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STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:)	
)	No. 02A-017-INS
KENNETH DARYL WHITLEY,)	
)	CONSENT ORDER
Petitioner.)	
_____)	

A Notice of Hearing was issued by the Director of the Arizona Department of Insurance (the "Department") on February 20, 2002 . Respondent Kenneth Daryl Whitley has been advised of his right to a hearing in this matter, which he waives. Respondent Kenneth Daryl Whitley admits the following Findings of Fact are true, and consents to entry of the following Conclusions of Law and Order.

FINDINGS OF FACT

1. On or about November 28, 2001, Kenneth Daryl Whitley ("Whitley") filed a renewal application for a Life, Accidental and Health or Sickness, Variable life and Variable annuities Insurance Producer's License Application with the Arizona Department of Insurance (the "Department").

2. Part II, Section E, asks: "Are any civil, criminal, administrative, judicial or quasi-judicial proceedings of any kind, including any criminal proceedings in which an indictment, criminal complaint or information has been issued naming you as defendant, currently pending against you in any jurisdiction based on any of the following:

- 1) Obtaining or attempting to obtain any type of license through misrepresentations or fraud?
- 2) Improperly withholding, misappropriating or converting any monies or properties received in the course of doing business insurance?
- 3) Intentionally misrepresenting the terms of an actual or proposed insurance

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- contract or application for insurance?
- 4) Committing any insurance unfair trade practice or fraud?
- 5) Using fraudulent, coercive or dishonest practices in the conduct of business?
- 6) Demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business?
- 7) Forging another's name to any document related to an insurance transaction?
- 8) Aiding or assisting any person in the unauthorized transaction of insurance business?
- 9) Violating A.R.S. § 41-624(B) or (C), the prohibition of sharing commissions with anyone other than the contractor or a person that has performed actual services for the contractor in connection with a bid involving the sale of insurance to the State?
- 10) Violating A.R.S. §§ 6-1410, 6-1412 or 6-1413, which provides requirements relating to premium finance transactions?
- 11) For any other cause arising out of an insurance transaction?"

Whitley answered, "Yes" to Part II, Section E, Questions 2,3,4,5,6 and 11.

3. On January 16, 2002, the Department denied Whitley's renewal application for an insurance producer's license.

4. On January 22, 2002, the Department received Whitley's request for hearing to appeal the Department's denial of his license application.

5. Whitley has held a license issued by the Department for several years. In the course of his licensure, he has renewed his license on numerous occasions, including:

- a) an October 21, 1999 renewal application for Life, Disability and Variable Contracts;
- b) a September 22, 1997 application for Variable Contracts agent's license; and
- c) an October 15, 1997 application for Life, Disability and Variable Contracts.

1 6. Each of the applications described in paragraph 5 above asks: “Are any civil,
2 administrative, other judicial or quasi-judicial proceedings of any kind, or any criminal proceeding in
3 which an indictment, criminal complaint or information has been issued naming you as a defendant,
4 *currently pending* against you in any jurisdiction based on the following:

- 5 1) Misappropriation, conversion or the withholding of moneys?
- 6 2) Incompetence, or a source of injury and/or loss to anyone?
- 7 3) Dishonesty in business or financial matters?
- 8 4) Fraud or misrepresentation?
- 9 5) Any cause arising out of an insurance transaction?”

10 Whitley answered, “No” to subparts 1-5 of this question in each and every application described in the
11 preceding paragraph.

12 7. On or about February 15, 1996, Whitley entered into a settlement in Best Western
13 International, Inc. v. Kenneth D. Whitley, case number CV95-06678, filed in Maricopa County
14 Superior Court on or about April 26, 1995. Whitley failed to disclose the pendency of this litigation
15 within his September 1995 application.

16 8. On or about July 17, 1995, litigation was commenced against Whitley in the United
17 States District Court for the Southern District of Florida, First Premium Services, Inc., v. Best
18 Western International, Inc., et al., Case No. 95-1466, CIV-UNGARO-BENAGES. Whitley failed to
19 disclose the pendency of this litigation on his September 1997, October 1997 and October 1999
20 applications.

21 9. On or about September 12, 1997, Whitley entered into a settlement in TIFCO v. Best
22 Western International, et al., case number CV95-09669 and CV95-10613, filed in Maricopa County
23 Superior Court on or about July 13, 1995. Whitley failed to disclose the pendency of this litigation
24 within his September 1995 application.

