STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION

In the Matter of **Gary S. Trammell**.	)	**FINAL ORDER**
	)	Case No. INS 01-07-003

The Director of the Oregon 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 Gary S. Trammell (Trammell).

On July 16, 2001, the Director issued a Notice of Proposed Action (Notice) pursuant to ORS 183.415 proposing to revoke Trammell's Oregon insurance agent license pursuant to ORS 744.013(1)(a) and assess Trammell a civil penalty of $6,000 pursuant to ORS 731.988(1) for allegedly violating various laws as specified therein. The Notice also informed Trammell that he had a right to a hearing and to be represented by an attorney at the hearing. The Notice also informed Trammell that if the Director issued a Final Order by default, then the Director designated a specified portion of the Insurance Division's file of this matter as part of the record for the purpose of proving a prima facie case upon default.

The Director did not receive from or on behalf of Trammell any request for a hearing.

The Director did not hold a hearing. However, the Director reviewed and considered the entire record in this matter, and found that the specified portion of the Insurance Division's file of this matter proved a prima facie case of the alleged violations.

Therefore, the Director 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 and Conclusions of Law

Licensing

Trammell has been licensed in Oregon as a resident individual agent from 1/25/84 to 1/31/01. On 1/31/01, Trammel's license expired because he did not renew it. Trammell's license number is 101524. Trammell's last recorded residence and

business street address is 2390 Falcon Drive, West Linn OR 97068-4143, residence and business mailing address is PO Box 267, West Linn OR 97068-0267, and residence and business telephone number is 503-650-7422.

Misappropriation of Insurance Premium

Trammell violated ORS 744.013(2)(d) in two instances by engaging in the following conduct:

1. On 10/25/97, Trammel solicited and received from Peter J. Milanovich (P. Milanovich or Milanovich) of West Linn, Oregon an application for life insurance to be provided by All American Life Insurance Company (AALIC). Trammell sent the application to AALIC. On or about 10/29/97, AALIC received the application. On 11/10/97, Trammell received from Margaret Milanovich (M. Milanovich or Milanovich), P. Milanovich's wife, a check, number 7557, dated 11/10/97, in the amount of $12,000.00, made payable to AALIC, as payment of the first annual premium for the insurance applied for. Also on 11/10/97, Trammell or someone on his behalf endorsed and deposited the check into a bank account, number 283-302994-2, at Washington Mutual Bank in Lake Oswego, Oregon. The account was in the name of Zenajida Zadan (Zadan)(aka Zena Zadan). Zadan was Trammell's wife or domestic partner. Trammell and Zadan had at least three children together and lived in the same residence. Trammell and Zadan both used the account to deposit money into and withdraw money out of. For example, from 10/30/97 to 12/11/97, around the date in question, Trammell or someone on his behalf deposited into the account six checks that were issued by various insurance companies to Trammell in the total amount of $17,096.10. Also for example, on 11/6/97, 11/10/97, and 11/17/97, around the date in question, Zadan or someone on her behalf deposited into the account two money orders and a check that were issued to Zadan in the total amount of $3,150.00. On 11/10/97, prior to the deposit of Milanovich's check, the account had a balance of $1,165.05. On 11/10/97, after the deposit of Milanovich's check, Zadan or someone on her behalf withdrew $9,475.00 from the account to purchase bank checks and money orders to pay for various personal expenses. Thus, Trammell enabled and permitted Zadan to use $8,309.95 of the $12,000 paid by Milanovich to Trammell. On or about 12/4/97,

