

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

In the Matter of **Brian B. Smith.**

) **STIPULATION** and
) **FINAL ORDER**
) Case No. INS 01-02-010
) File No. 2403 IV

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 Brian B. Smith (Smith) for violating the Oregon Insurance Code.

Smith enters into this Stipulation to conclude this proceeding without further administrative or judicial proceedings pursuant to ORS 183.415(5) and related rules.

Smith acknowledges that he received a notice of proposed action and waives any objections relative to such notice. Smith also waives the right to receive a notice of rights and procedures in contested cases, to have a hearing, to be represented by an attorney at the hearing, and to judicial review of the Final Order. Smith admits and agrees to the following facts, conclusions, and action.

Facts

Licensing

Smith was licensed in Oregon as a resident individual agent from 7/23/91 to 7/31/96 and from 9/19/96 to 7/31/00. On 7/31/00, Smith's license expired because Smith did not renew it. Smith's license number was 600271. Smith's residence address is PO Box 472, Terrebonne, OR 97760.

Misappropriation of and Failure to Deposit Insurance Premium into Trust Account

At all relevant times, Smith was the owner and an agent of Intermountain Insurance. On or about 4/13/99, Smith, on behalf of Intermountain Insurance, sold to Christy L. Cummings (Cummings) of Bend, Oregon an automobile insurance

policy, number 350683689, issued by Dairyland Insurance Company (Dairyland). On or about 5/11/99, Dairyland issued a check, number 03552685, dated 5/11/99 made payable to Intermountain Insurance in the amount of \$72.17 as payment of the commission for the sale of the policy. On or about 5/14/99, Smith deposited the check into an account at the US National Bank in Portland, Oregon. On or about 5/5/99, Cummings requested that the policy be canceled. On or about 5/11/99, Dairyland canceled the policy short rate. As a result, Dairyland owed Cummings \$288.56 as payment of the gross unearned premium. On or about 6/8/99, Dairyland issued a check, number 03578587, dated 6/8/99, made payable to Intermountain Insurance in the amount of \$295.44 as payment of, among other things, the net unearned premium of \$245.28 due to Cummings. On 6/15/99, Smith deposited the check into Intermountain Insurance's operating account, number 1102003812, at Columbia River Bank in Redmond, Oregon. Since the policy was canceled, Smith was entitled to keep only \$28.89 as earned commission and was obligated to add the remaining \$43.28 as unearned commission to the \$245.88 and pay the gross unearned premium of \$288.56 to Cummings. Smith never paid Cummings.

Ultimate Facts and Conclusions

Smith violated ORS 744.013(2)(d) by misappropriating to his own use money that he received from an insurer relative to an insurance transaction.

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

Action

The Oregon insurance agent license issued to Smith shall be revoked on the date of the Final Order pursuant to ORS 744.013(1)(a). Smith shall not transact insurance in Oregon, including servicing clients, on and after that date.

In consideration of the Director not assessing Smith a civil penalty of \$2,000 pursuant to ORS 731.988, Smith agrees not to apply to the Director for any license as an insurance agent, consultant or adjuster that is to be issued to Smith or to any business organization owned or operated by Smith. Smith also agrees not to own

any equity interest in, or be an officer, director or employee of, any business organization licensed as an insurance agent, consultant or adjuster in Oregon.

Dated April 3, 2001.

/s/ Brian B. Smith
Brian B. Smith

FINAL ORDER

The Director makes the following final decision in this proceeding in accordance with ORS 731.248 and 183.415(5) and related rules.

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 April 13, 2001.

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

CERTIFICATE OF SERVICE

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

Dated April 13, 2001.

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

//
//
//