

1 to ORS 731.988. The Notice also alleged that BIA violated ORS 744.031 warranting revocation of
2 its corporate insurance agency license, number 806368, pursuant to ORS 744.013(1)(a).

3 Additionally, the Notice concluded that, inasmuch as Barlow had allegedly violated the provisions
4 enumerated above and was an officer, controlling person and employee of BIA, BIA was subject to
5 administrative action pursuant to ORS 744.013(3).

6 **ISSUES**

7 1. Whether Barlow violated ORS 744.013(2)(d) and (g), ORS 744.225 and OAR 836-074-
8 0025, warranting revocation of his Oregon insurance agent license, number 117404, pursuant to
9 ORS 744.013(1)(a) and assessment of a civil penalty in the amount of \$7,000 pursuant to
10 ORS 731.988.

11 2. Whether BIA violated ORS 744.031 warranting revocation of its corporate insurance
12 agency license, number 806368, pursuant to ORS 744.013(1)(a) and whether the allegations
13 concerning Barlow, if true, subjects BIA to administrative action pursuant to ORS 744.013(3).

14 **EVIDENTIARY RULING**

15 The record consists of the department's Exhibits 1 through 17.

16 **FINDINGS OF FACT**

17 Barlow received his Oregon resident insurance agent license in November 1990 to sell life,
18 health and general lines insurance for Allstate. Prior to being licensed in Oregon, Barlow sold
19 insurance in Missouri for 10 years. In 1994, he started BIA in McMinnville, Oregon. The agency
20 was licensed to transact life, health and general lines insurance for Allstate.

1 William "Woody" Pelletier (Pelletier) worked for BIA from January 1992 to May 1994.
2 Katherine L. Peterson (Peterson) worked for BIA from August 1993 to September 1994. The
3 department's records do not reflect notice of their affiliation or termination by BIA.

4 Allstate required high-risk insureds and those who had been insured through a substandard
5 policy to pay for six months of coverage up-front. Many of Barlow's clients were unable to pay the
6 premium. Barlow loaned them the money for the premium payment and they repaid him monthly.
7 The clients did not sign a contract or financing agreement. Barlow made loans to fifteen or twenty
8 clients over a five-year period. Barlow manipulated his daily electronic transmittal to Allstate to
9 show that the insured had paid the entire amount when in fact they had only paid one-sixth of the
10 amount due.

11 When clients paid their premiums in cash or check, Barlow put the payment in a lockbox or
12 the client's file instead of BIA's client trust account. Barlow knew the amount in cash and checks
13 that should be in the trust account and also knew when Allstate was going to "sweep" or withdraw
14 premium from the trust account. He made sure that he had sufficient cash and checks in the trust
15 account to cover the applications he submitted by depositing other clients' payments. Financing
16 clients' premium payments was contrary to Allstate's policies

17 Barlow loaned money for premium payment to Myers, Black, Davis and Woodraft. Barlow
18 received refund checks for all four from Allstate totaling \$440.81, including \$147.90 for Myers,
19 \$187.00 for Black, \$91.00 for Davis and \$14.91 for Woodraft. Barlow kept the refunds because
20 they owed him money for their premium payment.

21 ////

22 ////

1 At first, Barlow covered the loans for the premium payment with his own money. Later, he
2 used premiums paid by other clients to cover the loans. He charged the clients a service fee of \$1.50
3 per month for loan processing. Barlow did not keep adequate records concerning the transactions.

4 Peterson, who worked for Barlow at the time, was Gloria Schultz's (Schultz's) agent.
5 Peterson was able to obtain a preferred auto insurance policy for Schultz from Allstate. Schultz
6 made monthly payments on the policy but was always late because Schultz's payroll schedule did
7 not match Allstate's payment schedule. Schultz wanted to change the due date but Barlow said he
8 would take care of it. Barlow failed to pay Schultz's auto insurance premium and her preferred
9 policy was canceled for non-payment.

10 Barlow tried to get the policy reinstated but was unable to do so. Because of the non-
11 payment, Schultz then qualified only for a substandard auto insurance policy. The substandard
12 policy was more costly. Barlow told Schultz the additional cost was due to her son being covered by
13 the policy. At Barlow's request, Schultz gave him a refund check for unearned premium from
14 Allstate in the amount of \$192.00 on February 9, 1994. Barlow told her that the refund was sent to
15 her by mistake. He did not deposit the refund check in the trust account until April 8, 1994. Schultz
16 also gave him her own personal check of \$187.20. Barlow received Schultz's premium payment
17 check on February 17, 1994 and did not deposit it in the trust account until April 8, 1994. On
18 August 24, 1994, Schultz contacted Darrell "Dekon" Jones (Jones), who was the senior account
19 agent for Allstate in McMinnville, requesting his assistance in obtaining her refund from Barlow.

