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

In the Matter of **Michael P. Bieker**. ) **STIPULATION** and
) **FINAL ORDER**
) Case No. INS 04-12-002

## STIPULATION

The Director of the Oregon Department of Consumer and Business Services (director) commenced this administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 731.256, to take enforcement action against Michael P. Bieker (Bieker).

Bieker enters into this stipulation, pursuant to ORS 183.415(5), to conclude this proceeding without further administrative or judicial proceedings.

Bieker waives all rights relative to an administrative hearing and judicial review thereof.

Bieker does not stipulate to the following facts and conclusions, but also does not contest that the director can prove, by at least a *prima facie* case, such facts and conclusions.

Bieker stipulates to the following action.

Bieker consents to the issuance of a final order incorporating this stipulation.

### Facts and Conclusions

Licensing Information

Bieker has been licensed in Oregon as a resident insurance agent from 4/2/93 to 4/30/96, 2/10/97 to 4/30/98, 12/31/98 to 4/30/00, 12/27/00 to 4/30/02, from 8/13/02 to 4/30/04, and since 8/4/04. Bieker's last recorded residence address is located in Gresham, Oregon, and last recorded business address is located in Portland, Oregon.

Demonstrated Incompetence and Untrustworthiness

Bieker is subject to enforcement action pursuant to ORS 744.074(1)(h) in two instances by engaging in the following conduct. ORS 744.074(1)(h) prohibits a person from using a fraudulent, coercive, or dishonest practice; or demonstrating incompetence, untrustworthiness, or financial irresponsibility, in the conduct of business in Oregon or elsewhere.

1. At all relevant times, Rose City Plumbing Corporation (Rose City Pluming), of Clackamas, Oregon, was licensed by the Oregon Construction Contractor Board (CCB) as a specialty contractor for all structures. One of the requirements to get and keep the license was to have a contractor's license surety bond. Rose City Plumbing had a bond, number RED1087337, effective from 12/19/01 to 12/18/02, issued by Redland Insurance Company (Redland). On or about 10/7/02, Bieker, on behalf of Bieker Agency, Inc. (Bieker Agency), mailed or caused to be mailed to Rose City Pluming an invoice offering to renew an unspecified existing bond. However, Bieker Agency did not intend to renew an existing bond but rather intended to offer to issue a new bond on behalf of an unspecified insurer of the "Gulf Insurance Group." The invoice indicated that the premium for the new bond was $800. The invoice also indicated that an application for the new bond was enclosed and had to be completed before the new bond could be issued. Eduard Khemchan, President of Rose City Pluming, did not recall receiving the invoice. On or about 10/11/02, Redland notified Rose City Plumbing as the principal of the bond, Bieker Agency as the agency, and CCB as the obligee of the bond, that Redland would not renew the Redland bond. Khemchan did not recall receiving the notice. However, Khemchan knew that the Redland bond would expire, unless renewed, sometime in December 2002. Sometime before or on 12/19/02, Khemchan learned that the Redland bond had expired on 12/18/02. On 12/19/02, Khemchan went to the Bieker Agency's office to pay the premium to renew the Redland bond. Khemchan asked Bieker how much Rose City Plumbing owed. Bieker looked at a computer and told Khemchan that the premium would be $800. Bieker received from Khemchan a check, number 3596, dated 12/19/02, in the amount of $800, and made payable to Bieker Agency, as payment of the premium. However, Bieker either (1) did not verify whether the premium was for the Redland bond or the Gulf bond, or (2) knew that it was for the Gulf bond but did not tell Khemchan that (a) the premium was for the Gulf bond, and (b) an application for the Gulf bond had to be completed before the bond could

