

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

MAY 12 2003

DEPT. OF INSURANCE  
BY Kath

In the Matter of: )  
)  
WILLIAM EDWARD BERGH dba )  
NATIONAL FINANCIAL GROUP, )  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. 02A-170-INS

**ORDER**

On April 30, 2003, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal, issued an Administrative Law Judge Decision ("Recommended Decision"), a copy of which is attached and incorporated by this reference. The Director of the Department of Insurance has reviewed the Recommended Decision and enters the following Order:

1. The recommended Findings of Fact and Conclusions of Law are adopted.
2. All insurance licenses issued by the Department to the Respondent shall be revoked, effective the date of this Order.

**NOTIFICATION OF RIGHTS**

Pursuant to A.R.S. § 41-1092.09, the aggrieved party may request a rehearing with respect to this order by filing a written motion with the Director of the Department of Insurance within 30 days of the date of this Order, setting forth the basis for relief under A.A.C. R20-6-114(B). Pursuant to A.R.S. § 41-1092.09, it is not necessary to request a rehearing before filing an appeal to Superior Court.

The final decision of the Director may be appealed to the Superior Court of Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal must notify the Office

1 of Administrative Hearings of the appeal within ten days after filing the complaint commencing the  
2 appeal, pursuant to A.R.S. § 12-904(B).

3 DATED this 9<sup>th</sup> of May, 2003



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6 \_\_\_\_\_  
7 Charles R. Cohen  
8 Director of Insurance

9  
10 A copy of the foregoing mailed  
11 this 12<sup>th</sup> day of May, 2003

12 Sara M. Begley, Deputy Director  
13 Gerrie L. Marks, Executive Assistant for Regulatory Affairs  
14 Mary Butterfield, Assistant Director  
15 Catherine O'Neil, Consumer Legal Affairs Officer  
16 Arnold Sniegowski, Investigations Supervisor  
17 Del Wisecarver, Producer Licensing Supervisor ✓  
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19 Arizona Department of Insurance  
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- 1 Safeco Insurance Company of America  
Safeco Plaza
- 2 Seattle, WA 98185
  
- 3 American National Insurance Company  
One Moody Plaza
- 4 Galveston, TX 77550-7999
  
- 5 Security Life Insurance Company of America  
10901 Red Circle Drive
- 6 Minnetonka, MN 55343-9137
  
- 7 Conseco Senior Health Insurance Company  
11815 N. Pennsylvania Street
- 8 Carmel, IN 46032-4911

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Katly Lender

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In The Matter of:

WILLIAM EDWARD BERGH dba  
NATIONAL FINANCIAL GROUP,

Respondent.

No. 02A-170-INS-res

ADMINISTRATIVE

LAW JUDGE DECISION

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**HEARING:** March 3 and 4, 2003; The record of this matter closed on April 17, 2003.

**APPEARANCES:** Assistant Attorney General Jennifer Boucek for the Arizona Department of Insurance; David Childers, Esq. and Tasha Cycholl, Esq. for William Edward Bergh dba National Financial Group

**ADMINISTRATIVE LAW JUDGE:** Lewis D. Kowal

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**FINDINGS OF FACT**

1. William Edward Bergh ("Mr. Bergh") is and, at all material times, was licensed by the Arizona Department of Insurance ("Department") to transact insurance as a life and disability producer, Arizona license number 587470.
2. At all times material to this proceeding, Mr. Bergh was doing business as National Financial Group.
3. On October 15, 1993, Mr. Bergh entered into a Consent Order with the Arizona Department of Insurance ("Department") *In the Matter of William Edward Bergh, dba, National Financial Group*, Docket No. 8184, (Exhibit 4a) in which he admitted that he withheld monies belonging to another in or during the conduct of insurance business. In the Consent Order, the Director of the Department ordered Mr. Bergh to pay a civil penalty in the amount of \$500.00 within thirty days of entry of the Order.
4. Mr. Bergh testified as to the facts and circumstances surrounding the above-mentioned Consent Order. According to Mr. Bergh, he had attempted to place a client

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1 with an insurance company and the insurance application was denied. Mr. Bergh  
2 remitted the client's payment to the insurer after withholding his commission. Upon  
3 receipt of the denial of the insurance application, Mr. Bergh testified that the client  
4 wanted Mr. Bergh to attempt to obtain insurance coverage with a different insurance  
5 company. Mr. Bergh testified that the insurance company did not file a complaint  
6 against him and the complaint filed with the Department that ultimately resulted in the  
7 above-mentioned Consent Order was made by the managing agent of the insurance  
8 company that denied the coverage.

