

NOV 21 2002

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE
BY Kath

4	In the Matter of:)	Docket No. 02A-110-INS
)	
5	WESLEY NEIL BASS d.b.a.)	ORDER
	NEIL BASS INSURANCE,)	
6)	
	Respondent.)	
7)	

8

9 On November 15, 2002, the Office of Administrative Hearings, through Administrative

10 Law Judge Grant Winston, issued an Administrative Law Judge Decision ("Recommended Decision"), a

11 copy of which is attached and incorporated by this reference. The Director of the Department of

12 Insurance has reviewed the Recommended Decision and enters the following Order:

- 13 1. The recommended Findings of Fact, Conclusions of Law and Order are adopted.
- 14 2. Respondent's insurance license(s) shall be revoked effective the date of this
- 15 Order. Respondent shall make restitution to Jessie Shireman in the sum of \$4,913.53, payable in full
- 16 immediately.

NOTIFICATION OF RIGHTS

17

18 Pursuant to A.R.S. § 41-1092.09, the aggrieved party may request a rehearing with

19 respect to this order by filing a written motion with the Director of the Department of Insurance within

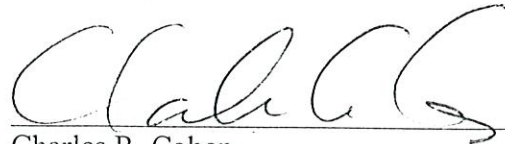
20 30 days of the date of this Order, setting forth the basis for relief under A.A.C. R20-6-114(B). Pursuant

21 to A.R.S. § 41-1092.09, it is not necessary to request a rehearing before filing an appeal to Superior

22 Court.

1 The final decision of the Director may be appealed to the Superior Court of Maricopa
2 County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal must notify the Office
3 of Administrative Hearings of the appeal within ten days after filing the complaint commencing the
4 appeal, pursuant to A.R.S. § 12-904(B).

5 DATED this 21st of November, 2002

6 

7 Charles R. Cohen
8 Director of Insurance

9 A copy of the foregoing mailed
10 this 21st day of November, 2002

11 Sara M. Begley, Deputy Director
12 Gerrie Marks, Executive Assistant for Regulatory Affairs
13 Mary Butterfield, Assistant Director
14 Catherine O'Neil, Consumer Legal Affairs Officer
15 Arnold Sniegowski, Investigations Supervisor
16 Del Wisecarver, Producer Licensing Supervisor ✓
17 Arizona Department of Insurance
18 2910 N. 44th Street, 2nd Floor
19 Phoenix, AZ 85018

20 David Ulrich, Management and Investigation Supervisor
21 Marcia Croddy, Investigator
22 Arizona Department of Insurance
23 400 W. Congress Street, #152
24 Tucson, AZ 85701

Office of Administrative Hearings
1400 W. Washington, Suite 101
Phoenix, AZ 85007

Mary Kosinski
1275 W. Washington
Phoenix, AZ 85007

Wesley Neil Bass dba Neil Bass Insurance
3025 N. Sparkman Blvd.
Tucson, AZ 85716

- 1 Wesley Neil Bass dba Neil Bass Insurance
4621 N. First Avenue, #11
- 2 Tucson, AZ 85718
- 3 AIG Life Insurance Company
600 King Street
- 4 Wilmington, DE 19809
- 5 Celtic Insurance Company
233 S. Wacker Drive, Suite 700
- 6 Chicago, IL 60606
- 7 Equitable Life & Casualty Insurance Company
P.O. Box 2460
- 8 Salt Lake City, UT 84110
- 9 Golden Rule Insurance Company
712 Eleventh Street
- 10 Lawrenceville, IL 62439
- 11 Kanawha Insurance Company
P.O. Box 610
- 12 Lancaster, SC 29721
- 13 Life USA Insurance Company
P.O. Box 59060
- 14 Minneapolis, MN 55459
- 15 Lincoln Heritage Life Insurance Company
4343 E. Camelback Road
- 16 Phoenix, AZ 85018
- 17 Mutual of Omaha
Mutual of Omaha Plaza
- 18 Omaha, NE 68175
- 19 Old American Insurance Company
3520 Broadway
- 20 Kansas City, MO 64111
- 21 United American Insurance Company
3700 S. Stonebridge Drive
- 22 P.O. Box 8080
McKinney, TX 75070

23 Kathy Linder

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

Docket No.: 02A-110-INS

**WESLEY NEIL BASS d.b.a.
NEIL BASS INSURANCE,**

**ADMINISTRATIVE
LAW JUDGE DECISION**

Respondent.

