

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

In the Matter of **Gillespie-Johnson-Stanger Insurance Inc. dba House of Insurance**) **STIPULATION** and
) **FINAL ORDER**
) Case No. INS 04-08-013

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 Gillespie-Johnson-Stanger Insurance Inc. dba House of Insurance (HOI).

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

HOI 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.

HOI stipulates to the following facts, conclusions, and action, and consents to issuance of a final order incorporating this stipulation.

Facts and Conclusions

Licensing Information

HOI has been licensed in Oregon as a resident insurance agent since 9/3/70.

Withheld Insurance Premiums

HOI violated ORS 744.013(2)(d) (1999) or 744.074(1)(d) in nine instances by engaging in the following conduct. Both ORS 744.013(2)(d) (1999) for violations before 1/1/02, and 744.074(1)(d) for violations on and after 1/1/02, prohibit a person licensed in Oregon as an insurance agent from, *inter alia*, withholding applications or premium for insurance belonging to an insurer, agent or other person entitled to the application or premium. At all relevant times, HOI had at least two insurance premium trust accounts. One account was a checking account, number 02 5000076

7, at LibertyBank. The other account, was a money market account, number 02 9002212 8, at LibertyBank.

1. On or about 5/13/99, HOI received from Perry Nicholson (Nicholson) \$300.00 as payment for insurance. On or about 5/19/99, HOI deposited the money into its checking trust account. HOI did not forward any application or premium to an insurer and thus did not procure any insurance. On or about 1/9/04, Nicholson had a loss that would have been paid for by insurance if HOI had procured the insurance. Subsequently, HOI reimbursed Nicholson for the loss. Thus, HOI withheld from Nicholson \$300.00 from the time HOI should have procured insurance to the time it paid for the loss.

2. On or about 8/4/00, HOI received from Wildfire Control Corporation (Wildfire) \$537.00 as payment for insurance. On or about 8/4/00, HOI deposited the money into its checking trust account. On 8/4/00, HOI remitted the money to the National Council on Compensation Insurance, Inc. (NCCI). On 8/29/00, NCCI returned the money to HOI. On 8/29/00 and 5/9/02, HOI unsuccessfully attempted to remit the \$537.00 to Wildfire Control. As of at least 7/2/04, the money remained in the checking trust account. Thus, HOI withheld from Wildfire \$537.00 from the date that HOI could have remitted the money to Wildfire to at least 7/2/04.

3. On or about 12/28/00, HOI received from Gordon Lindley (Lindley) \$285.00 as payment for insurance. HOI remitted \$283.00 to St Paul Insurance Company, and deposited the remaining \$2.00, which was overpayment, into its checking trust account. On 1/31/01, and again on 5/7/02, HOI issued a check for \$2.00 and sent it to Lindley. Neither check was negotiated. As of at least 7/2/04, the money remained in the checking trust account. Thus, HOI withheld \$2 from Lindley from the date HOI deposited the money into its trust account to at least 1/31/01.

4. On or about 3/13/01, HOI received from Ross Painter (Painter) \$300.00 as payment for insurance. On 3/15/01, HOI deposited the money into its money market trust account. HOI did not forward any application or premium to an insurer and thus did not procure any insurance. On or about 8/2/01, and again on 5/7/02, HOI issued a check for \$300.00 from its checking trust account and sent it to

Painter. Neither check was negotiated. On or about 4/26/04, HOI issued a third check for \$300 from its checking trust account and sent it to Painter. Thus, HOI withheld from Painter \$300 from the time HOI should have procured insurance to at least 8/2/01.

5. On or about 4/5/02, HOI received from Josephine County, Oregon \$254.00 as payment for insurance. On or about 4/5/02, HOI deposited the money into its checking trust account. On or about 6/3/03, HOI remitted \$44.00 to another insurance agency. On 4/27/04, HOI retained \$6.00 as commission, and issued a check for the remaining \$204.00 to Josephine County. Thus, HOI withheld \$204.00 from Josephine County from 4/5/02 to at least 4/27/04.

6. On or about 4/25/02, HOI received from Southern Oregon Choppers \$87.47 as payment for insurance. On or about 4/26/02, HOI deposited the money into its checking trust account. The money remained in the checking trust account until at least 9/13/03. Thus, HOI withheld \$87.47 from Southern Oregon Choppers from the date that HOI should have either forwarded the money to an insurer or returned the money to the Southern Oregon Choppers to at least 9/13/03.