20 In December 1994, Judy Romero (Romero) arranged with Barlow to purchase flood
21 insurance from Allstate through the National Flood Insurance Company. Barlow received a check
22 from Romero's title company in the amount of \$370 in payment for her flood insurance. He
23 provided Romero with a receipt and a binder for the insurance on December 23, 1994. Barlow used

1 the wrong form for the flood insurance application. Allstate received the application in early 1995
2 and determined that the application was incomplete. After repeated attempts by Allstate to contact
3 Barlow about the missing information, Allstate “nullified” the application and a refund check in the
4 amount of \$370 was sent to Barlow. Barlow held the refund check for six months before
5 resubmitting it with a second application. During that period of time, Barlow did not inform Romero
6 that she was not covered with flood insurance and did not obtain her permission to reapply for the
7 insurance.

8 From September 1994 to June 1995, Allstate reviewed Barlow’s records. Allstate terminated
9 Barlow’s appointment with Allstate in June 1995.

10 In December 1995, Romero asked Peterson, who left Barlow’s employment in September
11 1994, to transfer her flood insurance to her current carrier. Peterson was unable to locate a flood
12 insurance policy issued in December 1994. Romero contacted Jones and Richard Collins (Collins),
13 who was then servicing Barlow’s accounts due to Barlow’s termination by Allstate. They
14 discovered that a flood insurance policy for Romero had not been issued until September 1995.

15 FINDINGS OF ULTIMATE FACT

16 Barlow’s conduct with respect to the insureds’ premium payments and refunds and the
17 policies for Romero and Schultz constituted a minimum of seven violations of the Insurance Code.

18 BIA never notified the department when Pelletier and Peterson had become affiliated or
19 when their affiliation was terminated.

20 Barlow was the controlling person and an employee of BIA.

21 OPINION AND CONCLUSIONS OF LAW

22 The issues to be resolved in this agent and agency sanction case are whether Barlow violated
23 ORS 744.013(2)(d) and (g), ORS 744.225 and OAR 836-074-0025 warranting revocation of

1 Barlow’s insurance agent license and assessment of a civil penalty in the amount of \$7,000 against
2 Barlow and whether BIA violated ORS 744.031 warranting revocation of BIA’s corporate agent
3 license. In that regard, the department has the burden of proving these allegations by a
4 preponderance of the evidence. See ORS 183.450(2) and (5); *Harris v. SAIF*, 292 Or 683, 690
5 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of
6 the fact or position); *Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of
7 legislation adopting a different standard, the standard in administrative hearings is preponderance of
8 the evidence).

9 Barlow

10 The Notice alleged that Barlow violated ORS 744.013 in numerous instances. ORS 744.013
11 states in pertinent part:

12 “(1) If the director finds with respect to a licensee * * * that one or more of
13 the grounds set forth in subsection (2) of this section exist, the director may
14 take the following disciplinary actions:

15 “(a) The director may * * * revoke a license issued under ORS 744.002 or
16 the authority to engage in any category of insurance business or any class of
17 insurance.
18

19 “ * * * * *

20 “(2) The director may take any disciplinary action under subsection (1) of this
21 section on one or more of the following grounds:

22 “ * * * * *

23 “(d) Misappropriation or conversion to the licensee's own use, or illegal
24 withholding of money or property belonging to policyholders, insurers,
25 beneficiaries or others, and received by the licensee in the conduct of business
26 under the license.

27 “* * * * *

28 “(g) Use of fraudulent or dishonest practice by the licensee in the conduct
29 of business under the license, or demonstration therein that licensee is
30

1 incompetent, untrustworthy or a source of injury or loss to the public or
2 others.”
3

4 Here, I find that Barlow violated ORS 744.013(2)(d) in numerous instances. The evidence
5 establishes that during the relevant period, Barlow received four refund checks totaling \$440.81 for
6 Myers, Black, Davis and Woodraft, deposited the checks into BIA's client trust account, failed to
7 pay the proceeds to those insureds and illegally withheld those funds for his own purposes. He
8 stated in his recorded interview with department investigator Greg Ledbetter (Ledbetter) and in his
9 February 24, 1999 letter to Mitch Curzon that he kept the premium refunds because the named
10 insureds owed him money inasmuch as he had paid the premiums for them. However, Barlow
11 admitted that he had no financing agreements or contracts with these insureds which would
12 authorize him to retain the refunds for his own purposes or in payment for the money the insureds
13 allegedly owed him.