be issued. Khemchan asked Bieker if he needed to do anything more and Bieker said no. Thus, Khemchan left Bieker Agency's office believing that he had done everything necessary to renew the Redland bond so that Rose City Plumbing's contractor's license would continue to be effective. On 12/26/02, Bieker Agency deposited Rose City Plumbing's check into Bieker Agency's insurance premium trust account. However, on or about 2/4/03, another contractor told Khemchan that an inspector from CCB said that Rose City Plumbing's license was not active. Khemchan called Bieker and told him what the contractor had said. Bieker said that he would take care of it. However, Bieker did not take any action. On or about 2/18/03, the same contractor told Khemchan that someone at the City of Mollala said that Rose City Plumbing's license was not active. Khemchan called Bieker and told him what the contractor had said. Bieker said that he forgot to have Khemchan sign a paper. This was misleading because the "paper" was actually an application for the bond without which the bond could not be issued, and Bieker not only forgot to have Khemchan sign the application but also complete it. Khemchan asked Bieker why Bieker did not have Khemchan sign the paper on 12/19/02 when Khemchan went to Bieker Agency's office and paid the premium to Bieker. Bieker said that he was sorry that he had forgotten to have Khemchan sign the paper. Khemchan asked Bieker to immediately fax to him whatever he needed to sign. Bieker faxed to Khemchan an application. Khemchan called Bieker and ask him why he faxed an application when Bieker told him he only needed to sign a paper. Bieker said that Khemchan needed to complete and sign the application. Khemchan completed and signed the application and faxed it to Bieker. On the same date, 2/18/03, Bieker, as the attorney-in-fact for Gulf Insurance Company (Gulf), issued to Rose City Plumbing a bond, number B34235402, dated 2/18/03, and faxed or caused it to be faxed to CCB. However, since Bieker issued the Gulf bond to be effective on 2/18/03 rather than on 12/19/02, Rose City Plumbing did not have a bond from 12/19/02 to 2/17/03. As a result, on 5/29/03, CCB proposed to assess Rose City Plumbing a civil penalty of $9,000 for performing work as a contractor from 12/18/02 to 2/7/03 while not licensed. On 6/9/03, when he first found out about the proposed action, Khemchan called CCB and explained that "his insurance agent had failed to have a paper signed and therefore the proper documents were not sent to CCB." CCB told Khemchan to get a letter from his agent explaining what happened. Khemchan called Bieker and asked him to write a letter to CCB explaining what happened. Bieker called CCB and told them that the Gulf bond was not issued because Khemchan "did not pay for the bond in time." This was not correct and Bieker knew or should have known that this was not correct because (1) Bieker had offered to sell Khemchan the Gulf bond, (2) Bieker had received from Khemchan the premium for the Gulf bond on 12/19/02 although Khemchan believed the premium was for the Redland bond, and (3) before Bieker called CCB, Bieker had examined Bieker Agency's records and found that the Redland bond had expired but Bieker did not examine the records to find that Khemchan had paid the premium for the Gulf bond. Sometime between 6/9/03 and 6/17/03, Bieker examined Bieker Agency's records and found that Khemchan had paid the premium for the Gulf bond. On 7/1/03, 22 days after Khemchan asked Bieker to write a letter to CCB and 14 days after Bieker examined his records about the payment, Bieker sent a letter to CCB. On or about 9/8/03, Gulf decided to change the effective date of the Gulf bond to 12/19/02. On 3/24/04, CCB dismissed the proposed action against Rose City Pluming.

2. On 4/3/03, Jeremy P. Armstrong (Armstrong), doing business as Platinum Enterprises, of Gresham, Oregon, became licensed by the Oregon Construction Contractor Board (CCB) as a limited contractor for all structures. Armstrong had a bond, number PD1649, effective from 4/3/03 to 4/3/05, issued by CBIC. The limit of the bond was $5,000. On 4/8/03, Armstrong requested Bieker, on behalf of Bieker Agency, to increase the limit of the bond from $5,000 to $15,000 so Armstrong could become licensed as a general contractor by CCB. On 4/8/03, Bieker prepared a form to be sent to CBIC to request the change. However, Bieker did not send the form, and did not further act upon the request until 7/14/03. On 7/2/03, another employee of Bieker Agency faxed a letter to CBIC requesting the change. On 7/3/03, CBIC faxed a letter to Bieker Agency requesting certain additional information about