9 5. Although Mr. Bergh explained the circumstances surrounding the above-  
10 mentioned Consent Order, Mr. Bergh acknowledged there were monies he did not  
11 return to the managing agent that was owed to the above-mentioned insurance  
12 company that should have been returned. Mr. Bergh testified that, at the relevant time,  
13 he did not have the funds to return the monies that were withheld and eventually  
14 arranged for a loan to repay the monies to the insurance company upon being  
15 contacted by the Department concerning the situation.

16 6. On June 5, 1997, Mr. Bergh submitted to the California Department of Insurance  
17 an application to obtain a life insurance agent's license. The California Department of  
18 Insurance denied Mr. Bergh's application for the reasons that; (a) he failed to disclose  
19 the above-mentioned Consent Order on the application; (b) he was lacking in integrity;  
20 (c) he previously engaged in fraudulent practices as evidenced by the above-mentioned  
21 Consent Order; and (d) that he had shown incompetence or untrustworthiness in the  
22 conduct of business.

23 7. On August 7, 1997, the California Department of Insurance issued a stipulated  
24 order for monetary relief against Mr. Bergh requiring him to pay a \$100.00 penalty and  
25 \$245.00 examination fee. The California Department of Insurance ultimately issued Mr.  
26 Bergh a life insurance agent's license.

27 8. On December 23, 1997, the State of Minnesota Commissioner of Commerce  
28 issued a Notice of and Order for Hearing, Notice of Prehearing Conference, and Order  
29 to Show Cause against Mr. Bergh (Exhibit 1) for the Sale of Unsuitable Living Trusts,  
30 and Annuities and Unauthorized Transfer of Funds.

1 9. On February 20, 1998, Mr. Bergh executed a Consent Order (Exhibit 2)  
2 informally disposing of the above-mentioned Minnesota matter requiring him to  
3 surrender his Minnesota insurance agent's license. The Consent Order provided that  
4 Mr. Bergh's Minnesota insurance agent's license be terminated, it permanently  
5 prohibiting him from applying for any license issued by the Minnesota Department of  
6 Commerce and stated that if there is any such application Mr. Bergh agreed that it shall  
7 be denied without a hearing.

8 10. On February 10, 1999, Mr. Bergh filed with the Department an Insurance License  
9 Renewal Application (The First Renewal Application- Exhibit 3).

10 11. Mr. Bergh answered "Yes to Part II, Question (B) in the First Renewal  
11 Application, which asked:" Have you had any professional, vocational, business license  
12 or certification refused, denied, suspended, revoked or restricted, or a fine imposed by  
13 any public authority that has not previously been disclosed by you to this agency in a  
14 license application?"

15 12. In his response to the above-mentioned question in the First Renewal  
16 Application, Mr. Bergh wrote "See supporting paperwork CA Dept of Insurance" and  
17 underlined the words "fine imposed" in that question.

18 13. The weight of the credible evidence of record established that Mr. Bergh  
19 attached a copy of the California Department of Insurance, Statement of Issues and  
20 Order for Monetary Penalty dated August 7, 1997 (Exhibit 4) to the First Renewal  
21 Application but did not attach a copy of the above-mentioned February 28, 1998  
22 Minnesota Consent Order.

23 14. At all times material to this matter, Mr. Bergh was registered with the Arizona  
24 Corporation Commission ("ACC) as a securities salesman in the state of Arizona.

