

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

In the Matter of **Bieker Agency, Inc.**) **STIPULATION** and
) **FINAL ORDER**
) Case No. INS 12-03-004

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 Bieker Agency, Inc. (Bieker Agency).

Bieker Agency desires to conclude this proceeding without a hearing by entering into this stipulation pursuant to ORS 183.417(3).

Bieker Agency waives all rights relative to an administrative hearing and judicial review thereof.

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

Facts and Conclusions

Licensing Information

Bieker Agency has been licensed in Oregon as a resident business entity insurance producer since 9/24/91. Bieker Agency's license number is 804927, NAIC entity number is 2749672, and FEIN number is 93-1065510. Bieker Agency's last recorded business street address is 346 NE Quimby, Bend, OR, 97701-4069; mailing address is PO Box 6689, Bend, OR, 97708-6689; and telephone number is 503-252-1972. Francis P. Bieker is the President of Bieker Agency.

Prior Enforcement Action

On 3/2/05, in case number INS 04-12-003, the director assessed Bieker Agency a civil penalty of \$1,500 for the following three violations. Bieker Agency violated Oregon Administrative Rules (OAR) 836-074-0025 in two instances by depositing insurance premium into its trust account in one instance 114 days late and in

another instance 29 days late. Bieker Agency also violated ORS 836-074-0025(5) in one instance by withdrawing from its trust account \$575 of insurance premium before it had been deposited into the account, thereby using an insured's premium to pay another insured's premium for a short time. Bieker Agency also violated OAR 836-074-0025 in one instance by returning premium to an insured 24 days late.

Commingled Premium with Other Money in Trust Account

Bieker Agency is subject to enforcement action pursuant to ORS 744.083(2) because of the following circumstances.

ORS 744.083(2) prohibits a person that is licensed in Oregon as a resident insurance producer from commingling or otherwise combining premium with other money in an insurance premium trust account, unless permitted otherwise.

Bieker Agency received from Pepie D. Bieker dba B&W Company (B&W), and deposited into Bieker Agency's insurance premium trust account, number 8268049833, at Wells Fargo Bank, 18 checks, dated from 2/3/10 to 4/22/10, made payable to Bieker Agency, totaling \$11,870.00. The money that was deposited was not for the payment or refund of premium for insurance, or for any additional purpose permitted by ORS 744.083(3). Instead, the money that was deposited was for the repayment of money that B&W, as a premium finance company, had previously loaned to insureds to pay the premiums for bonds sold by Bieker Agency and issued by insurers. Thus, when Bieker Agency deposited the money into its trust account, Bieker Agency commingled or otherwise combined premium with the other money in its trust account.

Bieker Agency issued nine checks, dated from 3/19/10 to 4/22/10, made payable to M. Bieker dba www.contractorshelper.net (Contractor's Helper), totaling \$1,300.00 drawn on Bieker Agency's insurance premium trust account, number 8268049833, at Wells Fargo Bank. The money that was withdrawn, when the checks were paid, was not for the payment or refund of premium for insurance, or for any additional purpose permitted by ORS 744.083(3). Instead, the money that was withdrawn was for the payment of certain services previously provided by

Contractor's Helper, as a construction contractor pre-lien services company. Bieker Agency had received the money and deposited into its trust account. Thus, when Bieker Agency deposited the money into its trust account, Bieker Agency commingled or otherwise combined premium with the other money in its trust account.

Failed to Provide Adequate Description of Service Fees

Bieker Agency is subject to enforcement action pursuant to OAR 836-071-0277(2) because of the following circumstances.

ORS 744.074(1)(b) permits the director to take any authorized enforcement action against a person who has applied for a license or is licensed in Oregon as an insurance producer if the person violated any insurance statute; or any rule, order, or subpoena, of the director or the insurance regulator of another state.

OAR 836-071-0277(2) provides that, except as otherwise authorized, an insurance producer may charge a service fee "only in those instances where the insurance producer has provided service additional to what is the usual and customary practice of insurance producers under similar circumstances. The insurance producer must give a written explanation of the charge and the reason for it to the person charged...."

At all relevant times, Bieker Agency was licensed in Oregon only as an insurance producer. From 1/1/10 to 4/15/11, in 1,020 instances, Bieker Agency charged an insured a service fee of usually \$45, and in a few instances \$25 and \$150, for a total of \$45,985.00. Bieker Agency charged the fee for electronically filing certificates of liability insurance with the Oregon Construction Contractors Board (CCB), confirming with CCB that a insured's contractor's license is active, advising the insured what kind of licenses CCB requires to do work, providing the necessary CCB forms, answering the insured's questions regarding licensure, and following up with the insured as needed. Bieker Agency sent to the insured an invoice charging the fee and citing "OAR 836-071-0263; 0267; 0277." If an insured objected to paying the fee, then Bieker Agency did not collect the fee.

Regardless of whether the above-described services were additional to what is usual and customary, Bieker Agency could not charge a fee for the services because Bieker Agency did not give to the insured a sufficient explanation of why it charged the fee.

There is no other statute or rule, including ORS 744.091, ORS 744.093, OAR 836-071-0263, OAR 836-071-0267, or OAR 836-071-0269, that permitted Bieker Agency to charge the fee.

Action

Pursuant to ORS 731.988(1), Bieker Agency is assessed a civil penalty of \$15,000. 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 or mailed to the Insurance Division at the Labor and Industries Building, 350 Winter Street NE Room 300, Salem, OR 97301-3880; or mailed to the Insurance Division at PO Box 14480, Salem, OR 97309-0405. The payment shall be *received* by the Insurance Division by **7/1/13**.

Bieker Agency shall refund the service fees described above totaling \$45,985.00. By **8/1/13**, Bieker Agency shall issue a refund check to each person that paid the fee. By **10/1/13**, Bieker Agency shall send the amount of any unnegotiated refund check to the Oregon Department of State Lands (ODSL) pursuant to ORS 98.005 *et seq.* and OAR 141-045-0005 *et seq.* By **11/1/13**, Bieker Agency shall send to the director a written list of the name and address of the payee, the check number, the date of the check, and if the check was negotiated then also the date the check was paid by the bank or if the check was not negotiated then also the date that the unrefunded fee was sent and a copy of the check issued to ODSL.

Dated April 19, 2013

/s/ Francis P. Bieker

[Signature of Representative]

Francis P. Bieker

[Printed Name of Representative]

President

[Printed Title of Representative]

Bieker Agency, 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 8, 2013

/s/ Louis Savage
Louis Savage
Insurance Commissioner