HEARING: Friday, November 1st, 2002; 9:15 a.m.

APPEARANCES: The Arizona Department of Insurance was represented by Ms. Mary E. Kosinski, Assistant Attorney General. Respondent failed to appear.

ADMINISTRATIVE LAW JUDGE: Grant Winston.

The administrative hearing of this action was held in the Office of Administrative Hearings, Tucson, Arizona. The hearing was duly scheduled and noticed to convene at 9:00 a.m. The administrative law judge waited until 9:15 a.m. for respondent to appear before calling the case. Respondent failed to appear. Testimony was heard and other evidence admitted to the record, and, based on the entire record, the following Findings of Fact, Conclusions of Law and Recommended Order are made.

FINDINGS OF FACT

1. Respondent in this case is Mr. Wesley Neil Bass. Respondent is a life and disability insurance producer, licensed by the Arizona Department of Insurance ("the Department"), holding license number 7181. That license is scheduled to expire on July 31st, 2003. The Department summarily suspended respondent's insurance license on June 26th, 2002, by order of Director Charles R. Cohen.
2. The summary suspension of respondent's license was ordered because of the same facts which gave rise to this case. On the same day and as a part of the same document by which he ordered summary suspension, Director Cohen issued the notice of this administrative hearing to be held in the Arizona Office of Administrative Hearings. Following continuance and change of venue, the hearing was held in the OAH, Tucson, on Friday, November 1st, 2002.

Office of Administrative Hearings
100 North Stone Avenue, Suite 704
Tucson, Arizona 85701
(520) 628-5488

- 1 3. The notice of hearing sets forth allegations of licensee's wrongdoing relative to two
2 individuals: Mss. Frances Hamlin and Jessie Shireman. Both of these women are
3 over 80-years-old and widowed. The notice also alleges facts that would, if proved,
4 constitute additional violations of the Arizona insurance producer licensing and
5 regulation laws separate and apart from the allegations concerning respondent's
6 direct involvement with Hamlin and Shireman.
- 7 4. Respondent became an agent of Equitable Life and Casualty Insurance Company
8 ("Equitable) by general agent agreement between those two parties on July 20th,
9 1998. Equitable terminated its principal-agency relationship with respondent by letter
10 from its president, Mr. E. Rod Ross, to respondent, dated June 23rd, 2000.
- 11 5. Around this time, Ms. Hamlin had been working with her Certified Public Accountant,
12 Mr. William F. Hahn, regarding a trust he had created for her and had been managing
13 since 1999. Mr. Hahn is himself also a licensed insurance agent in Arizona.
14 Incidental to his trust work for Ms. Hamlin, Mr. Hahn solicited information from her
15 regarding her insurance policies. Ms. Hamlin had informed him respondent had sold
16 insurance to her.
- 17 6. Mr. Hahn also contacted respondent and requested respondent send to him
18 beneficiary information on the policies respondent had sold to Ms. Hamlin. When Mr.
19 Hahn began to question respondent about the Equitable policy, respondent became
20 testy and non-responsive to Mr. Hahn's request for information.
- 21 7. Based on the suspicious appearance of the documents respondent eventually did
22 forward to Mr. Hahn, the latter contacted Equitable himself to inquire about the
23 existence of any such policy it might have with Ms. Hamlin, and faxed them
24 information he had received from respondent, including a number respondent had
25 represented to be the Equitable policy number for Ms. Hamlin's policy. Mr. Hahn,
26 based on his observation of the same documents, suspected that some of the
27 documents might be from another insurance company by the name of Kanawha. Mr.
28 Hahn also contacted Kanawha and inquired of them what, if any, insurance policies it
29 had with Ms. Hamlin.