Armstrong in order to determine whether to grant the request for the change. On 7/14/03, Bieker mailed to Armstrong a letter, and another application form, referred to by CBIC as a supplemental application, for Armstrong to complete and return as soon as possible. Armstrong completed the supplemental application on 7/15/03, and faxed it to Bieker on 7/17/03. On 7/17/03, Bieker sent the supplemental application to Armstrong because there were some unanswered questions. Sometime between 7/17/03 and 7/21/03, Armstrong sent the supplemental application to Bieker. On 7/21/03, Bieker sent another supplemental application form to Armstrong because the previous one was "unreadable." On 7/21/03, Armstrong faxed to Bieker the second supplemental application. On 7/23/03 at 9:41 AM, CBIC faxed to Bieker Agency a letter again requesting the information that CBIC had initially requested in its letter dated 7/3/03. On the same date at 10:55 AM, Bieker faxed to CBIC the second supplemental application. On the same date at 1:46 PM, CBIC faxed to Bieker a letter requesting that question number 4 on the supplemental application be completed, and requesting further additional information. On the same date, Bieker called Armstrong and obtained the additional information, and Bieker prepared a letter with the information to be faxed to CBIC. However, Bieker did not send the letter to CBIC, and did not further act upon the request until sometime after 9/4/03. On 9/4/03, CBIC sent an e-mail to Bieker informing him that CBIC did not receive any reply to its letter dated 7/23/03 and that until it received a reply it would grant the request to increase the limit of the bond. Bieker misunderstood CBIC to mean that it would not grant the change because CBIC did not like Armstrong's answers to the questions CBIC had asked in their communications and in the application, and that Armstrong had not filled out the application properly. The problem was not with the information that CBIC received, but with the information that CBIC had requested but not received from Bieker. Subsequently, Bieker called Armstrong and told him, words to the effect, that "if you can't complete the application correctly then they [CBIC] cannot issue the bond." Bieker also told Armstrong that Bieker could issue a bond on behalf of another insurer but that the premium would be $1,500, which was significantly more than the premium for the CBIC bond. Bieker did not offer any further assistance to Armstrong. On 9/10/03, another employee of Bieker Agency contacted CBIC, found out what CBIC needed, contacted Armstrong, obtained the additional information, and faxed the information to CBIC. On 9/16/04, 161 days after Armstrong requested Bieker initiate the process to increase the limits, CBIC granted the increased limits, and charged Armstrong an additional $152 in premium therefor. On 9/19/03, CCB issued to Armstrong a general contractor's license.

### Withheld Insurance Application and Premium

Bieker violated ORS 744.074(1)(d) in one instance by engaging in the following conduct. ORS 744.074(1)(d) prohibits a person from improperly withholding, misappropriating, or converting, any moneys or properties received by the person in the course of doing insurance business. At all relevant times, Bieker was an authorized agent of Contractors Bonding and Insurance Company (CBIC). Bieker was authorized to solicit and receive applications and gross premiums for bonds and policies provided by CBIC, as well as to issue bonds and bind policies on behalf of CBIC. Bieker was required to forward to CBIC the application, a copy of the bond, the indemnity agreement, and net premium for each bond or policy within 30 days of issuing the bond or binding the policy. On or about 12/3/02, Bieker, on behalf of Bieker Agency, received from Enrico Napoli, on behalf of NW Life Tenure, Inc. (NWLT) of Portland, Oregon, an application for a contractor's license surety bond, and general liability insurance policy, both to be issued or bound by Bieker, on behalf of Bieker Agency, on behalf of CBIC. On the same date, Bieker also received from Napoli, on behalf of NWLT, a check number 10352, dated 12/3/02, in the amount of $500, and made payable to Bieker Agency, as payment of part of the premium for the bond and policy. On 12/13/02, Bieker issued the bond, number PC7437, and bound the policy, number INSPC7437. On 12/16/02, Bieker sent the bond and a certificate of insurance for the policy to CCB on behalf of NWLT. However, Bieker did not forward the application and check or proceeds of the check to CBIC. Instead, Bieker filed the application and check in a file folder, and did not take any further action until at least 3/26/03. On at least three occasions between 1/20/03 to 3/18/03, another employee of Bieker Agency began questioning why the policy had not been issued by CBIC. On 3/18/03, another employee of Bieker Agency asked Bieker to call CBIC about the status of the policy, but he did not do so. On 3/26/03, CCB notified CBIC that Bieker had issued the bond and bound the policy. Prior to this notice, CBIC did not know that Bieker had issued the bond and bound the policy. So, on the same date, CBIC asked Bieker to immediately send to CBIC all of the necessary information about the bond and policy. On 3/27/03, 73 days late, Bieker sent to CBIC the requested information about the bond and policy. On 4/3/03, Bieker deposited the check into Bieker Agency's trust account.

## Action

Pursuant to ORS 731.988, Bieker is assessed a civil penalty of $3,000.00. The payment shall be made in the form of a check payable to the "Department of Consumer and Business Services" for the full amount due. The payment shall be delivered to the Insurance Division at the Labor and Industries Building, 350 Winter Street NE, Room 440 (4th Floor), Salem, Oregon; or mailed to the Insurance Division at PO Box 14480, Salem, OR 97309-0405. The payment is due on, and shall be received by the Insurance Division by, the date of the final order.

Dated January 4, 2005

/s/ Michael P. Bieker
Michael P. Bieker

## FINAL ORDER

The director incorporates herein the above stipulation, adopts it as the director's final decision in this proceeding, and orders that the action stated therein be taken.

Dated March 2, 2005

/s/ Joel Ario
Joel Ario
Administrator
Insurance Division
Department of Consumer and Business Services