25 15. In 1999, Mr. Bergh contracted with World Cash Providers, LLC ("World Cash") to  
26 sell automated teller machines ("ATMs") and cash ticket machines ("CTMs"). Pursuant  
27 to that contract, Mr. Bergh was to promote and sell the above-mentioned machines as  
28 well as provide customer service.

29 16. Mr. Bergh testified that the above-mentioned contract provided for Mr. Bergh to  
30 received commissions on the sale of each ATM or CTM.

1 17. Mr. Bergh contracted with Hotel Connect, LLC ("Hotel Connect") to sell  
2 membership units. Pursuant to that contract, Mr. Bergh was to promote and sell such  
3 units and provide sales support and receive commissions on the sale of each  
4 membership unit.

5 18. The evidence of record established that during the relevant time, Mr. Bergh  
6 entered into a contract with Mobile Cash Systems L.L.C. to sell and promote  
7 membership units. Mr. Bergh testified that the above-mentioned contract provided for  
8 Mr. Bergh to receive commissions on the sale of each membership unit.

9 19. On February 11, 2000, Mr. Bergh sold Bernetta Greenlaw and her husband,  
10 Patrick Greenlaw (the Greenlaws) an annuity. Mr. Bergh testified that, after he provided  
11 information to the Greenlaws regarding Mobile Cash, the Greenlaws wanted to transfer  
12 their annuity investment to the Mobile Cash investment.

13 20. Mr. Bergh testified that he complied with the Greenlaws' request and arranged  
14 for their annuity investment minus the early surrender penalty to be transferred to an  
15 investment in Mobile Cash. Bergh testified that the Greenlaws received monthly  
16 payment checks on their \$20,000.00 Mobile Cash investment and were so satisfied with  
17 the investment that on April 17, 2000, they invested an additional \$80,000.00 in Mobile  
18 Cash.

19 21. At the time of the above-mentioned transactions, Mr. Greenlaw was eighty years  
20 old and had suffered three strokes and Mrs. Greenlaw was 78 years old and legally  
21 blind, suffering from macular degeneration, a progressive disease. This information is  
22 set forth in an Affidavit executed by Mrs. Greenlaw on December 12, 2000 (Exhibit 9).

23 22. Nancy Greenlaw, the Greenlaws' daughter, testified that Mrs. Greenlaw died in  
24 April 2001 and her father, Mr. Greenlaw, died in March 2001.

25 23. Nancy Greenlaw testified that she was present when her mother executed the  
26 Affidavit (Exhibit 9), that she was not personally familiar with the facts surrounding the  
27 Mobile Cash transactions, that she had spoken to her mother about the Mobile Cash  
28 transactions with her mother, and the Affidavit accurately reflects the substance of  
29 those discussions.

30 24. The weight of the evidence of record established that as a result of Mr. Bergh's  
presentation of investment opportunities to the Greenlaws, they changed their

1 investment in the annuity to a more risky investment without knowing the full extent of  
2 the risks involved.

3 25. On April 14 2000, Mr. Bergh entered into a Final Order for Relief and Consent to  
4 Same with the ACC in the Matter of William E. Bergh individually and d/b/a National  
5 Financial Group and Thomas Otto Tabat ,Docket No. S-03374A-99-0000, Decision No.  
6 62465 (" Decision No. 62465").

7 26. In the Consent Order entered into in Docket No. S-03374A-99-0000, Decision  
8 No. 62465 ("Decision No. 62465"), Mr. Bergh admitted that from October 1998 through  
9 June 2000, Mr. Bergh sold: (a) pay telephones through B.E.E. Communications, Inc.  
10 having lease agreements with ETS Payphones, Inc.; (b) membership interests in Hotel  
11 Connect , or (b) CTMs through World Cash that constituted unregistered securities.

12 27. Mr. Bergh also admitted in the Consent Order entered into in Decision No.  
13 62465 that he had sold membership interests in Hotel Connect and CTMs of World  
14 Cash without requesting or receiving approval of his broker, Legacy Financial Services,  
15 Inc. ("Legacy") and that those investments were not recorded in the books and records  
16 of Legacy. The ACC ordered Mr. Bergh to cease and desist from securities law  
17 violations, ordered him to pay an administrative penalty of \$20,000.00 and revoked his  
18 securities salesman registration.

