelled.” They later executed a Job Referral Document which provided that “Fee is negotiable at this point, client is willing to pay half if employer will pay half – to be discussed” and complainant later sent respondent a letter in which she agreed to try to pay half of the fee at \$25 per month. The forum found a violation of ORS 658.155(2) because that statute “absolutely prohibits such activity as practiced by the respondent and makes no provision for mitigation.” ---- *In the Matter of DADU Enterprises, Inc., 1 BOLI 201, 204 (1979).*

- 5.3 --- Filing Schedule of Charges with Commissioner**
- 5.4 --- Posting and Furnishing**
- 5.5 --- Refund**

□ The commissioner revoked respondent’s PEA license based on the following findings: (1) respondent committed five violations of ORS 658.185(2)(b), which requires that a private employment agency (PEA) refund a prorated fee when an individual leaves employment within 90 days; (2) respondent committed five violations of ORS 658.185(2)(e), which requires that, if a PEA does not make the refund noted above, the PEA must provide the agency and the individual a written explanation as to why the refund was not paid; (3) respondent committed one violation of ORS 658.185(2)(d), which requires a PEA to give credit against the fee for interest and other

PEA -- 6.0 CIVIL PENALTY

charges incurred by individuals in obtaining funds to pay the fee when employment is terminated within 90 days; (4) respondent committed one violation of ORS 658.185(3)(c), which requires a PEA to refund or adjust a fee when an applicant's fee was based upon commissions and employment was terminated before one year; (5) respondent failed to demonstrate financial responsibility as required by ORS 658.035(3)(a) and ORS 658.115(1); and (6) each violation was a ground for revocation or suspension of a PEA license. ----- *In the Matter of Robert Schurman, 1 BOLI 69, 82-84 (1978).*

Order vacated, *Schurman v. Bureau of Labor*, 36 Or App 841, 585 P2d 758 (1978).

6.0 CIVIL PENALTY

□ When respondent violated ORS 658.078 by failing to furnish a copy of a job order document to the agency upon request, the forum assessed a civil penalty of \$500 against respondent. The commissioner noted that the amount of the civil penalty is determined by assigning "weight factors" to the "circumstances" described in OAR 839-17-277, the "Guidelines for the Imposition of Civil Penalties for Violation of the Private Employment Agency Statutes or Any Rule Promulgated Thereunder" provided for a civil penalty of \$100 to \$1,000, and there was no basis for revocation or refusal to renew under Oregon statutes or rules and guidelines. ----- *In the Matter of Mark Tracton, 5 BOLI 159, 166-67 (1986).*

□ When the forum found a violation of OAR 839-17-70(1)(b), which requires that the Job Referral Document include the name and address of the person giving the order for help, the forum applied the "Guidelines for the Imposition of Civil Penalties for Violation of the Private Employment Agency Statutes or Any Rule Promulgated Thereunder," dated June 15, 1978. Although these Guidelines had not been promulgated as rules, they were found to have the force and effect of administrative rules and therefore bound the agency and the forum. The Guidelines were valid interpretations of OAR 839-17-277, 839-17-278, and ORS 658.115. ----- *In the Matter of Mark Tracton, 5 BOLI 159, 165-66 (1986).* See also *In the Matter of Mark Tracton, 5 BOLI 129, 147 (1986).*

□ According to the "Guidelines for the Imposition of Civil Penalties for Violation of the Private Employment Agency Statutes or Any Rule Promulgated Thereunder," a violation of OAR 839-17-070(1)(b) is a "procedural" violation and a civil penalty of \$100 to \$1,000 may be imposed. The amount of the civil penalty is determined by assigning "weight factors" to each of four circumstances – past history, prior violations of Private Employment Agency law, compliance difficulties, and magnitude and seriousness of the violation. The forum found no basis that revocation or refusal to renew would be appropriate or justifiable under Oregon statutes, rules and guidelines, and assessed a civil penalty of \$250 against respondent for his violation of OAR 839-17-070(1)(b). ----- *In the Matter of Mark Tracton, 5 BOLI 129, 147049 (1986).*

□ The presiding officer assessed a civil penalty amount that included an amount equal to costs to the Bureau of Labor for processing the case. The commissioner found no statutory authorization for

including such costs and reduced the civil penalty to \$200, pursuant to ORS 658.115(2). ----- *In the Matter of DADU Enterprises, Inc., 1 BOLI 201, 204 (1979).*

7.0 COMMISSION PAYMENT

8.0 CONTRACTS, CONTENT

8.1 --- Fee Paid Positions

8.2 --- In Violation of Law

8.3 --- Oral Agreements/Additions Prohibited

8.4 --- Record of

8.5 --- Terms for Payment

□ Respondent and complainant entered into a fee-paid contract that provided that "In the event I am willing to accept a referral on a position where I may pay the fee, I understand a new contract must be negotiated and this contract cancelled." They later executed a Job Referral Document which provided that "Fee is negotiable at this point, client is willing to pay half if employer will pay half – to be discussed" and complainant later sent respondent a letter in which she agreed to try to pay half of the fee at \$25 per month. The forum found a violation of ORS 658.155(2) because that statute "absolutely prohibits such activity as practiced by the respondent and makes no provision for mitigation." ----- *In the Matter of DADU Enterprises, Inc., 1 BOLI 201, 204 (1979).*