about a month later, Trammell sent to AALIC a money order, number 67444014, dated 12/4/97, in the amount of $1,000.00, made payable to AALIC. Sometime between 12/10/97 and 12/15/97, AALIC received the money order. On or about 12/15/97, AALIC issued a policy, number PB010012L, and mailed it to Trammell. Subsequently, Trammell delivered the policy to Milanovich. Subsequently, Trammell sent to AALIC additional premium of $2,022.84 on 3/6/98, $2,500.00 on 6/9/98, and $3,000.00 on 10/12/98 for a total of $8,522.84. Trammell did not send to AALIC or return to Milanovich the remaining $3,477.16. Trammell was not authorized by Milanovich to withhold or use any portion of the proceeds of the check. On 11/30/98, when Milanovich had not received any notice about when to pay the second annual premium for the policy, Milanovich called AALIC and discovered that the address to which correspondence about the policy was sent had been changed from 2905 Rawhide, West Linn OR 97068 to PO Box 267, West Linn OR 97068. 2905 Rawhide, West Linn OR 97068 was Milanovich's residence address. However, PO Box 267, West Linn OR 97068 was Trammell's postal box at which he received both personal and business mail. Milanovich requested AALIC to change the address back to Milanovich's correct address which AALIC did. Subsequently, when Milanovich still did not receive from AALIC any premium payment notice Milanovich again called AALIC and discovered that AALIC had received only $1,000 initially instead of the entire $12,000, that AALIC had just received a payment in 10/97, and thus no additional payment was due. Consequently, on 12/18/98, Milanovich requested AALIC to send an audit of the payments that AALIC had received and applied towards the policy. On 12/30/98, AALIC sent to Milanovich the audit which showed that AALIC had received only $8,522.84. On or about 1/14/99, Milanovich requested AALIC to cancel the policy and refund the $12,000 plus interest at nine percent. On 2/9/99, AALIC refunded to Milanovich $12,904.08 which represented the $12,000, plus 6.5% which was the highest interest rate payable under the policy while it was effective. AALIC charged Trammell for the difference between the $12,904.08 and the $8,522.84 which was $4,381.24. On 2/15/99, AALIC terminated Trammell and informed him that he owed

AALIC a total of $19,602.37. On 4/18/00, AALIC sent the unpaid debt to collection. As of 10/5/00, Trammell had not paid AALIC.

2. Sometime between 9/10/97 and 9/18/97, Trammel solicited and received from Joan L. Lovegrove (Lovegrove) of Portland, Oregon an application for life insurance to be provided by Great Southern Life Insurance Company (GSLIC). Lovegrove did not give any money to Trammell with the application because she intended to terminate a life insurance policy, number WMH76361, issued by Fortis Benefits Insurance Company (FBIC), and use the cash surrender proceeds to pay the premium for the policy being applied for. Accordingly, Trammell prepared a typed request to FBIC to terminate the FBIC policy, and mailed the request to Lovegrove. On 10/23/97, Lovegrove signed the request and mailed it to Trammell. On 10/29/97, FBIC received the request. On 11/4/97, FBIC sent to Trammell a Cash Surrender Request form. Trammell mailed the form to Lovegrove. On 11/10/97, Lovegrove signed the form and mailed it to Trammell. Trammell sent the form to FBIC. On 11/17/97, FBIC received the form. On 11/19/97, FBIC issued a check, number 0010549074, dated 11/19/97, in the amount of $3,370.64, made payable to Lovegrove, as payment of the cash surrender value of the FBIC policy. Sometime between 11/19/97 and 11/28/97, Lovegrove endorsed the check, and gave or mailed it to Trammell. On 11/28/97, Trammell or someone at his direction deposited the check into Trammell's bank account, number 283-302994-2, at Washington Mutual Bank in Lake Oswego, Oregon. Trammell did not send to GSLIC, or return to Lovegrove, any portion of the proceeds of the check. Trammell was not authorized by Lovegrove to withhold or use any portion of the proceeds of the check.

Dishonest Conduct While Acting as an Insurance Agent

Trammell violated ORS 744.013(2)(g) in two instances by engaging in the following conduct:

1. On or about 1/14/98, Trammel called AALIC and requested AALIC to change the address to which communications regarding P. Milanovich's policy were sent from 2905 Rawhide, West Linn OR 97068, which was Milanovich's residence address, to PO Box 267, West Linn OR 97068, which was Trammell's postal box at which he received

both personal and business mail. By calling and requesting AALIC to change the address, Trammell represented to AALIC that Milanovich had authorized Trammell to make the change. This representation was not true and Trammel knew that it was not true because Milanovich never used the postal box and Milanovich never talked to Trammell about changing the address. On 11/30/98, when Milanovich did not receive any notice about when to pay the second annual premium for the policy, Milanovich called AALIC and discovered that the address had been changed. Milanovich requested AALIC to change the address back to Milanovich's correct address.