19 28. On May 29, 2001, Mr. Bergh signed a Consent Order with the ACC In *the Matter*  
20 *of William E. Bergh individually and d/b/a/ National Financial Group and World Wide*  
21 *Business Opportunities*, LLC, Docket No. S-03441a-01-0000, Decision No. 63851  
22 (" Decision No. 63851"). In that Consent Order, Mr. Bergh agreed to cease and desist  
23 from violations of the Securities Act of Arizona, pay civil monetary penalties in the  
24 amount of \$25,000.00, pay restitution in the amount of \$963,000.00 and interest of  
25 10% per annum.

26 29. In Decision No. 63851, Mr. Bergh consented that he would never apply to the  
27 State of Arizona for registration as a securities dealer or salesman. The Decision also  
28 contains Mr. Bergh's consent to the admission of the Findings of Fact and Conclusions  
29 contained therein for purposes of that proceeding before the ACC and any other  
30 administrative proceedings before the ACC or another agency of the State of Arizona.

30 30. Mr. Bergh also agreed in Decision No. 63851 not to take any action or to make,



1 or permit to be made, any public statement denying, directly or indirectly, any Finding of  
2 Fact or Conclusion of Law in the Order or creating the impression that the Order was  
3 without factual basis.

4 31. In Decision No. 63851, the ACC found that an agent of National Financial group  
5 continued to sell unregistered securities after the ACC ordered Mr. Bergh to cease and  
6 desist such activity in April 2000. The ACC also found that Mr. Bergh "encouraged  
7 investors to transfer funds from CD's, mutual funds, and/or annuities" and invest in  
8 "CTMs and wireless terminal machines offered by Mobile Cash. The Decision contains  
9 Mr. Bergh's acknowledgement that the Mobile Cash offering was a continuation of the  
10 World cash program. Mr. Bergh also admitted that the WTMs were never actually  
11 placed in service, that many CTMs that were purchased were never delivered or placed  
12 in service, and that he made misrepresentations to investors about the safety of the  
13 programs.

14 32. Decision No. 63851 contained a finding of fact that Mr. Bergh did not fully  
15 disclose the risks of the investments in Hotel Connect and the ACC concluded that .  
16 Bergh violated A.R.S. § 44-2992 by offering or selling securities within or from Arizona  
17 by making untrue statements or misleading omissions of material facts.

18 33. Mr. Bergh testified that the restitution ordered by the ACC in Decision No. 63851  
19 has been discharged in a United States bankruptcy proceeding. However, Mr. Bergh  
20 represented that he has a moral obligation to repay his former client investors who were  
21 involved with World Cash and Mobile Cash if he is successful with the above-  
22 mentioned legal malpractice lawsuit against Jennings, Strauss & Salmon, P.C.  
23 ("Jennings, Strauss & Salmon") which is more fully addressed below.

24 34. Jerry Lowe ("Mr. Lowe"), an investigator with the ACC, testified that Arizona  
25 investors in Hotel Connect did not receive any return on their investments and the  
26 Arizona investors in World Cash and Mobile Cash lost most if not all of their principals.

27 35. Mr. Lowe testified that Mark McKowski ("Mr. McKowski"), the owner and operator  
28 of Eagle Communication recruited others agents within the state of Arizona to offer the  
29 investments opportunities provided by Hotel Connect, World Cash and Mobile Cash.  
30 Mr. Lowe also testified that Mr. McKowski did not have any prior experience in such  
investments.

1 36. Mr. Lowe testified that Mobile Cash was related to World Cash and there existed  
2 similar principals in those companies.

3 37. Mr. Bergh testified that during the relevant time when he sold Mobile Cash, Hotel  
4 Connect, and World Cash business opportunities, he did not believe that the  
5 investments were securities.

6 38. Mr. Bergh testified that Mobile Cash, World Cash, and Hotel Connect presented  
7 him with materials, which contained opinion letters from well-known law firms stating  
8 their opinion that the investments were not securities.