9.0 DEFINITIONS

10.0 DISPUTES BETWEEN AGENCIES

11.0 EXEMPTIONS

12.0 FALSE INFORMATION/ REPRESENTATIONS

□ A job applicant who sought a management trainee job was referred by respondent to a job with a grocery store chain. The grocery store chain employer had no formal management training program, but had a policy of placing new employees at the bottom of their job ladders, on which they could progress into management, and respondent's counselor advised the job applicant of the employer's policy. The forum found that respondent did not knowingly make a false representation concerning the job title, kind of work, special skills and minimum performance level required, in violation of ORS 658.195(3), OAR 839-17-060(4) and 839-17-070(1)(f), by labeling the kind of work the job applicant interviewed for as "management trainee" in the employer's "management training program." The forum found that the meanings of those two phrases were inexact, and that respondent's counselor's labeling of the job applicant's future job as "management trainee" or a part of a "management trainee program" was not clearly erroneous. ----- *In the Matter of Mark Tracton, 5 BOLI 129, 140-41 (1986).*

13.0 INTEREST CREDIT ALLOWED

□ The commissioner revoked respondent's PEA license based on the following findings: (1) respondent committed five violations of ORS 658.185(2)(b), which requires that a private employment agency (PEA) refund a prorated fee when an individual leaves employment

PEA -- 14.0 INVESTIGATION OF LICENSE APPLICANT AND PLACE OF BUSINESS

within 90 days; (2) respondent committed five violations of ORS 658.185(2)(e), which requires that, if a PEA does not make the refund noted above, the PEA must provide the agency and the individual a written explanation as to why the refund was not paid; (3) respondent committed one violation of ORS 658.185(2)(d), which requires a PEA to give credit against the fee for interest and other charges incurred by individuals in obtaining funds to pay the fee when employment is terminated within 90 days; (4) respondent committed one violation of ORS 658.185(3)(c), which requires a PEA to refund or adjust a fee when an applicant's fee was based upon commissions and employment was terminated before one year; (5) respondent failed to demonstrate financial responsibility as required by ORS 658.035(3)(a) and ORS 658.115(1); and (6) each violation was a ground for revocation or suspension of a PEA license. ----- ***In the Matter of Robert Schurman, 1 BOLI 69, 82-84 (1978).***

Order vacated, *Schurman v. Bureau of Labor*, 36 Or App 841, 585 P2d 758 (1978).

14.0 INVESTIGATION OF LICENSE APPLICANT AND PLACE OF BUSINESS

15.0 JOB ORDER

□ In an exploratory job order/job referral situation, respondent's job counselor put more information on the Job Referral Document (JRD) than he put on the Job Order Document (JOD), namely, that weekend and night work and union membership were required. The forum found that the failure to include the information recited in OAR 839-17-060 on the JRD was not a violation of law unless that information was available from the employer. The forum found no violation of OAR 839-17-060 or 839-17-052(4) because there was no showing that the information described above was available from the employer. ----- ***In the Matter of Mark Tracton, 5 BOLI 129, 143 (1986).***

16.0 JOB REFERRAL DOCUMENT

□ In an exploratory job order/job referral situation, respondent's Job Referral Document (JRD) did not include information about the hours of work or an accurate prediction of the amount or type of compensation. The forum found that OAR 839-17-052(4) requires a JRD to contain all available job order information, and respondent did not violate OAR 839-1-070 because the information was not available from the employer at the time of the exploratory job order. ----- ***In the Matter of Mark Tracton, 5 BOLI 129, 143 (1986).***

□ Respondent violated OAR 839-17-070(1)(b) by failing to indicate the names and addresses of the persons who had given respondent the exploratory job order on the Job Referral Document, even though that information was contained on the corresponding Job Order Document and therefore was clearly available from the employer. ----- ***In the Matter of Mark Tracton, 5 BOLI 129, 143 (1986).***

17.0 LICENSE

17.1 --- Amending

17.2 --- Application

17.3 --- Denial, Suspension, Revocation, Refusal to Renew

□ The commissioner revoked respondent's PEA license based on the following findings: (1) respondent committed five violations of ORS 658.185(2)(b), which requires that a private employment agency (PEA) refund a prorated fee when an individual leaves employment within 90 days; (2) respondent committed five violations of ORS 658.185(2)(e), which requires that, if a PEA does not make the refund noted above, the PEA must provide the agency and the individual a written explanation as to why the refund was not paid; (3) respondent committed one violation of ORS 658.185(2)(d), which requires a PEA to give credit against the fee for interest and other charges incurred by individuals in obtaining funds to pay the fee when employment is terminated within 90 days; (4) respondent committed one violation of ORS 658.185(3)(c), which requires a PEA to refund or adjust a fee when an applicant's fee was based upon commissions and employment was terminated before one year; (5) respondent failed to demonstrate financial responsibility as required by ORS 658.035(3)(a) and ORS 658.115(1); and (6) each violation was a ground for revocation or suspension of a PEA license. ----- ***In the Matter of Robert Schurman, 1 BOLI 69, 82-84 (1978).***

Order vacated, *Schurman v. Bureau of Labor*, 36 Or App 841, 585 P2d 758 (1978).