14 The same is true for the refund checks intended for Schultz and Romero. At Barlow’s request,
15 Schultz gave him a \$192.00 premium refund check sent to her from Allstate, telling her that the
16 refund was sent by mistake. Schultz also gave him her own personal check of \$187.20. Without any
17 authority to do so, Barlow deposited Schultz’s premium refund checks and her personal check in
18 BIA's insurance premium trust, illegally withholding the funds for his own purposes. He also illegally
19 withheld from Romero an unearned premium refund check from Allstate in the amount of \$370.
20 Although Barlow subsequently used Romero’s refund check to reapply for flood insurance, he failed
21 to notify Romero that he received the check and without her permission subsequently submitted the
22 check with another application for flood insurance. Even if the money was owed to Barlow and
23 even if he intended to retain Romero’s refund to purchase her flood insurance, I find that Barlow’s
24 conduct in this regard constitutes an illegal withholding in violation of ORS 744.013(2)(d).

1 I also find that Barlow’s conduct with respect to his daily electronic remittance reports to
2 Allstate and his communications, or lack there of, with Schultz and Romero violated ORS
3 744.013(2)(g). The evidence establishes that during the relevant times Barlow misrepresented in his
4 daily electronic remittance reports to Allstate that he had received from unnamed insureds the entire
5 insurance premium due when in fact he had only received one sixth of the premium. The evidence
6 also establishes that he misrepresented to Schultz during the relevant periods that she was insured
7 under an automobile insurance policy issued by Allstate on October 7, 1993 when he knew that
8 Allstate had terminated the policy due to nonpayment. Barlow also failed to notify Romero that she
9 did not have flood insurance for six months after he gave her a binder and told her that she had flood
10 insurance. This conduct violates the statute because it demonstrates untrustworthiness, dishonesty
11 and/or incompetence in the manner in which Barlow transacted insurance.

12 The Notice also alleged that Barlow violated ORS 744.225. ORS 744.225 provides in relevant
13 part:

14 “(1) All premium funds received by an agent shall be accounted for and
15 maintained in a trust account separate from all other business and personal
16 funds.

17
18 “(2) * * * [A]n agent shall not commingle or otherwise combine premiums
19 with any other moneys.”

20 Here, based on Barlow’s own comments and the testimony of Peterson, I find that during the
21 relevant period Barlow failed to deposit clients’ premium payments in the client trust account and
22 instead placed the cash and checks in a lock box, the insured’s file, or other location instead of
23 depositing the premiums into BIA’s trust account, creating a slush fund for his own purposes. In his
24 interview with Ledbetter, he also admitted that he deposited his own money in the trust account to
25 insure that when Allstate did a sweep of the trust account, the total deposits were consistent with
26 the applications. By his own admission, he withdrew from the trust account insurance premiums

1 paid by clients and forwarded such premiums to Allstate to be credited to the accounts of other
2 insureds. Consequently, I conclude that Barlow also violated ORS 744.225 in that this conduct
3 resulted in a commingling of his personal money with the clients' money and a total failure to
4 account for the funds paid by his respective unnamed clients.

5 Finally, the Notice alleged that Barlow violated OAR 836-074-0025. OAR 836-074-0025
6 provides that when a deposit is required, the deposit must be completed no later than the seventh
7 day after the funds are received. Returned premiums or refunds to clients and premium paid by
8 clients are required to be deposited by the seventh day.

9 Here, the evidence establishes that Barlow received a premium payment check from Schultz
10 in the amount of \$187.20 on February 17, 1994. Schultz's check was not deposited in the trust
11 account until April 8, 1994, almost 60 days after it was received. The evidence also establishes that
12 Barlow received from Schultz on February 9, 1994, a refund check in the amount of \$192.00 issued
13 by Allstate to Schultz. The refund check was not deposited in BIA's client trust account until April
14 8, 1994. On this record, I find that Barlow failed to comply with OAR 836-074-0025 because he
15 failed to deposit these funds within seven days from the date of receipt. Accordingly, based on these
16 violations, I conclude that revocation of Barlow's license and assessment of a civil penalty in the
17 amount of \$7,000 is warranted.