9 39. The Hotel Connect subscription agreement (Exhibit 8) specifically  
10 states that :

11 THIS UNIT IS PART OF AN OFFERING THAT HAS NOT  
12 BEEN REGISTERED UNDER THE SECURITIES ACT OF  
13 1933, AS AMENDED, NOR UNDER ANY APPLICABLE  
14 STATE REGISTRATION STATUTE AND MAY NOT BE  
15 OFFERED FOR SALE, SOLD, ASSIGNED, TRANSFERRED  
16 OR PLEDGED EXCEPT IN ACCORDANCE WITH SUCH  
17 LAWS AND IN ACCORDANCE WITH THE COMPANY'S  
18 OPERATING AGREEMENT.

19 40. Mr. Lowe testified that the ACC determined that the Hotel Connect offerings  
20 were a private placement that had to comply with federal and state securities laws.

21 41. Mr. Bergh testified that he sold the above-mentioned investments to members of  
22 his family, who like others, incurred losses from such investments.

23 42. Mr. Bergh testified that he performed due diligence before he began offering the  
24 above-mentioned investments in the state of Arizona by visiting the companies,  
25 reviewing materials and information provided by the International Franchise Association  
26 (the "Association"), which listed World Cash as a preferred provider.

27 43. Mr. Bergh testified that from his communication with the executive director of the  
28 International Franchise Association at the time he learned that it had spent  
29 approximately \$1,000,000.00 reviewing World Cash before listing it as a preferred  
30 provider. Mr. Bergh testified that CTMs were being proposed to be placed in franchises  
and that the Association approved World cash as a preferred provider and  
recommended it as an investment to its franchise members.

1 44. Mr. Bergh testified that he relied on the materials provided to him by World Cash  
2 regarding the International Franchise Association' members' satisfaction with World  
3 Cash investment and its placement of World Cash as a preferred provider.

4 45. Mr. Bergh testified that he requested but did not receive review any financial  
5 statements nor did he did he review financial statements of the entities or look into the  
6 background of the principals of the above-mentioned companies that provided the  
7 investment opportunities.

8 46. Mr. Bergh testified that he relied on representations made by Meadow Lark  
9 Lemon and Roger Craig in a video tape presentation, former celebrity sports figures  
10 who promoted those companies, he researched the business opportunities and spent  
11 two to three months gathering information about them before he began selling the  
12 above-mentioned opportunities.

13 47. Mr. Bergh testified that he relied on an opinion letter authored by Douglas  
14 Dunipace ("Dunipace opinion letter"), an attorney with Jennings, Strauss & Salmon,  
15 regarding Mobile Cash business offerings as not being securities.

16 48. Mr. Bergh testified that he did not show the above-mentioned Dunipace opinion  
17 letter or discuss with them the issue as to whether the offerings could be considered  
18 securities that were unregistered.

19 49. Mr. Bergh testified that he did not hire any attorneys to investigate the principals  
20 of the companies and acknowledged that in hindsight, he should have.

21 50. The above-mentioned Dunipace opinion letter states that aside from Mobile  
22 Cash, others should not rely on the letter without having obtained written consent from  
23 Jennings, Strauss & Salmon.

24 51. Mr. Bergh testified that he did not receive written permission from Jennings,  
25 Strauss & Salmon to rely on the Dunipace opinion letter. However, Mr. Bergh testified  
26 that by virtue of Mr. Dunipace's actions, he was receiving advice as to how to promote  
27 and sell the business opportunities.

28 52. Mr. Bergh testified that he was not aware that any of the above-mentioned  
29 business offerings were securities and relied on the legal opinion of Davis, Wright &  
30 Tamine, a law firm in California that the offering provided by Hotel Connect was not a

1 security. However, Mr. Bergh did not request an opinion from an attorney in Arizona as  
2 to whether the offerings were securities.

3 53. Mr. Bergh testified that at the time he provided information to the and other  
4 investors regarding the above-mentioned investment opportunities, he had not believe  
5 that he was making any misrepresentations as to the safety of the investments.  
6 However, Mr. Bergh acknowledged that he did admit in Decision No. 63851 that he  
7 made misrepresentations about the safety of those investments.

