STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION

In the Matter of **Tracie M. Donahue**.	)	**STIPULATION** and
	)	**FINAL ORDER**
	)	Case No. INS 01-02-008
	)	File No. 2149 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 Tracie M. Donahue (Donahue) for violating the Oregon Insurance Code.

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

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

Facts

Licensing

Donahue was licensed in Oregon as a resident individual agent from 8/11/97 to 1/10/00. On 1/10/00, Donahue voluntarily surrendered the license. Donahue's license number was 611861. Donahue currently resides at 4407 Vivien Way, Rocklin CA 95765-5508.

Failure to Promptly and Completely Respond to Director's Inquiry

On 12/2/99, the Insurance Division mailed to Donahue a letter asking for certain information in writing by 12/23/99. The Insurance Division mailed the letter to

Donahue's last known residence address in Oregon. However, Donahue had moved from Oregon to California without notifying the Insurance Division. The letter was forwarded to Donahue at an address in California. On 12/9/99, Donahue received the letter. On 12/9/99, Donahue called and left a recorded message for the Insurance Division's investigator who wrote the letter. In the message, Donahue gave her telephone number and said that she received a copy of the Insurance Division's subpoena to her former bank for certain bank account records. From 12/9/99 to 12/14/99, the investigator called for Donahue several times but no one answered. On 12/27/99, when the Insurance Division did not receive any written response to the letter, the Insurance Division mailed to Donahue a second letter continuing to request certain information. The second letter was mailed to Donahue at an address in California. Donahue received the second letter on 1/3/00. On 1/4/00, Donahue called the investigator. During the conversation, Donahue told the investigator that she did not have any of the financial records being requested. The investigator requested Donahue to respond in writing as requested. Donahue told the investigator that she had sent her Oregon insurance agent license to the Insurance Division when Donahue moved to California. The Investigator informed Donahue that according to the Insurance Division's records Donahue's Oregon insurance agent license was still active and had not been voluntarily surrendered. On or about 1/10/00, the Insurance Division received from Donahue a letter informing the Insurance Division that Donahue was voluntarily surrendering her Oregon insurance agent license.

Misappropriation of Premium

On or about 4/18/98, a Saturday, Nathan R. Reck (Reck) of Molalla, Oregon agreed to purchase a 1992 Toyota Corolla automobile from Coliseum Ford, Inc. (Coliseum Ford). As part of the purchase agreement, Reck agreed to obtain insurance insuring the automobile and Coliseum Ford agreed to pay the down payment of the premium for the insurance. On the same date, Coliseum Ford called Donahue at K&J Insurance, Inc (K&J). Coliseum Ford had Reck talk to Donahue on the telephone about purchasing the insurance. During the telephone

conversation, Donahue completed an application for the insurance to be provided by Guaranty National Insurance Company (GNIC). Donahue told Coliseum Ford that the down payment of the premium would be $269. Coliseum Ford agreed to issue a check to pay for the insurance the following week. Later that same date, Reck met with Donahue and signed the application. On the same date, Donahue issued a check, number 1275, dated 4/18/98, payable to GNIC in the amount of $269 as advance payment of the down payment of the premium due for the insurance. The check was drawn on Donahue's personal checking account, number 370062015745, at Key Bank National Association in Beaverton, Oregon. On 4/20/98, a Monday and the next business day, Donahue gave the application and her check to K&J to be processed and sent to GNIC. On 4/23/98, GNIC received the application and check. On 5/5/98, GNIC issued a policy, number 2067891, effective on 4/18/98. Sometime between 4/18/98 and 4/24/98, Reck agreed to purchase from Coliseum Ford a 1997 Ford Contour instead of the 1992 Toyota Corolla. Coliseum Ford called Donahue to find out what the premium would be to insure the 1997 Ford Contour. Donahue told Coliseum Ford that the down payment of the premium would be $400. On 4/24/98, Coliseum Ford issued a check, number 0080411, dated 4/24/98, made payable to K&J in the amount of $400 as payment of the insurance. On or about the same date, Donahue went to Coliseum Ford and picked up the check. On 4/27/98, Donahue sent to GNIC a memo informing it that the automobile to be insured had changed from the 1992 Toyota Corolla to a 1997 Ford Contour. On or about 4/28/98, Donahue endorsed the check and deposited it into her personal checking account. Donahue was not authorized by K&J to endorse or deposit the check. Donahue never gave to K&J, sent to GNIC, or returned to Coliseum Ford or Reck the $131 difference between the amount of Coliseum Ford's check of $400 and her check of $269.

Failure to Deposit Premium into Insurance Premium Trust Account

From 3/30/99 to 4/27/99, Donahue deposited into her personal checking account, number 370062015745, at Key Bank National Association in Beaverton, Oregon, five checks, totaling $1,381.92, which she received from or on behalf of insureds as

payment of the premium for automobile insurance to be provided through K& J by various insurers. The number, date, amount, payor, insured and deposit date relative to each check is as follows:

Check No.	Date	Amount	Payor	Insured	Deposit Date
2003040	3/30/98	$226.42	Thomason Toyota	Sharyl Oliver	3/30/98
2003926	4/13/98	$289.00	Thomason Toyota	Nathan M. Weide	4/14/98
2004094	4/15/98	$157.50	Thomason Toyota	Randall L. Smith	4/16/98
2004526	4/21/98	$309.00	Thomason Toyota	Ruby A. Fleming	4/22/98
0080411	4/24/98	$400.00	Coliseum Ford	Nathan R. Reck	4/27/98
	Total	$1,381.92			

Ultimate Facts and Conclusions

Donahue violated ORS 731.296 in one instance by not promptly or completely responding to an inquiry from the Director.

Donahue violated ORS 744.013(2)(d) in one instance by misappropriating her own use money that she received on behalf of an applicant for insurance.

Donahue violated ORS 744.225 in five instances by failing to deposit insurance premiums into an insurance premium trust account.

Action

The Oregon insurance agent license issued to Donahue shall be revoked on the date of the Final Order pursuant to ORS 744.013(1)(a) and 744.011. Donahue shall not transact insurance in Oregon, including servicing clients, on and after that date.

In consideration of the Director not assessing Donahue a civil penalty of $3,000 pursuant to ORS 731.988, Donahue agrees not to apply to the Director for any license as an insurance agent, consultant or adjuster that is to be issued to Donahue or to any business organization owned or operated by Donahue. Donahue also agrees not to own any equity interest in, or to be an officer, director or employee of, any business organization licensed as an insurance agent, consultant or adjuster in Oregon.

Dated April 11, 2001.

/s/ Tracie M. Donahue
Tracie M. Donahue

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 26, 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 26, 2001.

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

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