

**STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

In the Matter of **David W. Holmes** and
Three Rivers Financial Group.

) **STIPULATION and**
) **FINAL ORDER**
) Case No. INS 00-12-006

STIPULATION

The Director of the Department of Consumer and Business Services (Director) commenced the above entitled administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 731.256, to take disciplinary action against David W. Holmes (Holmes) and Three Rivers Financial Group (TRFG) for violating the Oregon Insurance Code.

Holmes and TRFG each enter into this stipulation, pursuant to ORS 183.415(5) and Oregon Administrative Rules (OAR) 137-003-0510(3)-(4), to conclude this proceeding without further administrative or judicial proceedings. Holmes represents by signing herein that he has the authority to sign this stipulation on behalf of TRFG.

Holmes and TRFG each waive the right to receive a notice of proposed action, notice of rights and notice of judicial review, to have a hearing, to be represented by an attorney at the hearing and to judicial review of the final order.

Holmes and TRFG each admit and agree to the following facts, conclusions and action.

Facts

Licensing

Holmes has been licensed in Oregon as a resident individual agent from 2/20/96 to 2/28/97 and since 3/24/97. Holmes' license number is 609096. Holmes resides in Grants Pass, Oregon.

TRFG has been licensed in Oregon as a resident firm or corporate agent since 4/15/96. TRFG's license number is 808276. TRFG is an Oregon sole proprietorship.

Holmes is the proprietor of and an individual licensee employed by TRFG. TRFG is located in Grants Pass, Oregon.

Illegal Withholding of Insurance Premium and Failure to Deposit Insurance Premium into Trust Account

On or about 8/24/99, Holmes solicited and received from Ruth E. Porterfield (Porterfield) of Eugene, Oregon an application and a check, number 4833, dated 8/25/99 made payable in blank for \$2,110 as payment of the annual premium, for long term care insurance to be provided by Equitable Life and Casualty Insurance Company (Equitable). On 8/25/99, Holmes deposited the check into TRFG's *operating* checking account, number 1-536-0083-8665, at US Bank. Equitable did not receive from Holmes the application or any of the premium. On 11/9/99, after not receiving any communication from Equitable or Holmes about the insurance, Porterfield called Equitable. Equitable informed her that it did not have any record of receiving the application or any of the premium. Sometime between 11/9/00 and 11/20/00, Porterfield called Holmes and requested a full refund. On 12/3/99, Holmes repaid Porterfield.

Ultimate Facts and Conclusions

Holmes violated ORS 744.013(2)(d) by illegally withholding property and money that he received from an applicant relative to an insurance transaction.

Holmes violated ORS 744.225 by failing to deposit insurance premiums into an insurance premium trust account.

TRFG is subject to disciplinary action pursuant to ORS 744.013(3) because Holmes violated the laws specified above and Holmes is an owner of and an individual licensee employed by TRFG.

Action

The Oregon insurance agent licenses issued to Holmes and TRFG shall be suspended from February 1, 2001 to April 30, 2001 pursuant to ORS 744.013(1)(a).

Holmes shall pay to the Director a civil penalty of \$2,000 pursuant to ORS 731.988 on or before the date of the Final Order. Payment shall be made in the

form of a check payable to the "Department of Consumer and Business Services" for the full amount due.

Dated January 23, 2001.

/s/ David W. Holmes
David W. Holmes

/s/ David W. Holmes
David W. Holmes
Owner
Three Rivers Financial Group

FINAL ORDER

The Director adopts, and incorporates herein by this reference, the Facts, Ultimate Facts, Conclusions and Action in the above Stipulation as the Findings of Fact, Ultimate Findings of Fact, Conclusions of Law and Order, respectively, of this Final Order.

Dated February 1, 2001.

/s/ Mary C. Neidig
Mary C. Neidig
Director
Department of Consumer and Business Services

CERTIFICATE OF SERVICE

I certify that I served the above Stipulation and Final Order by mailing a copy thereof in a sealed envelope, with first class postage prepaid, to the party named therein on the date below.

Dated February 1, 2001.

/s/ Mitchel D. Curzon
Mitchel D. Curzon
Administrative Law Specialist
Insurance Division

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