□ When a licensee, both personally and through and by his corporation, had substantial obligations based upon unsatisfied judgments entered against him and his corporation; the corporation owed a substantial amount of taxes to the IRS; the licensee failed to honor promises to make payments to several creditors; and two surety companies cancelled surety bonds they had provided to the licensee, who also failed to maintain a surety bond during the latter half of a license year; the commissioner found that the licensee failed to demonstrate financial responsibility to such an extent that if the licensee was then applying for a license as provided for in ORS 658.035, such application would be denied. Based on the facts above and findings of other violations, respondent's PEA license was revoked pursuant to ORS 658.115(1). ----- ***In the Matter of Robert Schurman, 1 BOLI 69, 78-81, 84 (1978).***

Order vacated, *Schurman v. Bureau of Labor*, 36 Or App 841, 585 P2d 758 (1978).

□ Where the agency proposed to revoke or suspend respondent's private employment agency license, and respondent's license expired before the hearing and respondent did not apply for renewal, the forum denied respondent's motion to dismiss, holding that the agency was entitled to create a record with regard to respondent's activities and the expiration of respondent's license did not prevent the agency from proceeding to a final administrative determination as to whether the alleged violations took place and, if they did occur, what sanctions, if any, should be imposed. ----- ***In the Matter of Robert Schurman, 1 BOLI 69, 69-71 (1978).***

Order vacated, *Schurman v. Bureau of Labor*, 36 Or App 841, 585 P2d 758 (1978).

17.4 --- Eligibility

□ When a licensee, both personally and through and by his corporation, had substantial obligations based upon unsatisfied judgments entered against him and his

PEA -- 18.0 OPERATION OF EMPLOYMENT AGENCY WITHOUT LICENSE

corporation; the corporation owed a substantial amount of taxes to the IRS; the licensee failed to honor promises to make payments to several creditors; and two surety companies cancelled surety bonds they had provided to the licensee, who also failed to maintain a surety bond during the latter half of a license year; the commissioner found that the licensee failed to demonstrate financial responsibility to such an extent that if the licensee was then applying for a license as provided for in ORS 658.035, such application would be denied. Based on the facts above and findings of other violations, respondent's PEA license was revoked pursuant to ORS 658.115(1). ----- *In the Matter of Robert Schurman, 1 BOLI 69, 78-81, 84 (1978).*

Order vacated, *Schurman v. Bureau of Labor*, 36 Or App 841, 585 P2d 758 (1978).

17.5 --- Examination

17.6 --- Expiration

Where the agency proposed to revoke or suspend respondent's private employment agency license, and respondent's license expired before the hearing and respondent did not apply for renewal, the forum denied respondent's motion to dismiss, holding that the agency was entitled to create a record with regard to respondent's activities and the expiration of respondent's license did not prevent the agency from proceeding to a final administrative determination as to whether the alleged violations took place and, if they did occur, what sanctions, if any, should be imposed. ----- *In the Matter of Robert Schurman, 1 BOLI 69, 69-71 (1978).*

Order vacated, *Schurman v. Bureau of Labor*, 36 Or App 841, 585 P2d 758 (1978).

17.7 --- Fees

17.8 --- Not to be Granted for Certain Places/People

17.9 --- Partnerships

17.10 --- Posting

17.11 --- Renewal

18.0 OPERATION OF EMPLOYMENT AGENCY WITHOUT LICENSE

19.0 POLICY

20.0 POSTING OF STATUTES AND RULES

21.0 PROHIBITED EMPLOYMENT AGENCY ACTIVITIES

22.0 RECORDS

Respondent violated ORS 658.078 by failing, when asked, to furnish the agency with a copy of the job order document used to refer a job applicant for employment. The agency had made repeated requests, by several different means, directly and indirectly, during an investigation of a complaint of misrepresentation against respondent. ----- *In the Matter of Mark Tracton, 5 BOLI 159, 163-64 (1986).*

23.0 RESPONDENTS

In a private employment agency matter, the words, actions, inactions, and motives of the agency's employee, an employment counselor, were properly

imputed to the respondent agency. ----- *In the Matter of Mark Tracton, 5 BOLI 129, 142 (1986).*

24.0 SALE AND TRANSFER OF INTEREST IN PEA