

about the title company, there is no exception in OAR 836-080-0320 to OAR 836-080-0340 that permits a title company to pay for an intermediary's share of the advertisement. As early as April 2004, Stan Amundson (Amundson), a realtor with Re/Max Equity Group, Inc. (Re/Max) contacted FNT about Amundson and Don Madsen (Madsen), another realtor with Re/Max, and FNT jointly advertising in the *Consumer's Link* magazine published by Consumer's Link, Inc, now known as Connectivity Multimedia, Inc. Later, between April and June 2004, Bob Frazier, a senior loan consultant with Equity Home Mortgage, LLC. (Equity Home Mortgage) also contacted FNT about jointly advertising in the magazine. FNT agreed to participate in the joint advertisement, and to pay for its share of the cost based on the advertising space allocated to each advertiser. However, FNT did not discuss with the intermediaries or publisher the size, content, or cost, of the advertisement and therefore what portion of the advertisement would be about FNT; FNT did not enter into any agreement with the publisher for the advertisement; and the publisher did not send to FNT, and FNT did not request from the publisher, a proof of the advertisement to review. The advertisement was published in the June-July-August 2004 edition of *Consumer's Link*. The advertisement primarily featured Amundson, Madsen, and Frazier, and only incidentally mentioned FNT. The advertisement measured 9.75 inches by 12.75 inches for a total of 124.31 square inches. The portion of the advertisement that was about FNT consisted of two strips each measuring 2.75 inches by .5 inches for a total of 2.75 square inches. Thus, the portion of the area of the advertisement that was about FNT was only 2.2%. The publisher normally charged \$6,100 for a full page advertisement but, for some unknown reason, charged only \$3,062 for the advertisement. Thus, the portion of the cost of the advertisement that FNT could pay for was only 2.2% of \$3,062 or \$67.36. On or about 6/14/04, the publisher issued an invoice numbered 81 and sent it to Amundson. The publisher did not send the invoice to FNT until more than two months later. On 8/23/04, the publisher faxed to FNT a copy of the invoice. The invoice indicated that the cost of the advertisement was \$3,062.50 and of that amount Amundson's portion was \$531.25, Madsen's portion was \$531.25,

and FNT's portion was \$2,000. The invoice did not indicate that Frazier was responsible for any portion of the cost of the advertisement. On 8/24/04, the publisher issued a second invoice numbered 199 for the advertisement and sent it to FNT. The second invoice indicated that the cost of the advertisement was still \$3,062.50, and of that amount Amundson's and Madsen's portion were still \$531.25 each. However, the second invoice added that Frazier's portion was now \$1,000, and reduced FNT's portion from \$2,000 to \$1,000. At this time, FNT had not seen the advertisement and thus did not know what portion of the area of the advertisement was about FNT. On 8/25/04, FNT reviewed the first invoice. FNT assumed that the invoice was correct and that \$2,000 was their portion of the cost of the advertisement. FNT intended to authorize the payment of only \$2,000 but mistakenly authorized the payment of the entire \$3,062. On 8/27/04, two days later, FNT reviewed the second invoice. FNT again assumed that the invoice was correct and that \$1,000 was their portion of the cost of the advertisement. FNT failed to recall that they had already authorized a payment for the advertisement of more than the \$1,000, and thus was entitled to a refund rather than obligated to make a payment. FNT authorized the payment of the additional \$1,000. On or about 8/31/04, FNT issued a single check in the amount of \$4,062.50 made payable to the publisher. Thus, FNT indirectly gave \$3,995.14 to Amundson, Madsen, and Frazier to pay for all or at least a portion of their cost of the advertisement. On 10/15/04, the Insurance Division began investigating this matter and sent an e-mail to FNT asking for some information about this matter. Only after the Insurance Division began investigating this matter did FNT discover what had happened. On or about 10/19/04, the publisher credited FNT with \$4,019.73 towards the cost of further advertising in the magazine. It is unknown if the intermediaries paid anything for their portion of the advertisement and if so when and how much they paid.

Gave a Thing of Value to an Intermediary

FNT is subject to enforcement action pursuant to OAR 836-080-0315 because of the following circumstances. As indicated above, OAR 836-080-0315 prohibits a title company from giving, either directly or indirectly, a thing of value to an

intermediary unless otherwise permitted. One exception to OAR 836-080-0315 is OAR 836-080-0325(5) which permits a title company to “give a thing of value to a [n intermediary that is a] trade association[, as defined in OAR 836-080-0310(6),] *in response to a general solicitation of the entire membership* of the trade association if the net cost to the title company is \$50 or less.” (Emphasis added.) This amount is adjusted annually pursuant to OAR 836-080-0345. The adjusted monetary limit was \$61.66 for 2005. On 2/25/05, the Women’s Council of Realtors (WCR) and the Oregon Association of Mortgage Professionals (OAMP), conducted an educational class called *At Home With Diversity*. WCR and OAMP were intermediaries that were trade associations. The cost to attend the class was \$100 per person. WCR and OAMP did not send to all of their members a general solicitation to help support the class. If WCR and OAMP had solicited the support of all of their members, then a title company could have given up to \$61.66. However, since WCR and OAMP did not solicit support from all of their members, a title company could not give any thing of value to WCR and OAMP beyond to the cost for the title company’s employees to attend the class. On 2/8/05, FNT issued to OAMP a check, number 28962794, in the amount of \$1,000 as payment of \$500 for five of FNT’s employees to attend the class, and the remaining \$500 to pay for part of the lunch to be served to the attendees at the class. Thus, FNT directly gave \$500 to WCR and OAMP to help pay for the cost of the their class.

Action

Pursuant to ORS 731.988, FNT is assessed a civil penalty of \$6,000. 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 shall be *received* by the Insurance Division by the date of the final order.

Dated June 14, 2006

/s/ Patricia A. Ihnat

[Signature of Representative]

Patricia A. Ihnat

[Printed Name of Representative]

Counsel / Sr. Vice President

[Printed Title of Representative]

Fidelity National Title Company of Oregon

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 June 27, 2006

/s/ Joel Ario

Joel Ario

Administrator

Insurance Division

Department of Consumer and Business Services

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