8 54. Mr. Bergh presented character witnesses, who testified as to knowing Mr. Bergh  
9 Those witnesses testified as to Mr. Bergh's good character, honesty, and  
10 trustworthiness. However, most of those witnesses knew very little about the particulars  
11 of Mr. Bergh's activities that gave rise to the above-mentioned ACC action.

12 55. Carol Fowler ("Ms. Fowler") testified that she has known Mr. Bergh for  
13 approximately 3 years. Ms. Fowler first met Mr. Bergh during training at Jentec, a multi-  
14 media company when Mr. Bergh was involved with training of the sales force. Ms.  
15 Fowler has been a friend of Gary and Louise Jenkins, the owners of Jentec, for over 25  
16 years.

17 56. Ms. Fowler testified that she purchased a long term care insurance policy from  
18 Mr. Bergh approximately one and a half years ago and that she was satisfied with the  
19 way in which he handled the sale of the product. Ms. Fowler testified that she believes  
20 Mr. Bergh to be an ethical and moral person.

21 57. Ms. Fowler testified that she was not aware of Mr. Bergh's conduct, as set forth  
22 above, involving the Insurance Department Consent Order, the California Department  
23 of Insurance, the Minnesota Department of Commerce or the ACC Consent Orders.

24 58. Thomas Jonavich ("Mr. Jonavich"), a financial consultant with Smith Barney,  
25 testified that Mr. Bergh is a friend and client who he has known for more than ten years.

26 59. Mr. Jonavich testified that he has never observed Mr. Bergh engage in a  
27 dishonest act and considers him honest and trustworthy on a personal level but did not  
28 commit to making the same observation on a professional or business level.

29 60. Mr. Jonavich testified that he was not aware of Mr. Bergh's conduct, as set forth  
30 above, involving the Insurance Department Consent Order, the California Department  
of Insurance, the Minnesota Department of Commerce or the ACC Consent Orders.

1 61. Larry Davis II ("Mr. Davis") testified that he has known Mr. Bergh for nine years  
2 through what began as a business relationship eventually involved into a friendship.

3 62. Mr. Davis testified that he sees Mr. Bergh socially about once a week and sees  
4 Mr. Bergh's family about once or twice a year.

5 63. Mr. Davis testified that he first learned of the instant hearing about four or five  
6 months ago and that Mr. Bergh was being held accountable through his securities  
7 license concerning the selling of CTMs.

8 64. Mr. Davis testified that he was not aware of Mr. Bergh's conduct, as set forth  
9 above, involving the Insurance Department Consent Order, the California Department  
10 of Insurance, the Minnesota Department of Commerce or the ACC Consent Orders.

11 65. Mr. Davis testified that Mr. Bergh is upbeat, humble, confident, positive, honest  
12 and trustworthy and he has not observed Mr. Bergh engage in any fraudulent activity.

13 66. Daniel Sondholm ("Mr. Sondholm"), an insurance agent with Stewart & Tunno  
14 Insurance Agency, testified that he previously worked with Mr. Bergh from January  
15 1985 though July 1986 and has maintained a friendship with him.

16 67. Mr. Sondholm, testified that Mr. Bergh had a great attitude and contributed  
17 significantly in a positive manner influencing staff and the district in which they worked  
18 at Prudential insurance office.

19 68. Mr. Sondholm had been made generally aware of Mr. Bergh's problem in  
20 obtaining a California insurance agent's license, the Minnesota Department of  
21 Commerce, and World Cash and Hotel Connect offerings.

22 69. Mr. Sondholm testified that Mr. Bergh is "aggressive go-getter, a "good  
23 salesman", who is honest and trustworthy and who he has not known to engage in a  
24 fraudulent or dishonest act.

25 70. Mr. Sondholm testified that Mr. Bergh did not inform him that Mr. Bergh admitted  
26 to having engaged in securities fraud.

