

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

In the Matter of **Bailey & De Bernardi**) **STIPULATION** and
Insurance, Inc.) **FINAL ORDER**
) Case No. INS 04-02-008

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 Bailey & De Bernardi Insurance, Inc. (B&D).

B&D enters into this stipulation, pursuant to ORS 183.415(5), to conclude this proceeding without further administrative or judicial proceedings.

B&D waives the right to receive a notice of proposed action, receive a notice of the rights of a party and procedures in contested cases, have a hearing, be represented by an attorney at the hearing, receive a proposed order, file exceptions to the proposed order, and have the final order judicially reviewed.

B&D stipulates to the following facts, conclusions, and action; and consents to issuance of a final order incorporating this stipulation.

Facts and Conclusions

Licensing Information

B&D has been licensed in Oregon as a resident insurance agent since 4/1/68. B&D's current license number is 801793. B&D's last recorded business street address is located in Roseburg, Oregon. Warren L. Marcotti, Jr. (Marcotti) is President of, and an individual licensee employed by or contracted with, B&D.

Withheld Insurance Premium

B&D violated ORS 744.013(2)(d) (1999) in one instance by engaging in the following conduct. ORS 744.013(2)(d) (1999) prohibits a person licensed in Oregon as an insurance agent from misappropriating, illegally withholding, or converting applications or premium for insurance belonging to an insurer, agent or other

person entitled to the application or premium. At all relevant times, Red Shield Insurance Company (Red Shield) authorized Indemnity Excess & Surplus Agency, Inc. (IESA) to transact insurance on behalf of Red Shield in Oregon. Also at all relevant times, B&D were authorized by IESA to transact insurance on behalf of IESA in Oregon. On or about 8/8/01, Marcotti, on behalf of B&D, received from William and Robin Kempke (collectively referred to as Kempke), of Roseburg, Oregon, an application for an AdultCare and Homeowners insurance policy to be issued by Red Shield. Sometime between 8/20/01 and 8/24/01, Marcotti received from AmeriTitle, Inc., on behalf of Kempke, a check, number 102810, dated 8/20/01, in the amount of \$1,611.00, as payment of the annual premium of \$1,536.00 and processing fee of \$75.00. On 8/25/01, Marcotti deposited the check into B&D's insurance premium trust money market account, number 044021915, at PremierWest Bank in Roseburg, Oregon. On 9/10/01, Red Shield issued the policy, assigned number AFC001782. The policy was to be effective from 8/14/01 to 8/14/02. On 9/21/01, IESA received from Marcotti a check, number 11551, dated 9/19/01, in the amount of \$1,375.70, as payment in part of the net premium due for the policy. B&D retained the gross commission of \$153.60 for selling the policy. On or about 12/6/01, Red Shield issued a notice of cancellation to be effective from 11/17/01. The notice indicated that the gross unearned premium to be refunded to the insured was \$1,192.00. On or about 12/3/01, IESA issued to B&D a check, number 6830, dated 12/3/01, in the amount of \$1,023.20, as payment of the net unearned premium due to insured. B&D was required to add its unearned commission of \$168.80 to the net unearned premium of \$1,023.20 and refund the entire \$1,192 to the insured. Sometime between 12/3/01 and 12/14/01, B&D received the check from IESA. On 12/14/01, B&D deposited the check into its insurance premium trust account, number 0440211908, at PremierWest Bank. On or about 12/14/01, Marcotti completed an application in the name of Kempke for a policy to be issued by Red Shield. On the same date, Marcotti, issued a check, number 11570, dated 12/14/01, in the amount of \$947, as payment of the annual premium of \$872 and processing fee of \$75 for the policy to be issued by Red Shield.

Marcotti obtained the \$872 from the \$1,192.00 unearned premium for policy number AFC001782. On or about 12/17/01, IESA received the check from Marcotti. On or about 1/2/02, Red Shield issued the policy, assigned number RCP001467. B&D has not paid to Kempke the remaining \$245.00.

Failed to Respond to Director

B&D violated ORS 731.296 in three instances by engaging in the following conduct.

