

Proposed Order pursuant to ORS 183.460. The Proposed Order was mailed to Oak Tree on February 23, 2001 and was subsequently received by Oak Tree.

On March 23, 2001, the Director received Oak Tree's written exceptions to the Proposed Order. On April 4, 2001, the Insurance Division responded to Oak Tree's exceptions. On April 6, 2001, Oak Tree replied to the Insurance Division's response. As explained below, the Director is not persuaded by Oak Tree's exceptions or reply.

One of Oak Tree's exceptions is that the Proposed Order failed to recognize the underlying circumstances of this matter as simply and only a contract dispute between Oak Tree and Scott Gelfand (Gelfand), thereby implying that the parties merely had a misunderstanding and that no one did anything wrong.

The Director disagrees. Although Oak Tree's acts of endorsing and depositing Gelfand's commission checks in to its operating account without Gelfand's authority may have generated a contract dispute, they also violated ORS 744.013(2)(d), thereby also generating this disciplinary matter. The Proposed Order correctly determined that Oak Tree's Producer Agreement with Gelfand applied only to business written or renewed through Oak Tree. The flood insurance policies were sold by Gelfand prior to signing the agreement with Oak Tree pursuant to his individual appointment by Hartford and the National Flood Service. Oak Tree did not have an appointment by Hartford to write or renew flood insurance policies. Thus, the flood insurance policies were not written or renewed through Oak Tree. Consequently, Oak Tree had no right to keep any part of Gelfand's commissions.

Oak Tree's other exception is that the Proposed Order misinterpreted the significance of the ownership provisions of Oak Tree's agreement with Gelfand by incorrectly relying on Paragraph 2 of the Producer Agreement. Oak Tree argues that Paragraph 2 does not limit Oak Tree's ownership rights in the policies produced by Gelfand as set forth in Paragraphs 7, 8, and 17.

The Director disagrees. Paragraph 2 of the agreement directly addresses the compensation of the producer and clearly states in three separate sentences that all policies written or renewed through Oak Tree are subject to the agreement. Paragraph 7 limits the producer to developing business exclusively for Oak Tree. However, it is a limitation on the producer's activities and does not address ownership of commissions. Paragraph 8 addresses fees and ownership of the business developed, but it references, as does Paragraph 2, business that is developed through Oak Tree. Finally, Paragraph 17

addresses the ownership of client lists and provides a specific remedy for breach of Oak Tree's ownership of the client lists. Of these provisions, only Paragraph 2 specifically addresses the ownership of the commissions themselves and that provision applies only to business written or renewed through Oak Tree. Consequently, the Proposed Order correctly interpreted the provisions of Oak Tree's agreement with Gelfand.

Accordingly, the Director, having considered the entire record in this matter, now makes the following final decision in this proceeding in accordance with ORS 731.248, 183.450 and 183.470 and related administrative rules.

Findings of Fact, Conclusions of Law and Opinion

The Director adopts, and incorporates herein by this reference the facts, conclusions and reasoning of the Proposed Order dated February 23, 2001 issued in this matter as the facts, conclusions, and reasoning of this order.

Order

Oak Tree shall pay a civil penalty of \$10,000 pursuant to ORS 731.988. Payment 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, Room 440, Salem, OR 97301-3883. Payment shall be received by the Insurance Division by 5:00 PM (PT) on the 71st calendar day after the date of this order pursuant to ORS 183.090(2).

Notice of Judicial Review

Pursuant to ORS 183.480 and 183.482, Oak Tree may request the Oregon Court of Appeals to review this order by filing a written petition for judicial review with the Court within 60 calendar days following the date this order is personally delivered or mailed to Oak Tree, whichever occurs first.

Dated May 7, 2001.

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

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