27 71. Gary Jenkins ("Mr. Jenkins"), the owner and president of Jentec Interactive  
28 ("Jentec"), testified to having known Mr. Bergh for five to six years. Mr. Jenkins holds  
29 insurance licenses in good standing in the States of California and Arizona, and the  
30 State of Washington,

1 72. Mr. Jenkins testified that he has used Mr. Bergh on trade shows, that Mr. Bergh  
2 has attended Jentec shareholder meetings, that Mr. Bergh attends church functions  
3 and Sunday school classes that Mr. Jenkins attends, and has allowed Mr. Bergh to live  
4 at his home four to five days a week for two to three week periods at a time.

5 73. Mr. Jenkins testified that he has offered Mr. Bergh a position at Jentec and prior  
6 to offering him such a position, Mr. Jenkins hired a private investigator to conduct a  
7 background check on Mr. Bergh.

8 74. Mr. Jenkins testified that through the background check, he learned the factual  
9 circumstances surrounding the Department's 1993 Consent Order, the California  
10 Department of Insurance, the Minnesota Department of Commerce or the ACC  
11 Consent Orders

12 75. Mr. Jenkins testified that Mr. Bergh presented his files to Mr. Jenkins showing  
13 him to be honest and having integrity.

14 76. Mr. Jenkins testified that despite what he learned through the background check  
15 he had performed on Mr. Bergh, he would like to hire Mr. Bergh to work at Jentec and  
16 would refer clients to Mr. Bergh for insurance matters.

17 77. The above-mentioned evidence as to Mr. Bergh's good character is a factor to  
18 consider concerning any penalty to be imposed. The testimony of those witnesses are  
19 not directly relevant as to the honesty, trustworthiness and good character of Mr. Bergh  
20 with respect to the above-mentioned business transactions involving the Greenlaws or  
21 investors in World Cash, Hotel Connect , or Mobile Cash.

22 78. Mr. Bergh testified that for approximately one year the above-mentioned  
23 businesses made payment to his clients who invested in the business opportunities and  
24 when the payments became sporadic, he stopped selling those business opportunities.

25 79. Regarding his answers on the First Renewal Application, Mr. Bergh testified that  
26 the wording was confusing. Mr. Bergh testified that on the First Renewal Application,  
27 he believed he answered the questions correctly. He testified that in the Second  
28 Renewal Application, based on what had occurred in the interim period, he believed it to  
29 be prudent to disclose information that was not disclosed on the First Renewal  
30 Application. Mr. Bergh testified that he did not mean to withhold or hide information

1 from the Department by his failure to include information in the First Renewal  
2 Application.

3 80. Mr. Bergh maintained that the wording in the renewal applications does not meet  
4 a readability standard as demonstrated by the test score that Kathy Newcomb ("Ms.  
5 Newcomb") a paralegal experienced in corporate matters who works for Low &  
6 Childers, P.C., Respondent's counsel herein, determined by application of the Flesch  
7 test .

8 81. Ms. Newcomb testified that the Flesch test is applied to provisions of insurance  
9 policies that are offered to everyone regardless of education and background.

10 82. Ms. Newcomb testified that with respect to the pertinent questions in the  
11 First and Second Renewal Applications (Exhibits D and E), the Flesch scores were in  
12 the very difficult to read category.

13 83. Ms. Newcomb also acknowledged that the renewal application forms were  
14 devised by the Department for insurance applicants and that she is unaware of any  
15 legal requirement that the renewal application forms have to pass the Flesch test.

16 84. Ms. Newcomb testified that while the insurance policies that undergo the Flesch  
17 test are written for the general public, the renewal insurance forms are written for  
18 insurance producers.

19 85. It is determined that with respect to the argument that the renewal application for  
20 questions are difficult to understand, the evidence regarding the application of the  
21 Flesch test is not relevant. Therefore, the Administrative Law Judge is not persuaded  
22 that the pertinent questions regarding the renewal application forms were difficult to  
23 understand and respond to.

24 86. Mr. Bergh maintained that his entire career has been in the insurance field and  
25 that if he can't continue as an insurance producer, he is unsure as to how he will earn a  
26 living to provide for his family.