18 In reaching this conclusion, I note that the civil penalty in this case is more than fair
19 inasmuch as ORS 731.988 allows the department to assess a civil penalty in the amount of \$1,000
20 for each violation. If each incident where Barlow violated the Insurance Code and the department's
21 administrative rules were all counted as separate violations, the department was entitled to assess a
22 civil penalty in excess of \$7,000.
23

24 BIA

1 The Notice alleged that BIA violated ORS 744.031 by failing to notify the department that it
2 had affiliated Pelletier in January 1992 to transact insurance on its behalf and that it terminated him
3 in May 1994. The Notice also alleged that BIA failed to notify the department that it affiliated
4 Peterson in August 1993 to transact insurance on its behalf and that it terminated her in September
5 1994. Finally, the Notice alleged that BIA was subject to administrative action pursuant to ORS
6 744.013(3) if the allegations concerning Barlow were proven and Barlow was an officer, controlling
7 person, employee, or any combination thereof, of BIA.

8 In that regard, ORS 744.031 states in pertinent part:

9 “(1) Not later than the 30th day after the authority of an individual licensee to
10 act for a firm or corporate licensee has commenced or terminated, * * *
11 **corporate licensee shall notify** the Director of the Department of Consumer
12 and Business Services of the commencement or termination.” (Emphasis
13 added).

14
15 In addition ORS 744.013(3) states that:

16 “The director may * * * revoke the license of a firm or corporation * * * if
17 the director finds that any of the grounds set forth in subsection (2) of this
18 section exists:

19
20 “(a) With respect to any individual licensee employed by * * * the firm or
21 corporation.

22 “ * * * * *

23
24
25 “(c) With respect to any person who directly or indirectly has the power to
26 direct or cause to be directed the management, control or activities of the
27 licensee.”

28
29
30 There is no dispute that BIA employed Pelletier and Peterson during the relevant periods.

31 Moreover, the evidence establishes that BIA did not notify the department of their affiliation or their
32 termination. As proof, the department offered its agent licensing screens which had no record of
33 Pelletier’s or Peterson’s affiliation or termination by BIA.

1 Barlow stated in his interview with Ledbetter that he thought Allstate was responsible for
2 notifying the department. However, the statute clearly states that the corporate licensee is the party
3 responsible for the notification. Consequently, I conclude that it was BIA's responsibility in that
4 regard. Furthermore, the evidence establishes that Barlow was both an employee and the person
5 who controlled BIA. He made all of the decisions in the agency. Inasmuch as I have found that
6 Barlow violated certain provisions of ORS 744.013, I conclude that revocation of BIA's license is
7 appropriate pursuant to ORS 744.013(3).

8 *////*

9 *////*

10 *////*

11 *////*

12 *////*

13 *////*

14 *////*

15 *////*

16 *////*

17 **ORDER**

18 For violations of ORS 744.013(2)(d) and (g), ORS 744.225 and OAR 836-074-0025,
19 Barlow's Oregon resident insurance agent license, number 117404, shall be revoked pursuant to
20 ORS 744.013(1)(a) and a civil penalty of \$7,000 shall be assessed pursuant to ORS 731.988. For
21 violations of ORS 744.031 and in light of Barlow's violations, the corporate insurance agent license
22 of BIA, number 806368, shall be revoked pursuant to ORS 744.013(1)(a) and (3).

23 IT IS SO ORDERED.

1 Dated this _____ day of September, 1999 at Salem, Oregon.

2 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

3
4 _____
5 Ella D. Johnson, Hearings Officer
6 Insurance Division
7
8

9 **NOTICE OF OPPORTUNITY FOR ADMINISTRATIVE REVIEW**

10 NOTICE: Pursuant to ORS 183.460, the parties are entitled to file written exceptions to this
11 Proposed Order and to present written argument concerning those exceptions to the Director.
12 Written exceptions must be received by the Department of Consumer and Business Services within
13 30 days following the date of service of this proposed order. Mail exceptions to:

14
15 Department of Consumer and Business Services
16 Insurance Division Hearings Unit
17 350 Winter Street NE, #440-6
18 Salem, OR 97310
19

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21 ////

22 Barlow9/99