7. On or about 8/26/02, HOI received from IVCRT \$750.00 as payment for insurance. On or about 8/27/02, HOI deposited the money into its checking trust account. The money remained in the checking trust account until at least 4/23/04. Thus, HOI withheld \$750.00 from IVCRT from the date that HOI should have either forwarded the money to an insurer or returned the money to the IVCRT to at least 4/23/04.

8. On or about 11/5/02, HOI received from St Paul Surety \$35.00 to refund unearned premiums to Bill Judy (Judy), as a conservator. Subsequently, HOI deposited the money into one of its trust accounts. HOI issued a check from one of its trust accounts for the \$35 and sent it to Judy. The check was not negotiated. The money remained in the checking trust account until at least 3/19/04. Thus, HOI withheld the money from Judy from the date HOI should have tried again to refund the money to Judy to 3/19/04.

9. On or about 3/17/03, HOI received from Roland Theiss (Theiss) of Myrtle Creek, Oregon, a check, number 04900, dated 3/17/03, in the amount of \$1,689.00, as payment for insurance. On 3/18/03, HOI deposited the money into its checking trust account. On 5/23/03, after Theiss filed a complaint with the Insurance Division and it began to investigate the complaint, HOI refunded the full amount to Theiss. Thus, HOI withheld \$1,689.00 from Theiss from the date that HOI should have refunded the money to Theiss to 5/23/03.

Misappropriated Insurance Premiums

HOI violated ORS 744.074(1)(d) in twelve instances by engaging in the following conduct. ORS744.074(1)(d) prohibits a person licensed in Oregon as an insurance agent from, *inter alia*, misappropriating applications or premium for insurance belonging to an insurer, agent or other person entitled to the application or premium. On 3/10/03 and 3/11/03, HOI received from the following 12 insureds payments of insurance premiums totaling \$65,213.00. On 3/12/03, HOI deposited all of the money into its money market trust account. From 3/11/03 to 5/6/03, HOI withdrew premiums totaling \$62,939.32 from its the checking trust account, and remitted them to various persons entitled to receive the premiums. On 4/2/03, HOI transferred premiums totaling \$60,000.00 from its money market trust account to its checking trust account. Thus, HOI misappropriated \$62,939.32 of premiums belonging to certain insureds and using it to pay the premiums for other insureds.

Name of Insured	Date Received	Amount Received	Date Remitted	Amount Remitted
A-One	3/10/03	\$979.50	3/19/03	\$3,526.20
Unigard	3/11/03	\$177.65	NA	NA
Depuglia	3/11/03	\$140.96	3/11/03	\$140.96
Grant	3/11/03	\$32.20	3/11/03	\$32.20
Gunderson	3/11/03	\$83.50	3/11/03	\$83.50
Mitchell	3/11/03	\$169.80	3/11/03	\$169.80
Green	3/11/03	\$115.00	3/12/03	\$115.00
Illinois Valley	3/11/03	\$1,480.00	3/12/03	\$1,480.00
Katzenbach	3/11/03	\$23.32	3/12/03	\$23.32
Wes McKay	3/11/03	\$95.67	3/12/03	\$95.67
Royal Gardens	3/11/03	\$61,825.40	4/1/03	\$45,309.65

Royal Gardens	3/11/03	\$0.00	4/1/03	\$2,982.20
Royal Gardens	3/11/03	\$0.00	4/1/03	\$8,980.82
Rabjohn	3/11/03	<u>\$90.00</u>	5/6/03	<u>\$63.00</u>
Total		\$65,213.00		\$63,002.32

3. HOI violated ORS 744.074(1)(d) in seven instances by engaging in the following conduct. ORS 744.074(1)(d) prohibits a person licensed in Oregon as an insurance agent from, *inter alia*, misappropriating applications or premium for insurance belonging to an insurer, agent or other person entitled to the application or premium. From 4/5/02 to 3/17/03, HOI received from the following seven insureds payments of insurance premiums totaling \$3,615.47. HOI deposited all of the money into its checking trust account. HOI had not remitted the premiums to the person entitled to them as of 3/31/03 so it should have had at least \$3,615.47 in the account as of 3/31/03. However, HOI had only \$1,871.19 in the account as of 3/31/03. Thus, HOI misappropriated the difference between \$3,615.47 and \$1,871.19, which is \$1,744.28, in premiums as of 3/31/03.

