

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

In the Matter of **Gary W. Hoag**) **STIPULATION** and
) **FINAL ORDER**
) Case No. INS 06-12-006

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 Gary W. Hoag (Hoag).

Hoag desires to conclude this proceeding without a hearing by entering into this stipulation pursuant to ORS 183.415(5).

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

Hoag stipulates to the following facts, conclusions, action, and to the issuance of a final order incorporating this stipulation.

Facts and Conclusions

Licensing Information

Hoag has been licensed in Oregon as a resident individual insurance producer since 1/31/00. Hoag's last recorded residence and business address is located in Eugene, Oregon.

Demonstrated Incompetence in Business and
Made Unsuitable Recommendation in Life Insurance Transaction

Hoag is subject to enforcement action pursuant to ORS 744.074(1)(h) and OAR 836-080-0090 because of the following circumstances.

ORS 744.074(1)(h) permits the director to take any authorized enforcement action against a person who has applied for a license or is licensed in Oregon as an insurance producer if the person used a fraudulent, coercive, or dishonest practice, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in

the conduct of business in Oregon or elsewhere. In this case, Hoag demonstrated incompetence in the conduct of business in Oregon.

OAR 836-080-0090 prohibits a person from recommending to a consumer the purchase, sale, or replacement of a life insurance policy or annuity, or any rider, endorsement or amendment to the policy or annuity, without reasonable grounds to believe that the recommendation or transaction is not unsuitable for the consumer based upon reasonable inquiry concerning the consumer's insurance objectives, financial situation and needs, age and other relevant information known by the person. In other words, before recommending to a person that they purchase or replace a life insurance policy or annuity, an insurance producer must (1) make a reasonable inquiry of the person's insurance objectives, financial situation and needs, age and other relevant information, and (2) based on such inquiry must reasonably believe that the purchase or replacement is suitable for the person. Thus, if an insurance producer does not make a reasonable inquiry, or if an insurance producer makes a reasonable inquiry but based on such inquiry does not reasonably believe that the purchase or replacement is suitable for the person, then the insurance producer may not make a recommendation to buy or replace the policy or annuity. In this case, Hoag failed to make a reasonable and timely inquiry into a person's circumstances before making a recommendation to buy insurance.

In September 2005, Hoag recommended to Roberta E. Stacy (Stacy) of Eugene, Oregon that she terminate three annuities issued by Bankers Life and Casualty Company (BLCC) and use the proceeds to purchase a new annuity also to be issued by BLCC. Hoag informed Stacy of the option to terminate the annuities, and have the net proceeds deposited into an interest bearing account. However, Hoag did not inform Stacy that she could continue the annuities rather than terminate them. Hoag asked Stacy if she needed the proceeds to live on, and Stacy said she did not need the proceeds to live on. However, Hoag did not ask Stacy any other questions about her insurance objectives, financial situation, or other relevant information. Stacy relied on Hoag's recommendation and did as he recommended. As a result of terminating the annuities, Stacy owed federal and state taxes. As a result of

purchasing the new annuity, Stacy would have to pay a fee if she withdrew any money from the new annuity during the next nine years. If Stacy had continued the annuities, then she would have had access to the proceeds if needed, and avoided paying the taxes and potential withdrawal fees. In January and February 2006, Stacy learned that she owed additional taxes as a result of terminating the annuities and could have avoided the taxes by continuing the annuities. In February 2006, Stacy complained to the Insurance Division. The Insurance Division contacted BLCC about the complaint. In March 2006, BLCC reversed the transactions.

Action

Pursuant to ORS 731.988, Hoag is assessed a civil penalty of \$2,000. 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 shall be *received* by the Insurance Division by the date of the final order.

Dated June 22, 2007

/s/ Gary W. Hoag
Gary W. Hoag

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 July 12, 2007

/s/ Carl N. Lundberg
Carl N. Lundberg
Deputy Administrator
Insurance Division
Department of Consumer and Business Services