- 1 8. Equitable responded to Mr. Hahn through its Secretary and General Counsel, Mr.
2 Kendall R. Surfass. Mr. Surfass (who testified at the hearing) informed Mr. Hahn that
3 Equitable had no insurance coverage of Ms. Hamlin, and never had any insurance
4 coverage of Ms. Hamlin.
- 5 9. One application respondent sent to Equitable in behalf of Ms. Hamlin was declined by
6 Equitable. A second application for an Equitable policy respondent had provided Mr.
7 Hahn had never been sent to Equitable. The home care policy number respondent
8 had sent Mr. Hahn was a bogus number, and did not even resemble the numbering
9 system employed by Equitable. The policy number was similar, if not identical, to a
10 policy number used in connection with an application for insurance by Ms. Hamlin to
11 the Kanawha Insurance Company.
- 12 10. Respondent had been sending fraudulent premium notices to Ms. Hamlin, using what
13 appeared to be Equitable's letterhead, with his typewritten additions. Ms. Hamlin had
14 been paying these premiums to respondent, who had been cashing her checks.
15 Equitable never received any money from Ms. Hamlin.
- 16 11. Kanawha responded to Mr. Hahn's inquiries through its Senior Vice President and
17 General Counsel, Mr. Thomas W. Thomas by his letter to Mr. Bob Hill, of the
18 department's Investigative Division. Mr. Thomas informed Mr. Hill of Mr. Hahn's
19 recent contact. Mr. Hill concluded that respondent had constructed a false insurance
20 policy using a conglomeration of Equitable and Kanawha documents. Ms. Hamlin
21 had refused a Kanawha policy based on that company's proposed rate increase. Mr.
22 Thomas concluded that respondent had retained the policy.
- 23 12. The record contains copies of respondent's fraudulently created premium notices on
24 Equitable letterhead with his own typewritten information. Mr. Surfass saw these
25 documents and testified that Equitable's premium notices do not even resemble
26 those created by respondent. Also in evidence are several checks from Ms. Hamlin
27 to Equitable totaling more than \$2,000.00. The evidence also contains the backside
28 of these checks proving that they were endorsed and deposited by respondent to his
29 enrichment.

1 13. The record also contains additional proof of respondent's fraud perpetrated against
2 Ms. Hamlin. Again using Equitable letterhead, respondent typed thereon "Notice of
3 Exercise of Option Three: III" Mr. Surfass proved by his testimony that
4 Equitable has no such terminology as Option Three or Option Four as used by
5 respondent in his billing of Ms. Hamlin. The document ostensibly contains Ms.
6 Hamlin's signature, but on closer examination (and taken in connection with the other
7 evidence of respondent's fraudulent use of signatures) it appears that respondent cut
8 and pasted another signature of Ms. Hamlin's onto the new signature line. For one
9 thing, it can be seen where respondent typed a signature line for Ms. Hamlin, but in
10 cutting and pasting her signature to the fraudulent document he included the
11 signature line over Ms. Hamlin's signature cut from the separate document, so that
12 there is the obvious evidence of respondent's sloppy attempt at fraud in the form of a
13 signature over a signature line over a signature line. (See: complainant's exhibit 7).

14 14. The record also contains proof of respondent's defrauding Ms Hamlin in the form of
15 his typewritten letter to her dated June 23rd, 2000, in which he references the
16 attachments, also in the record (See: complainant's exhibit 9) his enclosure of her
17 policy. The enclosure is not a policy, but is nothing more than Equitable sales
18 promotional material, and general descriptions of Equitable's coverage.

19 15. Further evidence proving the fraud perpetrated by respondent is in the form of an
20 "AUTHORIZATION" he prepared purporting to give him the authority to act in Ms.
21 Hamlin's stead in her insurance matters. The document again shows the fraudulently
22 attached signature of Ms. Hamlin, and shows that it was notarized by Ms. Ranae L.
23 Hutchinson, Arizona Notary Public, who works at a local bank. Ms. Hutchinson
24 testified at the hearing. She brought her notary log with her, and copies from the log
25 are in evidence. (See: complainant's exhibit 13a). Through the testimony of Ms.
26 Hutchinson and the exhibits to her testimony it is proved that she never notarized the
27 so-called authorization, but that respondent again transferred a previous signature of
28 hers onto this document just as he had transferred Ms. Hamlin's signature to it. Ms.
29 Hutchinson's notary logs contain no such record of her ever having notarized the
30 "AUTHORIZATION."