Name of Insured	Date Received	Amount Received
Josephine County	4/5/02	\$254.00
S. Oregon Choppers	4/25/02	\$87.47
Wildfire Control	5/7/02	\$537.00
Lindley	5/7/02	\$2.00
IVCRT	8/26/02	\$750.00
Nicholson	12/16/02	\$300.00
Theiss	3/17/03	<u>\$1,685.00</u>
Total		\$3,615.47

Inaccurate Trust Account Record Keeping

HOI violated OAR 836-074-0045(6) by engaging in the following conduct. OAR 836-074-0045(6) requires a person that is licensed in Oregon as an insurance agent and that is required to have an insurance premium trust account to use a record keeping system for the trust account that, *inter alia*, provides an audit trail so that details underlying the summary data, such as invoices, checks and statements may be identified and made available on request. On 2/27/04, the

Insurance Division sent HOI a letter requesting certain information about its money market insurance premium trust account, number 02 9002212 8, and checking insurance premium trust account, number 02 5000076 7, both at LibertyBank, for the period from 1/1/03 to 6/30/03. On an unknown date the Insurance Division received from HOI a letter dated 3/19/04 enclosing certain information but it was inaccurate. The Insurance Division gave HOI additional time to produce accurate information. However, as of 5/25/04, HOI was unable to produce accurate information.

Commingling Premiums with Other Money in Trust Account

HOI violated ORS 744.083 in an unknown number of instances by engaging in the following conduct. ORS 744.083 prohibits a person that is licensed in Oregon as an insurance agent and that is required to have an insurance premium trust account from commingling premiums with other money in the trust account. At least from 1/1/03 to 6/30/03, HOI deposited an indeterminable amount of commissions into one or more of its trust accounts and kept some commissions therein for purposes other than those permitted ORS 744.083(3).

Action

In consideration of the director not revoking HOI's Oregon resident insurance agent license, HOI agrees to the following:

Pursuant to ORS 731.988, HOI is assessed a civil penalty of \$10,000. The payment 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 the Labor and Industries Building, 350 Winter Street NE, Room 440 (4th Floor), Salem, Oregon; or mailed to the Insurance Division at PO Box 14480, Salem, OR 97309-0405. The payment is due on, and shall be received by the Insurance Division by the date of the final order.

HOI shall hire a person, who is licensed in Oregon as a certified public accountant, to (a) audit HOI's operating and trust accounts, (b) send a report of the audit to the Insurance Division's Investigation Unit, and (c) establish a trust account record keeping system and written procedures that comply with

ORS 744.083 and OAR 836-074-0005 *et seq.* HOI shall complete the above activities within 90 days of the date of the final order, unless the Insurance Division's Investigation Unit agrees in writing to a later date.

After the above date, HOI shall use the trust account record keeping system and written procedures.

After the above date, HOI shall permit the Insurance Division to audit HOI's insurance premium operating and trust accounts for the period from the above date to the date of the audit. The purpose of the audit shall be to determine if HOI has established and is using a trust account record keeping system and written procedures that comply with ORS 744.083 and OAR 836-074-0005 *et seq.* The audit shall be conducted during the hours of 8:00 AM to 5:00 PM, Monday through Friday at the principal office of HOI, which is presently located at 243 SW J Street, Grants Pass, OR 97526-2818. The Insurance Division may, but is not required to give HOI any notice of the commencement of the audit. HOI shall cooperate with the Insurance Division by having all relevant records on the premises of HOI's office and permit the Insurance Division to inspect and duplicate any and all such records at the Insurance Division's expense. HOI shall pay for all services provided by third party professionals, such as accountants and lawyers, procured by HOI to enable HOI to cooperate in the audit. If the ownership or any of the assets of HOI are sold before an audit is conducted, then the Insurance Division shall continue to have the right to conduct the audit. HOI acknowledges that if HOI violates this order, or the Insurance Division finds as a result of the audit that HOI, or any of its agents, or both, has violated any applicable provision of the Insurance Code or related rules, then the director may take action against HOI, or any of its agents, or both, for any such violations.

Nothing herein shall prevent the Insurance Division from conducting at any time any investigation or audit of HOI or its agents as permitted by law.

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Dated September 24, 2004

/s/ John B. Gillespie

[Signature of Representative]

John B. Gillespie

[Printed Name of Representative]

President

[Printed Title of Representative]

Gillespie-Johnson-Stanger Insurance Inc.

FINAL ORDER

The director incorporates herein and adopts the above stipulation as the director's final decision in this proceeding, and orders that the action stated therein be taken.

Dated October 13, 2004

/s/ Joel Ario

Joel Ario

Administrator

Insurance Division

Department of Consumer and Business Services

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