### 27 CONCLUSIONS OF LAW

28 1. Mr. Bergh's conduct, as set forth above, constitutes using dishonest practices, or  
29 demonstrating incompetence, untrustworthiness or financial irresponsibility in the  
30

1 conduct of business in this state or elsewhere, within the meaning of A.R.S. § 20-  
2 295(A)(8).

3 2. Mr. Bergh's conduct, as set forth above, constitutes having an insurance  
4 producer's license, or its equivalent denied, suspended or revoked in any state within  
5 the meaning of A.R.S. 20-295(A)(9).

6 3. Mr. Bergh's conduct, as set forth above, constitutes violating any provision of  
7 A.R.S., Title 20, or any rule, subpoena or order of the Director within the meaning of  
8 A.R.S. § 20-295(A)(2).

9 4. Mr. Bergh's conduct , as set forth above, constitutes the obtaining or attempting  
10 to obtain a license through misrepresentation or fraud within the meaning of A.R.S. §  
11 20-295(A)(3). Mr. Bergh did not disclose the above-mentioned Minnesota Consent  
12 Order in the First Renewal Application and its subsequent disclosure in the Second  
13 Renewal Application, which was done prior to the institution of any disciplinary action  
14 against Mr. Bergh, does not cure the failure of Mr. Bergh to disclose information that  
15 was required to be disclosed in the First Renewal Application.

16 5. Mr. Bergh demonstrated that he is active in the community which he lives, that he is  
17 actively involved in the insurance industry and has achieved recognition for outstanding  
18 sales performance. However, Mr. Bergh also has a history of licensing problems  
19 involving insurance licenses in the State of Minnesota, a prior disciplinary action  
20 involving the Department , and has had his Securities Salesman Registration in the  
21 State of Arizona revoked. Despite attempts to explain the history of licensing  
22 disciplinary actions as unfortunate circumstances, the Administrative Law Judge is  
23 persuaded by the overwhelming evidence of inattention to or violation of regulatory law.  
24 It is that history and the factual determinations or circumstances outweigh Mr. Bergh's  
25 accomplishments in the insurance industry and community. At this point in time, Mr.  
26 Bergh poses a risk of harm to the public while licensed in the insurance industry. The  
27 Administrative Law Judge would arrive at the same determination even if the Affidavit of  
28 Mrs. Greenlaw (Exhibit 9) had not been admitted into the evidentiary record..

29 6. Mr. Bergh attempted to discount and collaterally attack the above-mentioned  
30 Consent Orders and argued that this disciplinary proceeding should be held in  
abeyance pending the outcome of Mr. Bergh's civil action in the Maricopa County



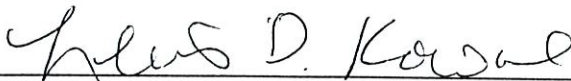
1 Superior Court involving the Dunipace letter which Mr. Bergh contends will address  
2 whether the Hotel Connect offerings involve securities. However, Mr. Bergh failed to  
3 present any legal document or authority that established the Consent Orders were not  
4 valid and in effect and no stay orders were presented tot he Administrative Law Judge  
5 to stop the instant matter from proceeding to hearing.

6 7. It is determined that grounds exist to suspend, revoke or refuse to renew Mr.  
7 Bergh's insurance license, impose a civil penalty upon him and order restitution  
8 pursuant to A.R.S. §§ 20-295(A) and (F).

9 **RECOMMENDED ORDER**

10 Based on the above, commencing on the effective date of the Order entered in  
11 this matter, all licenses issued by the Department to William Edward Bergh dba  
12 National Financial Holdings shall be revoked.

13 Done this day, April 30, 2003.

14   
15 \_\_\_\_\_  
16 Lewis D. Kowal  
17 Administrative Law Judge

18  
19 Original transmitted by mail this  
20 6<sup>th</sup> day of MAY, 2003, to:

21  
22 Department of Insurance  
23 Charles R. Cohen  
24 ATTN: Kathy Linder  
25 2910 North 44th Street, Ste. 210  
26 Phoenix, AZ 85018

27 By NANCIE SCHENK.