25 10. On or about May 20, 1998, Whitley settled litigation pending against him, Inn at the
26 Airport dba Best Western Inn at the Airport (#03098) et al., v. Kenneth Daryl Whitley and Jane Doe

1 Whitley, Case No. CV96-01248, filed in Maricopa County Superior Court on or about January 23,
2 1996. Whitley failed to disclose the pendency of this matter within his September 1997 and October
3 1997 applications.

4 11. On or about July 27, 1998, Whitley settled litigation pending against him in Taj
5 International Hotel et al. v. Aetna Casualty and Surety Company, et al., Case No. CV97-00715, filed
6 in Maricopa County Superior Court on or about January 15, 1997. Whitley failed to disclose the
7 pendency of this litigation on the applications he filed in September 1997 and October 1997.

8 12. On or about December 15, 1998, Whitley entered into a settlement in National Union
9 Fire Insurance Co. of Pittsburgh v. Kenneth Whitley, case number CV97-16549, filed in Maricopa
10 County Superior Court on or about September 20, 1997. Whitley failed to disclose the pendency of
11 this litigation within his September 1995 and October 1997 applications.

12
13 **CONCLUSIONS OF LAW**

14 1. Whitley has a record of providing incorrect, misleading, incomplete or materially untrue
15 information in the license applications, a violation of A.R.S. § 20-295(A)(1).

16 2. Whitley has a record of obtaining or attempting to obtain a license through
17 misrepresentation or fraud, a violation of A.R.S. § 20-295(A)(3).

18 3. Grounds exist for the Director to suspend, revoke, or refuse to renew Whitley's
19 insurance producer's license, impose a civil penalty upon him and/or order restitution pursuant to
20 A.R.S. § 20-295(A), (D) and (F).

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1 **ORDER**

2 IT IS ORDERED THAT:

3 All licenses held by Respondent Kenneth Daryl Whitley shall be suspended for a period of
4 sixty calendar days, commencing one week after entry of this order.

5 DATED AND EFFECTIVE this 14th day of May,
6 2002.

7 
8 _____
9 CHARLES R. COHEN, Director

10
11 **CONSENT TO ORDER**

12 1. Respondent has reviewed the foregoing Findings of Fact, Conclusions of Law and
13 Order.

14 2. Respondent admits the jurisdiction of the Director of Insurance, State of Arizona and
15 admits the foregoing Findings of Fact and consents to the entry of the foregoing Conclusions of Law
16 and Order.

17 3. Respondent is aware of his right to notice and a hearing at which he may be represented
18 by counsel, present evidence and cross-examine witnesses. Respondent irrevocable waives his right
19 to such notice and hearing and to any court appeals relating to this Consent Order.

20 4. Respondent states that no promise of any kind of nature whatsoever, except as expressly
21 contained in this Consent Order, was made to him to induce him to enter into this Consent Order, was
22 made to him to induce him to enter into this Consent Order and that he has entered into this Consent
23 Order voluntarily.

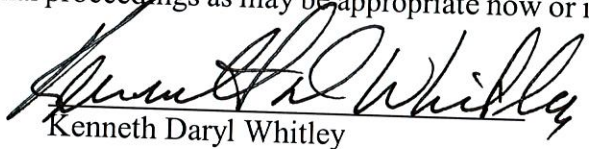
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1 5. Respondent acknowledges that the acceptance of this Consent Order by the Director
2 is solely to settle this matter against him and does not preclude any other agency, officer or subdivision
3 of this state from instituting civil or criminal proceedings as may be appropriate now or in the future.

4 May 10, 2002
5 Date


Kenneth Daryl Whitley

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7
8 COPY of the foregoing mailed this
9 14th day of May , 2002 to:

10 Eric Bryant, Administrative Law Judge
11 Office of Administrative Hearings
12 1400 West Washington, Suite 101
13 Phoenix, AZ 85007

14 Sara Begley, Deputy Director
15 Del Wisecarver, Supervisor
16 Rebecca Sanchez, Licensing Section
17 Arizona Department of Insurance
18 2910 North 44th Street, Suite 210
19 Phoenix, Arizona 85018

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33 723426 [CPA02-048]