1. On 6/27/02, the Insurance Division mailed by first class mail a letter dated 6/27/02 to Marcotti, on behalf of B&D, at his last recorded business mailing address of Bailey & De Bernardi Insurance, Inc., PO Box 985, Roseburg, OR 97470-0229, requesting Marcotti to provide to the Insurance Division certain information by 7/15/02. The Insurance Division did not receive any response. On 7/23/02, the Insurance Division mailed by certified mail a follow up letter dated 7/23/02 to Marcotti at the same address. On 7/25/02, Noreen Snawder (Snawder), an employee of B&D, received the letter. On 8/12/02, and again on 8/27/02, a representative of the Insurance Division called and talked with Marcotti who said that he would respond to the letters within a week. On 9/11/02, 58 days late, the Insurance Division received from Marcotti a letter dated 9/11/02 providing some but not all of the information requested. Marcotti did not provide a copy of the bank statement for the period from 12/00 to 3/01 for B&D's insurance premium trust account, or a copy of Marcotti's agreement with certain insurers. Since then, the Insurance Division has not received the omitted information.

2. On or about 7/11/02, the Insurance Division mailed by first class mail a letter dated 7/11/02 to Marcotti, on behalf of B&D, at his last recorded business mailing address of Bailey & De Bernardi Insurance, Inc., PO Box 985, Roseburg, OR 97470-0229, requesting Marcotti to provide certain information to the Insurance Division by 8/1/02. The Insurance Division did not receive any response. On 9/17/02, the Insurance Division mailed by certified mail a follow up letter dated 9/17/02 to Marcotti to the same address. This first follow up letter requested Marcotti respond by 10/1/02. Marcotti did not claim the letter. On 10/7/02, the Insurance Division

received the unclaimed letter. On 10/21/02, the Insurance Division mailed by certified mail a second follow up letter dated 10/21/02 to Marcotti at the same address. The second follow up letter requested Marcotti respond by 11/12/02. On 10/25/02, Snawder received the letter. On 11/20/02, 111 days late, the Insurance Division received from Marcotti a letter dated 11/19/02 providing the requested information.

3. On 2/5/03, the Insurance Division mailed by first class mail a letter dated 2/5/03 to Marcotti, on behalf of B&D, at his last recorded business street address of Bailey & De Bernardi Insurance, Inc., 830 SE Rose Street, Roseburg, OR 97470, requesting Marcotti, and his "secretary" referred to in his letter dated 11/19/02 and referred to above, to provide to the Insurance Division certain information by 2/20/03. The Insurance Division did not receive any response. On 3/20/03, the Insurance Division mailed by certified mail a follow up letter dated 3/20/03, to Marcotti at the same address. On 3/21/03, Janelle Bangs received the letter. The Insurance Division has not receive any response.

Action

Pursuant to ORS 731.988, B&D is assessed a civil penalty of \$5,000. The payment of the civil penalty 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 350 Winter Street NE, Room 440, Salem, OR 97301-3883, 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.

In consideration of the director not taking other enforcement action against B&D, B&D agrees to the following:

B&D agrees to refund to Kempke \$245 plus \$49.62 in interest, for a total of \$294.62. B&D shall mail the check to Kempke by 4/1/04. B&D shall mail a copy of the check to the Insurance Division by 4/1/04.

B&D agrees to permit the Insurance Division to audit B&D's insurance premium trust account from 1/1/02 to the date of the audit. The audit shall be conducted

during the hours of 8:00 AM to 5:00 PM, Monday through Friday at the principal office of B&D, which is presently located at 830 SE Rose Street, Roseburg, OR 97470-3942. The Insurance Division may, but is not required to give B&D any notice of the commencement of the audit. B&D shall cooperate with the Insurance Division by having all relevant records on the premises of B&D's office and permit the Insurance Division to inspect and duplicate any and all such records at the Insurance Division's expense. B&D shall pay for all services provided by third party professionals, such as accountants and lawyers, procured by B&D to enable B&D to cooperate in the audit. If the ownership or any of the assets of B&D are sold before an audit is conducted, then the Insurance Division shall continue to have the right to conduct the audit. B&D acknowledges that if B&D violates this order, or the Insurance Division finds as a result of the audit that B&D, or any of its agents, or both, has violated any applicable provision of the Insurance Code or related rules, that the director may take action against B&D, or any of its agents, or both, for any such violations.

Dated April 5, 2004

/s/Warren L. Marcotti, Jr.

[Signature of Representative]

Warren L. Marcotti, Jr.

President

Bailey & De Bernardi Insurance, Inc.

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 May 14, 2004

/s/ Cory Streisinger

Cory Streisinger

Director

Department of Consumer and Business Services

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