1 16. Also in evidence is a document created by respondent titled "Limited Power of
2 Attorney." (See: complainant's exhibit 14). This purports to be a power of attorney
3 granted by Ms. Hamlin to respondent. Its authenticity is called into question by the
4 testimony of Ms. Virginia Slager, Ms. Hamlin's niece, whose signature is on the
5 document. She testified that when she was asked to sign the document by
6 respondent, he would not show her the document, but only would turn back the piece
7 of paper enough to reveal a signature line for her as witness. He pressured her into
8 signing it.

9 17. As part of its investigation into the matters of respondent's involvement with Ms.
10 Hamlin, the department, through Consumer Specialist and Investigator, Ms. Marcia
11 Croddy, who testified, sent him a letter by certified mail dated August 21st, 2000.
12 (See: complainant's exhibit 10). It explained that a complaint had been filed and the
13 department was looking into it. It scheduled an appointment with respondent to
14 discuss the matter on August 30th, 2002. As a part of the investigation, the
15 department served a subpoena on respondent to produce documents relative to his
16 involvement with Ms. Hamlin. Many of these documents are in the record. (See:
17 e.g., complainant's exhibit 16a – 16k). As Ms. Croddy's testimony proved,
18 respondent was uncooperative and evasive when it came to the investigation. The
19 documents he produced, in the opinion of Ms. Croddy, were obviously falsified. She
20 could see on the documents where he had actually cut out previous signatures and
21 taped them onto the documents he produced pursuant to the subpoena. It is obvious
22 also from those documents that respondent had created signatures by tracing over
23 previous signatures to make it appear that the signature was on the document he
24 produced. Again, it is found that respondent's crude and sloppy attempts at forgery
25 and falsification of signatures and documents are so gross as to require no
26 handwriting expert to testify. Ms. Croddy credibly testified that in one instance she
27 actually saw the signature taped onto the document.

28 18. Ms. Croddy also credibly testified that she had been told by Ms. Hamlin that Ms.
29 Hamlin never signed a power of attorney for respondent. Her statement of this is also
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1 of record at complainant exhibit 17. The power of attorney is another of respondent's
2 forgeries.

3 19. The evidence showed that some of the money respondent obtained from Ms. Hamlin
4 he refunded to her, but that he still owes her approximately \$800.00. The
5 department's evidence establishes that Ms. Hamlin does not desire any restitution
6 based on advice from Mr. Hahn.

7 20. In the evidence relative to Ms. Shireman it is proved that respondent submitted an
8 application for long term care insurance to Equitable around June 11th, 1999. A
9 premium of \$113.16 accompanied the application. Prior to any issuance of the policy
10 by Equitable, respondent faxed a request to cancel the application and refund the
11 premium on August 14th, 1999. (See: complainant's exhibit 24). Equitable canceled
12 the application and refunded the premium by letter dated August 20th, 1999.
13 Equitable never kept any money from Ms. Shireman.

14 21. Respondent continued to take money from Ms. Shireman on the non-existent policy,
15 and cashed her checks himself. He eventually took from her \$4,597.51 on the non-
16 existent Equitable policy, and \$316.02 on another fraudulent policy with a company
17 named Lincoln Heritage, for a total amount of \$4,913.53.

18 22. Ms. Susan J. McCracken testified. She is Ms. Shireman's daughter. Her testimony
19 established many facts which brought to light respondent's fraudulent dealings with
20 her mother. Ms. Shireman's doctor had recommended to Ms. McCracken that her
21 mother enter an assisted living situation. When respondent learned that Ms.
22 Shireman was going to seek assisted living arrangements, he visited her. He asked
23 her where her policy for assisted living was. She informed him and he took it from
24 her, saying he needed to review it.

