

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

In the Matter of **Clarence D. Horner**. ) **STIPULATION** and  
 ) **FINAL ORDER**  
 ) Case No. 01-11-006  
 ) File No. 2329 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 Clarence D. Horner (Horner) for violating the Oregon Insurance Code as specified herein.

Horner enters into this Stipulation to conclude this proceeding without further administrative or judicial proceedings, as provided by ORS 183.415(5) and related rules.

Horner acknowledges that he received a notice of proposed action, and waives any objections relative to such notice. Horner also waives the right to request a hearing, 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.

Horner does not admit to any of the following facts and conclusions, except for the facts stated in the paragraph under the caption of "Licensing."

Horner agrees that the Director may issue a Final Order containing all of the following facts, conclusions, and action. Horner agrees to comply with the Final Order.

**Facts and Conclusions**

Licensing

Horner has been licensed in Oregon as a resident insurance agent since 3/26/99. Horner's license number is 614992. However, Horner, doing business as the Dart Company, has never been licensed in Oregon as a firm or corporate insurance agent.

Furthermore, Horner, either under his own name or doing business as the Dart Company, has never been licensed in Oregon as an insurance consultant. Horner's residence and business street address is 1937 SE Arborwood, Bend OR 97702, his residence telephone number is 541-388-2644; his business mailing address is 1972 NE 3rd Suite 305, Bend OR 97701; and his business telephone number is 541-317-4977.

#### Charging a Fee Without Being Licensed as an Insurance Consultant

Horner violated ORS 744.039(2) by engaging in the following conduct. Horner, either under his own name or doing business as the Dart Company, has never been licensed in Oregon as an insurance consultant. However, on or about 10/27/99, Horner, on behalf of the Dart Company, entered into an agreement with Wilbert M. Van Dyke (Van Dyke) of Redmond, Oregon "to assist [Van Dyke] in formulating a Long Term Care Asset Protection Plan" and in the course of which Horner "may suggest [to Van Dyke] companies that are used in this process" to reposition Van Dyke's assets to qualify for government assistance in the event that Van Dyke required long term care. Horner charged Van Dyke \$595 for Horner's services. In the course of formulating the plan, Horner advised Van Dyke about the benefits of, and recommended that Van Dyke purchase, a flexible premium deferred annuity. Subsequently, on or about 11/17/99, Horner sold to Van Dyke a flexible premium deferred annuity, number 3000279, issued by Liberty Bankers Life Insurance Company (Liberty Bankers Life). Horner received a commission of \$3,000 for selling the annuity to Van Dyke. Subsequently, Van Dyke declined to accept the annuity and returned it to Liberty Bankers Life; and Horner returned the entire commission to Liberty Bankers Life.

#### **Action**

Horner shall pay a civil penalty of \$1,000 pursuant to ORS 731.988(1).

Horner shall also pay a civil penalty of \$595 pursuant to ORS 731.988(2); unless Horner provides to the Director proof that Horner has repaid \$595 to Van Dyke.

Payment of the civil penalty shall be made in the form of a check payable to the "Department of Consumer and Business Services" for the full amount due.

Payment shall be delivered or mailed to the Insurance Division at 350 Winter Street NE, Room 440, Salem, OR 97301-3883. Payment shall be received by the Insurance Division by the date of the Final Order.

Horner shall not charge any person residing in Oregon a fee for transacting insurance as defined in ORS 731.102, or acting as an insurance consultant, as described in ORS 744.605, unless Horner is licensed in Oregon as an insurance consultant, or except as permitted by any applicable insurance regulatory law.

Horner shall not use the name of, or purport to represent, the Dart Company, or any other business entity, in the transaction of insurance relative to a person residing in Oregon, unless Horner, the Dart Company, or any other business entity, each comply with all applicable insurance regulatory laws, including insurance intermediary licensing laws.

Dated January 18, 2002

/s/ Clarence D. Horner  
Clarence D. Horner

### **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, Conclusions, and Action in the above Stipulation as the Findings of Fact, Conclusions of Law, and Order, respectively, of this Final Order.

Dated February 5, 2002

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

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