2. On 2/8/99, Trammell faxed an undated letter to AALIC. In the letter, Trammell claimed that another unnamed person mistakenly deposited Milanovich's check into Trammell's bank account while Trammell was incarcerated for 21 days for being convicted for the second time for driving while under the influence of intoxicants (DUII). This was not true and Trammell knew that this was not true. Milanovich gave the check to Trammell on 11/10/97 and the check was deposited on the same date. Trammell was not incarcerated from 10/97 to 12/97. In the letter, Trammell also claimed that Milanovich "would be happy with the going policy interest rate of 6.25% with his refund." This was not true and Trammell knew that this was not true. Milanovich had previously sent a letter dated 1/14/99 to AALIC requesting AALIC to cancel the policy and refund the $12,000 plus interest at nine percent. Also, Trammel never discussed with Milanovich an acceptable interest rate.

Misrepresentation on or Relative to an Insurance Application

Trammell violated ORS 746.100 in one instance by engaging in the following conduct. On 9/18/97, Trammel solicited and received from Lovegrove the application for the GSLIC policy referred to above. The application asked two questions about existing life insurance and whether any such existing life insurance would be replaced by the life insurance being applied for. Question 14A asked if Lovegrove had any life insurance at that time. Question 14B asked if "the proposed insurance [is] intended to replace an existing insurance or annuity policy." Trammell wrote "None" as the answer to question 14A and marked "No" as the answer to question 14B. These answers were not true and Trammell knew that they were not true. Lovegrove was

insured under a life insurance policy, number WMH76361, issued by FBIC. Lovegrove intended to terminate the FBIC policy and use the cash surrender proceeds thereof to pay the initial premium for the GSLIC policy. Trammell knew that Lovegrove was insured under the FBIC policy because Trammell (1) sold the FBIC policy to Lovegrove, (2) advised Lovegrove to terminate the FBIC policy and purchase the GSLIC policy in lieu thereof, and prepared and forwarded for Lovegrove the necessary documents to terminate the FBIC policy. Likewise, Trammell knew that Lovegrove intended to replace the FBIC policy with the GSLIC policy because Trammell (1) told Lovegrove that she could terminate the FBIC policy and use the cash surrender proceeds of the policy to pay the initial premium for the GSLIC policy "without any loss of money," (2) completed and had Lovegrove sign an application for the GSLIC policy, and (3) Lovegrove did not pay to Trammell any premium with the application for the GSLIC policy but would do so later after she received from FBIC the cash surrender proceeds of the FBIC policy. Trammell sent to GSLIC the application, and a check issued by a Derek J. Wright (Wright), check number 1019, dated 9/16/97, in the amount of $100, made payable to GSLIC. On 9/22/97, GSLIC received the application and check. On or about 10/14/97, GSLIC issued to Lovegrove a policy, number 1843177. By sending the check with the application to GSLIC, Trammell represented to GSLIC that Lovegrove intended to pay only $100 as the initial premium and to use the check to pay the initial premium. These representations were not true and Trammell knew that they were not true because (1) Lovegrove did not know Wright at all, (2) Lovegrove did not know of or consent to Trammell sending the check to GSLIC, (3) Lovegrove did not pay any premium with the application, and (4) sometime between 11/19/97 and 11/28/97, Lovegrove gave or mailed to Trammell the endorsed FBIC cash surrender check in the amount of $3,370.84 as payment of the an initial premium for the GSLIC policy.

Failure to Comply with Life Insurance Replacement Rules

Trammell violated OAR 836-080-0025(2) in one instance by engaging in the following conduct. On 9/18/97, Trammel solicited and received from Lovegrove the application for the GSLIC policy referred to above. Trammell knew that Lovegrove

intended to replace the FBIC policy with the GSLIC policy. However, Trammell did not present to Lovegrove, or have Lovegrove sign, a replacement notice referred to in and required by OAR 836-080-0025(2)(a). Also, Trammell did not obtain from Lovegrove certain information about the existing FBIC policy that was to be replaced by the GSLIC policy as required by OAR 836-080-0025(2)(b). Also, Trammell did not leave with Lovegrove a copy of the signed replacement notice, or the to-be-replaced policy information as required by OAR 836-080-0225(2)(c). Trammell sent the application to GSLIC. Trammell sent the application to GSLIC. On 9/22/97, GSLIC received the application. Trammell did not include with the application or send to GSLIC at any other time, a copy of the signed replacement notice or the to-be-replaced policy information as required by OAR 836-080-0225(2)(d).

Order

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

Trammell shall pay a civil penalty of $6,000 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 NE, 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, Trammell 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 Trammell, whichever occurs first.

Dated August 24, 2001

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