25 23. Ms. McCracken had been informed by her mother and respondent that Ms. Shireman
26 had an insurance policy covering assisted living, which had been sold to her by
27 respondent. When Ms. McCracken approached respondent in an effort to procure
28 the policy after she learned he had taken it from her mother, respondent was evasive
29 and would not give her the policy. He said he was still reviewing it. She gave him
30 ample time to provide her the policy or make a copy for his further review, but he

1 balked and was non-responsive to her requests. At long last respondent provided
2 what he said was Ms. Shireman's policy. Ms. Shireman herself recognized that it was
3 not her policy. It was yet another crude attempt by respondent to pass off one of his
4 falsified documents as a genuine policy. This time he had actually pasted a page
5 from another policy over what he gave Ms. McCracken. When that page was peeled
6 back other policy information was revealed underneath.

7 24. Ms. McCracken then telephoned Equitable and discovered that Equitable had no
8 policy on her mother.

9 25. The record also contains at complainant's exhibits 23b and 23c another so-called
10 "AUTHORIZATION" prepared by respondent. This one is to authorize him to act for
11 Ms. Shireman. Ms. McCracken testified that what appears to be her mother's
12 signature thereon is a forgery. Looking at the signature it is obvious that respondent
13 traced the signature from another document onto the so-called authorization.

14 26. Ms. Shireman herself testified. She testified that she never instructed respondent to
15 cancel her application with Equitable. She never received the refund Equitable sent
16 to her. Through her testimony it is proved that respondent brought her a check, and
17 without showing her the check front, forced her to sign it, and gave her \$120.00 cash
18 saying it was the check's amount.

19 27. In addition to Ms. Croddy, Mr. Dave Ulrich, the department's Investigation Supervisor
20 Manager, testified. Through his and Ms. Croddy's testimonies it is established that
21 when the department's representatives visited respondent's Tucson office and
22 requested his insurance documents relative to this case, he told them that they were
23 not at his office, and failed to produce any such requested documentation.

24 CONCLUSIONS OF LAW

25 1. This administrative hearing was held under authority of and in accordance with
26 A.R.S. §§20-150, 20-165, and 41-1092, and A.A.C. R20-6-101 – 115, and A.A.C.
27 R2-19-101 – 119.

28 2. Respondent's conduct, as found above, constitutes improperly withholding,
29 misappropriating or converting any monies or properties received in the course of
30

1 doing insurance business, a violation of A.R.S. §20-295.A.4. (formerly A.R.S. §20-
2 316.A.4.).

- 3 3. Respondent's conduct, as found above, constitutes using fraudulent, coercive or
4 dishonest practices, or demonstrating incompetence, untrustworthiness or financial
5 irresponsibility in the conduct of business in this state or elsewhere, a violation of
6 A.R.S. §20-295.A.8. (formerly A.R.S. §20-316.A.8.).
- 7 4. Respondent's conduct, as found above, constitutes a failure to have records
8 available and open to the inspection of the director at any business time, a violation
9 of A.R.S. §20-290.A.3. (formerly A.R.S. §20-302.C.).
- 10 5. Respondent's conduct, as found above, constitutes an unfair or deceptive act or
11 practice in the business of insurance, a violation of A.R.S. §20-442.
- 12 6. Respondent's conduct, as found above, constitutes fraudulent practice by causing
13 to present or prepare an oral or written statement to or by an insurer, insurance
14 producer or agent of a reinsurer that contains untrue statements of material fact, in
15 violation of A.R.S. §20-443.4.
- 16 7. Grounds exist for the department's director to revoke respondent's insurance
17 license and order restitution be made to Ms. Shireman in the sum of \$4,913.53,
18 pursuant to A.R.S. §20-295.A. and F.

19 **RECOMMENDED ORDER**

20 In view of the foregoing Findings of Fact and Conclusions of Law, it is hereby
21 recommended that respondent's insurance license(s) be revoked, and he be ordered to
22 make restitution to Ms. Shireman in the sum of \$4,913.53.

23 Done this day, November 15th, 2002.

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26 _____
27 GRANT WINSTON
28 Administrative Law Judge
29
30

1 Original transmitted by mail this
2 15 day of November, 2002, to:

3 Charles R. Cohen, Director
4 Department of Insurance
5 ATTN: Kathy Linder
6 2910 North 44th Street, Ste. 210
7 Phoenix, AZ 85018

8 By 
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