STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION

In the Matter of **Bailey & DeBernardi Insurance, Inc.**	)	**FINAL ORDER**
	)	Case No. INS 04-09-014

History of the Proceeding

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 & DeBernardi Insurance, Inc. (B&D or party).

On 3/2/05, the director issued a notice of proposed action notifying the party that the director proposed to take enforcement action against the party and that the party was entitled to a hearing, pursuant to ORS 183.415 and Oregon Administrative Rules (OAR) 137-003-0001.

On 3/22/05, the director timely received from the party a written request for a hearing.

On 3/23/05, the director referred the party's request for a hearing to the Office of Administrative Hearings (OAH).

On 4/19/05, OAH scheduled a hearing to be held on 6/16/05.

On 6/16/05, OAH held a hearing. The hearing was conducted by Catherine P. Coburn, an administrative law judge of OAH. The director, by and through the Insurance Division, appeared and was represented at the hearing by Kathleen Dahlin, an Assistant Attorney General. The Insurance Division called Gary R. Holliday as their only witness. The Insurance Division offered Exhibits A1 to A21 as their documentary evidence. All of the Insurance Division's exhibits were admitted into the record. The party appeared and was represented at the hearing by Daniel R. Lang, an attorney. The party called Warren L. Marcotti as their only witness. The party offered Exhibits R1 to R6 as their documentary evidence. All of the party's exhibits were admitted into the record.

On 7/14/05, OAH issued a proposed order. The proposed order found that the party committed all of the violations that were alleged in the notice of proposed action except two[1], and recommended that the director take the action proposed in the notice. The proposed order informed the party that they could file with the director written exceptions to the proposed order within 30 days after the proposed order was sent to the party.

The director did not receive from the party any exceptions to the proposed order.

The director now makes the following final decision in this proceeding.

Findings of Fact, Conclusions of Law and Opinion

The director adopts, and incorporates herein by this reference, the findings of fact, conclusions, and reasoning of proposed order as the findings of facts, conclusions, and reasoning of this final order, except as follows:

On page 5, the statement "and the propriety of the proposed sanctions" is not adopted because neither the appellate case cited in the proposed order nor any other law which the director is aware of, imposes on the director a burden of proving, by any evidentiary standard, the appropriateness of the director's choice of enforcement action when such action is within the range of actions authorized by law.[2]

On page 10, the statement "without disciplinary offense" is not adopted because it is not true. The director took enforcement action against the party on 5/14/04 for misconduct occurring from August 2001 to March 2003. A copy of the order implementing the action was admitted into the record at the hearing. See Insurance Division Exhibit 2.

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[1] The proposed order did not make any finding about the allegation that the party violated ORS 744.083(1) in two instances because during the hearing the Insurance Division withdrew the allegation.

[2] See *In the Matter of Karen M. Thatcher*, Case No. INS 02-04-015, final order dated 7/18/03, page 9 footnote 5. This case was appealed to Oregon Court of Appeals. On 8/3/05, the court affirmed the final order without opinion.

Order

Pursuant to ORS 744.074(1), the party's Oregon resident business entity insurance producer license is revoked on the date of this order.

Notice of Right to Judicial Review

The party may be entitled to have the final order reviewed by the Oregon Court of Appeals pursuant to ORS 183.480 and 183.482. A party may institute a proceeding for judicial review by filing with the court a petition for judicial review within 60 days from the date this order was served on the party. If the order was personally delivered to a party, then the date of service is the day the party received the order. If the order was mailed to a party, then the date of service is the day the order was mailed to the party, not the day the party received the order. If a party files a petition, the party is requested to also send a copy of the petition to the Insurance Division.

Dated August 24, 2005

/s/ Joel Ario
Joel Ario
Administrator
Insurance Division
Department of Consumer and Business Services

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