STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION

In the Matter of **Elaine L. Koback**.	) **STIPULATION** and) **FINAL ORDER**) Case No. INS 01-03-009) File No. 2441 IV

STIPULATION

The Director of the Department of Consumer and Business Services (Director) commences the above entitled administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 731.256, to take disciplinary action against Elaine L. Koback (Koback) for violating the Oregon Insurance Code and related rules.

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

Koback waives the right to receive a notice of proposed action, 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. Koback admits and agrees to the following facts, conclusions, and action.

Facts

Licensing

Koback has been licensed in Oregon as a resident individual insurance agent since 12/10/92. Koback's license number is 602780.

Misappropriation of Premium Refund and Failure to Timely Pay Premium Refund

At all relevant times, Koback was the sole owner and an agent of Koback & Gross, Inc. (K&G), a licensed insurance agency, in Portland Oregon. In 3/99, K&G sold to Charles F. Morgan Jr. (Morgan) then of Portland, Oregon, a motorcycle insurance policy, number 350683126, issued by Dairyland Insurance Company (Dairyland). On or about 3/9/00, “Teri”, an employee of K&G, notified Dairyland that Morgan had moved to Fairview, Oregon. The address change entitled Morgan to a refund of gross unearned premium of $54.09. On or about 3/14/00, Dairyland prepared an

endorsement to the policy indicating, among other things, that Morgan's address had been changed, that he was entitled to a premium refund of $54.09 and that he would receive the refund within 30 days. On or about 3/20/00, K&G received the agent copy of the endorsement. On or about 3/24/00, Dairyland issued to K&G a check, numbered 03815949, dated 3/24/00, in the amount of $133.09 as payment of, among other things, the net unearned premium of $45.98 due to Morgan. Sometime between 3/24/00 and 3/27/00, Koback received from Dairyland the check and a commission statement. The commission statement indicated, among other things, that Dairyland was crediting K&G with the unearned premium of $45.98 due to Morgan and that K&G was obligated to add the unearned commission of $8.11, and therefore pay the total gross unearned premium of $54.09 to Morgan. On 3/27/00, K&G deposited Dairyland's check into K&G's insurance premium trust account. On or about 5/26/00, almost 2 months later, Koback issued and mailed to Morgan an agency check, numbered 19570, dated 5/26/00, in the amount of $54.09. On or about 7/7/00, Morgan attempted to negotiate the check. However, the check was dishonored because Koback's trust account was overdrawn by $501.99. Koback never paid the refund to Morgan.

Ultimate Facts and Conclusions

Koback violated ORS 744.013(2)(d) by misappropriating an insurance premium refund that Koback received from an insurer and was to pay to an insured.

Koback violated Oregon Administrative Rules (OAR) 836-074-0025 by failing to pay an insurance premium refund to an insured within 30 days after receiving the refund from the insurer.

Action

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

In consideration of the Director not assessing Koback a civil penalty of $2,000 pursuant to ORS 731.988, Koback agrees not to apply to the Director for any license as an insurance agent, consultant or adjuster that is to be issued to Koback or to any

business organization owned or operated by Koback. Koback 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 26, 2001.

/s/ Elaine L. Koback
Elaine L. Koback

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.

The Director shall not take any further disciplinary action against Koback for any violation of the Insurance Code that occurred before the date of this Final Order.

Dated May 8, 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 May 8, 2001.

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